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科 目：共通問題

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For preparing a utility patent application and proceeding application procedure, it is required to satisfy several formal and legal requisites before the Patent Office awards a patent on an invention for which the patent application is applied.

The formal requisites are relatively simple. In the United States, the formal requisites are satisfied as long as the patent application is accompanied by a specification, at least one claim, and drawings when necessary. Not alone the filing fee but the oath or declaration executed by inventor(s) can be filed later.

The legal requisites are rather complicated. Briefly speaking, for obtaining a patent, the invention described in the specification must be new, non-obvious, and useful. To be new, namely, to have novelty, the invention should be distinctive from any portion of prior art. It may be difficult to judge by what the prior art is constituted. In general, the prior art includes patented publications preceding the invention for which the patentability is sought, printed publications preceding the invention, and products and methods which embody inventions that have been already made available to public.

Nonobviousness is referred to also as "inventive step". This means that there should be useful distinctiveness between the invention disclosed in the patent application and the prior art. The judgment as to whether certain invention is non-obvious or not is the most controversial issue during prosecution of the application in the Patent Office.

It is normally not difficult to meet the requisite of being useful, that is, so-called usefulness requisite. The useful requisite is interpreted or construed in a very broad sense.

There is something that is ineligible to be patented, namely, excluded from "legal protection". Including laws of nature, abstract ideas and simply found objects are also excluded from legal or patent protection. However, creatures can be patented provided that they are engineering products. In the fields of biotechnology and genetic engineering, the cloned creatures have been already produced. Rapid progress in those fields, however, may pose serious problems as to the validity of intellectual property right on such cloned creatures.