



invents
COMPANY

**Inventions & Patents:
Marketing a New Idea**



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About Intellectual Property

Intellectual Property (IP) refers to the rights assigned to individuals who have created an original work. This can include inventions, art, literary works, names or logos. Basically anything that can be created by the human mind can potentially be protected by IP rights, providing of course that no one else has had the same thought before.

In the U.S., intellectual property is protected through the use of patents, copyrights, trademarks, and trade secrets. Once an invention or other work is acknowledged by the United States Patent and Trademark Office (USPTO) to be unique and non-obvious, the rights are assigned exclusively to the applicant and the IP is considered an asset, just like your home or car.

Intellectual property is a very special type of asset though – no one else has it! IP rights protect the invention or work of art from being used, sold, manufactured, or imported in the United States by anyone without the permission of the inventor.

The intellectual property rights assigned by the USPTO will of course only protect the inventor in the United States and its territories. Other countries do offer similar and effective protection, but separate applications will have to be filed with each entity.



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Patents

There are a few different types of patents available from the USPTO including; utility patents, design patents, plant patents, and provisional patents. Most patents result exclusive protection that will prevent “copycats” for a period of 20 years from the USPTO filing date.

Owning a patent is not trouble free either, defending your patent rights can be costly and time consuming. Considerable resources could be spent in patent infringement lawsuits if your patent is closely related to another product or if proper patent procedures are not followed.

Not only could your patent infringe on another inventor's, but you may find other patents filed after your's that infringe on your claims. Either way, patent litigation can be expensive for both parties.

Trademarks

Trademarks protect names, phrases, sounds, or designs such as logos. Trademarks do not expire within the 20 year term like patents, they can be renewed as long as they are “kept alive” by a business. Trademarks are essential for distinguishing a brand or product from it's competition. Trademarks offer instant recognition for consumers, allowing them to immediately identify products and instill confidence that they are purchasing the “real McCoy”.

Trademarks only protect your “brand” or public image, but not the actual product. They are still extremely important and valuable, especially if you want your company to be an industry leader and stand for a quality product. Some examples of trademarks would be “Sears” or “Lowes” or the “Best Buy” logo.



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Trade Secrets

Trade secrets are not protected by any official organization, but refer to secret information that companies use to make or sell their products. An somewhat famous example of a trade secret is the formula used to produce Coca-Cola soft drinks.

While a trade secret might seem a lousy way to protect a new idea, in some cases this method is preferred to obtaining a patent or other protection. For instance if you are trying to sell a product that utilizes a secret recipe, like Coca-Cola, you never have to disclose the ingredients - ever. With a patent, you will publicly disclose this information in exchange for exclusive rights, but only for the 20 year term we mentioned earlier.



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Types of Patents



Most inventors are interested in obtaining a patent after conceiving a new idea. Few however are familiar with their options and the requirements of the patent process. Among the first things to consider, after an extensive patent search of course, is what type of patent to pursue? As we mentioned before, there are four main types of patents;

Non Provisional Utility Patent

A non-provisional utility patent protects an invention that is a unique machine, device, chemical compound, method, or process for a period of 20 years.

Design Patent

A design patent protects intellectual property that defines the ornamental design of a particular object. Design patents are useful for protecting a specific form of furniture or jewelry.

Plant Patent

A plant patent is a special classification that applies to the breeding of plants. This protection provides exclusive rights to a plant breeder that produces a variety that is new, uniform, and stable.

Provisional Patent

A provisional patent provides temporary protection of sorts – it lasts for 12 months and must be converted to a non-provisional patent in order for protection to continue. A provisional patent can be filed without a formal patent claim, oath or declaration, or prior art statement. The purpose of a provisional patent is to establish an early filing date for the future corresponding non-provisional patent while giving the inventor time to fully develop the invention and address the proper patent claims.



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Perhaps the most desirable is the utility patent as it offers the broadest protection, but it is not uncommon for utility patent holders to file a corresponding design patent. This protects not only the function of the product, but also the “look” of the invention.

Things you cannot patent

- Laws of nature
- Object found in Nature
- Abstract concepts
- Literary works, songs, and artwork.
- Modifications or new inventions that are considered “obvious”.

