

What a Patent Search Can, and Cannot, Tell You Before You File

A plain-English guide for founders and product teams

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Most founders who ask us about a patent ask the same first question: *has someone already done this?* A professional patent search is the usual way to find out. It is also one of the most misunderstood documents in the patent process. Used well, it saves money and produces a stronger patent. Read as a guarantee, it can lead to expensive surprises. Here is what a search does, what it does not, and how to use one.

There is no legal duty to search, but there is a duty of candor

US law does not require an inventor to search before filing. What it does require is honesty: everyone involved in preparing and prosecuting an application must disclose to the Patent Office information they know to be material to patentability (37 C.F.R. § 1.56). A search does not create that duty, but any relevant references it turns up will need to be disclosed. That is a reason to search early, not a reason to avoid searching.

The real reason to search is economic. Drafting and prosecuting a US utility application typically costs many times what a search costs. A search that shows the core idea is already public lets you stop, pivot or narrow your claims before that money is spent.

Four different searches, four different questions

“Patent search” covers several distinct exercises. Asking for the wrong one is the most common mistake we see.

- **Patentability (novelty) search.** *Can I get a patent?* Looks for anything published before your filing date that discloses your invention, including expired patents, foreign patents and technical papers.
- **Freedom-to-operate (clearance) search.** *Can I sell this product without infringing someone else's patent?* Looks only at patents that are in force, in the countries where you will make or sell, and compares their *claims* to your product. Having your own patent does not answer this question.
- **Invalidity search.** *Can a patent asserted against us be knocked out?* A deep search for prior art that predates a specific patent's claims, usually for litigation or licensing negotiations.
- **Landscape search.** *Who is patenting in this space, and where are the gaps?* A map of filings by company, technology and trend, used for strategy and investor diligence.

What a good search can tell you

A well-run patentability search gives you the closest references a professional searcher could find, and an honest comparison of each feature of your invention against them. That comparison is the valuable part. It tells your attorney which features are already known, which appear to be new, and therefore where the claims should focus. Patents drafted around the real point of novelty tend to be granted faster and hold up better when challenged.

What no search can tell you

- **Anything filed in roughly the last 18 months.** US and most foreign patent applications are published about 18 months after their earliest filing date, with limited exceptions (35 U.S.C. § 122(b)). Until then they are invisible to every searcher, yet they can still count as prior art against you once published.
- **Undocumented public activity.** Products sold, demonstrated or used in public before your filing date can be prior art (35 U.S.C. § 102(a)(1)) even if nothing about them was ever written down in a searchable form.
- **A guarantee.** Searches are bounded by time, budget, databases and language. A good report says exactly what was searched so you can judge the residual risk. Be wary of any report that does not.

Your own disclosures matter too

Founders are often the source of their own prior art: a pitch deck sent to investors without a confidentiality agreement, a conference talk, a product launch or a blog post. US law gives inventors a one-year grace period for their own disclosures (35 U.S.C. § 102(b)(1)), but many jurisdictions, notably Europe under the European Patent Convention and China, have no general grace period. If international protection matters, file before you talk publicly. Tell your attorney about every disclosure you have made, and when.

How to read the report you receive

A professional search report should include, at a minimum:

- a short statement of the invention as the searcher understood it (check this first: a search on the wrong understanding is worthless);
- the databases, classification codes and date limits used, and the key search strings;
- a ranked list of the most relevant references, with the specific passages or figures that matter;
- a feature-by-feature comparison, often called a claim chart; and
- a clear note of limitations: what was not searched and why.

The search itself is research, not a legal opinion. Whether your invention is patentable, and how to claim it, is a judgment your registered patent attorney or agent makes using the search results.

Five questions to ask before you commission one

- Which question am I trying to answer: patentability, freedom to operate, invalidity or landscape?
- Which countries matter to my business in the next three to five years?
- Have I, or anyone on my team, already disclosed the idea publicly? When?
- What is the one feature I believe competitors cannot easily copy? Put it at the center of the search.
- What will I do differently depending on the result? If nothing, the search may not be worth commissioning yet.

Bottom line. A patent search is a risk-reduction tool, not a verdict. Commissioned for the right question and read with its limits in mind, it is usually the cheapest step in the patent process and the one that shapes everything after it.

This article is general information, not legal advice. Statutory references are to US law as at September 2026. |

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