Rights Granted Under U.S. Patent Law

**Patents issued** by the U.S. Patent and Trademark Office confer upon the patent holder "the right to exclude others from making, using or selling the invention throughout the United States" and its territories and possessions. This page addresses:

- the scope of this right, and
- the infringement of this right.

**Scope of Right to Exclude**: The exact nature of the right conferred by a U.S. patent must be carefully distinguished, and the key is in the words "right to exclude." Any person is ordinarily free to make, use, or sell anything she/he pleases, and a grant from the Government is not necessary. Since the patent does not grant the right to make, use, or sell the invention, the patent holder's own right to do so is dependent upon the rights of others and whatever general laws might be applicable. Another party may own a patent which will prevent the patentee from utilizing her/his own invention. In addition, government laws, such as antitrust laws or FDA regulations, may restrict the ways in which a patent holder can utilize her/his invention.

Since the essence of the right granted by a patent is the right to exclude others from commercial exploitation of the invention, the patent holder is the only one who may make, use, or sell the invention. Others may do so only with the authorization of the patent holder. Such authorization is usually given through a patent license agreement.

The rights granted under patent law are very different than rights granted under copyright law. Patent law gives to the patent holder the right to exclude all others from making, using, or selling the invention. The scope of the invention is determined by the patent claims (described in more detail in BitLaw's discussion of [patent applications](#)). Note that it does not matter if the infringer independently developed the same invention. In contrast, copyright law prevents the **copying** of the expression of ideas. Copyright law does not protect ideas themselves. As a result, copyright law does not protect against someone else stealing an invention, nor does it prevent anyone else from independently creating the same or similar expression (see the BitLaw discussion on the [scope of copyright protection](#) for more information).

**Infringement** of a patent is the unauthorized making, using, or selling of the patented invention within the territory of the United States, during the term of the patent. If a patent is infringed, the patent holder may sue for relief in the appropriate Federal court. The patent holder may ask the court for an injunction to prevent the continued infringement and may also ask the court for an award of damages. In such an infringement suit, the defendant may question the validity of the
patent, which is then decided by the court. The defendant may also claim that its actions do not constitute infringement. Infringement is determined primarily by the language of the claims of the patent: if what the defendant is making does not fall within the language of any of the claims of the patent, there is no infringement.

Suits for infringement of patents follow the rules of procedure of the Federal courts. From the decision of the district court, there is an appeal to the Court of Appeals for the Federal Circuit. The Supreme Court may thereafter take a case by writ of certiorari. If the United States Government infringes a patent, the patent holder has a remedy for damages in the United States Claims Court. The Government may use any patented invention without permission of the patent holder, but the patent holder is entitled to obtain compensation for the use by or for the Government.