

# Who is an inventor?

To be an “inventor” of an idea described in a patent, you must have had an “inventive idea”. Just carrying out part of the work does not usually make you an inventor.

## What is an inventive idea?

An “inventive idea” or “inventive step” must be more than an obvious development over what others know or have used before (ie, what is already in the public domain). To prove your idea includes an inventive step, your patent application needs to:

- compare the invention and what others know or have used before you filed the patent application, and
- consider the qualitative difference between what others know or have used and what you claim as the invention.

A guiding principle is that it is the idea itself that is the inventive step, rather than the way of carrying out the idea.

## What contribution does the inventor have to make to the idea?

Only a person who contributed to the inventive step or inventive idea is an inventor.

A person involved only in the process that led to the invention being carried out or made is not an inventor.

Patent laws distinguish those who plan or design, and those who build from others’ plans.

## Who is the inventor if the original idea has to be modified to work?

If the original inventive step has to be modified for the invention to work, then a person contributing to the idea of that modification is a “joint-inventor”. A joint-inventor must show the modification in itself has an inventive step.

Just carrying out what a person skilled in that area would do in the same circumstances, is not an inventive step.

## Example – who is the inventor?

Person 1: thinks of the idea of making a horseless carriage or “car”, which you pedal to get around.

Person 2: suggests that you could attach a petrol-driven motor to make a “motor car”.

Person 3: assembles the motor car including adding some improvements over what carriage makers normally put into carriages, such as up market seats.

In this example, Person 1 and Person 2 are inventors but Person 3 is not an inventor.

But, if in assembling the motor car, Person 3 realises that you need to be able to stop the car once it starts moving, so comes up with the new idea of putting “brakes” on the wheels, then Person 3 would be an inventor.

## What exactly does the law say?

Here's what the US Patent Office says about inventors.

*"If each had a share in the ideas forming the invention, they are joint inventors and a patent will be issued to them jointly on the basis of a proper patent application.*

*If, on the other hand, one of these persons has provided all of the ideas of the invention, and the other has only followed instructions in making it, the person who contributed the ideas is the sole inventor and the patent application and patent shall be in his/her name alone."*

*"A person who makes a financial contribution is not a joint inventor and cannot be joined in the application as an inventor."*

*"According to the law, only the inventor may apply for a patent, with certain exceptions. If a person who is not the inventor should apply for a patent, the patent, if it were obtained, would be invalid. The person applying in such a case who falsely states that he/she is the inventor would also be subject to criminal penalties."*

Talk to A J Park for more information about identifying "inventors".