You can however get a patent on inventions that are truly unique, new, and non-obvious. This means you can get a patent on modifications on something that has been patented, but not if your idea is too similar to the existing patent or a modification that is assumed to be an obvious add-on by the USPTO.



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Can You Patent Your Idea?



Filing an application with the United States Patent & Trademark Office does not necessarily mean that you will be granted a patent. Beyond checking to see that the invention has not been patented before, the examiner must ensure the idea is new, non-obvious, and useful.

For these reasons it is advisable that you consult an experienced patent attorney whom is familiar with your invention's respective industry in order to have the best chances for patent success. Remember, even if your invention passes all the hurdles of the USPTO, it also must withstand scrutiny of the general public. If another patent holder feels your invention infringes on their own, you could face costly litigation fees that could have been avoided.

Novel or New Invention Ideas

The USPTO will consider your invention not new, or "novel" if another identical or similar product was used or known in the U.S. or described in detail in a U.S. or foreign publication. Likewise if your patent claims match another patent holder's, you will be denied a patent.

This means that if anyone else in the world has declared rights to your patent and the USPTO finds it, you could be denied your patent issuance. U.S. patent law allows for a 1 year "grace period", meaning that if you publicly disclose your idea, you have a period of 12 months to apply for a patent. This 12 month allowance is exclusive to the U.S. however, and will not apply to foreign countries.



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Non-obvious

To be considered non-obvious an invention must be unique and substantially different from any existing patent claims. In order to qualify for a patent, the invention must be non-obvious to a person with knowledge or skill in a related industry.

An example of something obvious and thus not able to be patented is a product that is patent protected where you only changed the size or type of materials it is made out of.

Useful

In order to be considered for a patent, your invention must work. More specifically it must be operative (perform the function you say it does) and serve a useful purpose. Submitting an accurate and thorough description with your patent application will help the examiner determine whether your invention fulfills this requirement.

Defining Your Claims

Perhaps the most important section of your patent application is where you define your claims. The term “claims” in this sense refers to the invention’s attributes that you (or your patent attorney) consider unique and patentable.

These claims will describe your invention, how it functions, and define what will be legally protected by your patent (if issued). Therefore patent claims often decide whether your application is accepted or rejected. The claims are part of the area called the “specification” which in addition to the claims will contain descriptions and drawings further depicting your invention. The specification should include all and only the information required for the patent examiner to quickly and clearly understand all aspects of the idea.



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Filing a patent application is a very complex process, and requires individual attention. There is no “template” that will allow an individual to successfully follow. It is a document that should be prepared by a patent attorney whom is familiar with your particular industry.

The claims of the invention must be thorough and complete when you submit your patent application, you cannot make revisions to your patent once issued. The exception is unless the additions can be easily inferred from the original description or drawings.



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The Value of a Patent Search

A patent searches goal is to uncover prior art that describes your invention or even a part of the claims you hope to patent. Prior art is not just drawings or artistic renderings, it refers to any type of existing knowledge of your invention idea.

Prior art can include any public discussions, publications, trade shows, use or sales. While a daunting task, it is necessary, and if a positive result, it can help your case for the new and non-obvious requirements mentioned earlier. A patent attorney should conduct an official patent search before you proceed, but it is always a good idea to test the water yourself before spending more money. There are a number of online patent search tools, such as Google patents. In addition to uncovering identical or similar patents, doing research yourself will give you a better idea of your competition, inspire you for ideas when filing your patent, and provide further education on your industry.

You can also note similar patent assignees as possible contacts when moving into the marketing phase of your product. Patents are categorized by industry or category and respective subclasses. This organization will allow you to quickly find other products in the same field as your invention and assess if your idea is patentable.

Remember to extend your search to non-patent related literature as well. Check industry related magazine archives and press releases that may have been written about a similar invention. Also keep in mind, although you may have a similar invention to an existing idea, if it is unique enough you may still qualify for a patent. Don't immediately get discouraged if you see something "like" your idea. Conducting a patent search is a lot of work - that is why it is such a big part of a patent attorney's business. It is absolutely necessary though, and you should absolutely hire an experienced professional to perform a search for you before you begin the patent application.



