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科 目：共通問題

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In order to prepare a patent application and proceed with the application procedure, the patent application is required to satisfy certain formal and legal requirements before the patent office grants a patent for an invention claimed in the subject application.

The formal requirements are relatively simple. The USPTO just requires a specification, at least one claim, and when necessary, a drawing. A declaration or an oath of the inventor and, of course, the basic application fee can be submitted at a later date.

The legal requirements are rather complicated. In short, in order to obtain a patent, the invention described in the application must be new, unobvious and useful. For the invention to be new, in other words, for the invention to include “novelty”, the invention must be different from any part of the prior art. A determination as to what constitutes the prior art may be difficult. In general, the prior art includes a preceding issued patent, a preceding publication, and a product or a method embodying an invention which has been made already accessible to the public.

The unobviousness, also known as an “inventive step”, means that there must be a significant difference between the invention described in the subject application and the prior art. Whether or not an invention is unobvious is usually the most discussed matter in the patent application procedure at the patent office.

For the invention to be useful, in other words, for the invention to satisfy the requirement of “utility”, it is not generally a difficult matter because this requirement is broadly interpreted.

There are some inventions which cannot obtain a patent, in other words, which are not “protected under the law”. A law of nature is unpatentable. An abstract idea and a simple discovery are also unpatentable. However, if an organism is an engineering product, the organism is patentable. The biotechnology and the genetic engineering have already achieved to generate cloned animals. If the biotechnology and the genetic engineering make a rapid progress, a serious problem may occur in the future regarding legitimacy of the intellectual property right of the cloned animals.