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What is Market Analysis



Even though few inventors are actually granted a patent, even fewer inventors make money from an invention. Some ideas are useful, they benefit society, but are simply not valuable or are too impractical to produce with current technology. This is where market research can possibly save you time, money, and headaches. For a relatively small fee, you can have a professional

marketing and research firm give you a full report on the potential of profiting from your idea. This product assessment can uncover;

Will anyone purchase your product?

How large is your potential market?

Can the product be made at the right price?

Will your invention be a desirable product once you get it patented?

Will your product stay desirable long enough to make a good profit?

What will it cost to market the product?

What are the steps to selling the product?

How much competition is there for this type of product?

There are many firms that can help you with market analysis, but there are just as many that will take advantage of new inventors. Be careful to research any potential companies and ask questions before hiring an outside consultant. As when contacting any potential company or individual for outside help, always get a signed non-disclosure agreement from a company representative. Always use generic terms and keep your invention's details confidential until you have the signed agreement or at least a provisional patent filed with the USPTO.



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If you are going to have a company assess your idea, take their findings seriously. If your product receives a negative report, you will undoubtedly be very disappointed, but remember that is why you had the unbiased report created. Avoid spending money on an invention that is highly unlikely to be profitable. You are better off to move on to the next idea.

So you have done your homework and found you have a patentable invention that could be a great success on the open market, congratulations! The next step is to actually get your patent protection. This entails submitting a patent application to the USPTO along with the required fee.

Unfortunately a patent application is a legal document, however it is not a “form”. Although each application contains the same components, no two patents are exactly the same. Most sections are composed in essay form and you may also need to include drawings depicting the invention.

Like any other legal document the strength of a patent is found in verbiage. The more comprehensive the descriptions and claims are, the stronger the patent. While the inventor may want to cover a broad scope, a patent is more likely to be granted to a more specific description.

Writing your own patent application is not recommended, but if you choose to do so, it is good practice to write a first draft and have someone else proofread it before submitting it to the patent office. If this is your first patent, perhaps you should consider filing a provisional patent first. These applications do not require claims, and are much more forgiving than a non-provisional patent. If you are filing a non-provisional utility patent, you will need to include the written specification including description and claims along with a declaration or oath testifying that you are the first and original inventor. You will need a drawing(s) if required to fully understand the product. Finally you will need the filing fee, which is determined by the USPTO according to the type of patent and entity filing the patent.



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It may take up to 36 months after filing your application before it is granted, and that is if everything goes smoothly. Many times your application will be rejected on the first office action and will need to be revised. The USPTO patent agents are helpful, but adhere to the process and are not available to “coach” you on how to file your application. So it is important that you educate yourself as much as possible and exercise patience when entering the patent process.

First to File

The United States has recently switched from a first to invent policy to a first to file rule via the America Invents Act. Under the former policy having accurate detailed records could prove that you were an original inventor of an invention and would give you the ability to contest a granted patent. The new policy grants exclusive rights to the first person to apply for the patent.

The USPTO notes that the new policy is actually a first inventor to file system, which means the applicant must submit an oath of declaration stating that they are the true inventor. In other words, according to the USPTO an individual whom gained knowledge of an idea without being a part of the invention process would not have rights to the intellectual property.

It is still advisable to keep records of your process, though they will have much less legal weight under the new policies. Keeping a detailed log will prevent you from repeating mistakes and may inspire you to take your invention in new directions. The laws may change yet again, and the patent process can be quite lengthy, so a log book or “inventor’s notebook” may still prove useful in patent litigation.



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Being a Profitable Inventor



Some inventors invent products for the benefit of society, others for the prestige of being a creative mind, and still others do it solely to make money. The majority of successful inventors fall somewhere in-between all of these.

In order to profit from your invention you must choose one of three paths; You can sell your invention outright, you can receive royalty payments based on a licensing agreement, or you can manufacture and sell the product yourself.

Selling Outright

When you sell an invention outright you are actually selling the intellectual property rights to the buyer. This means that they will now have exclusive rights to produce and sell the product without your consent. You will receive one upfront payment for the invention.

Licensing the invention

This is the preferred method by most inventors. With a licensing agreement you in a sense “rent” your intellectual property rights. This gives the manufacturer the right to produce and sell the invention in exchange for compensating you, the inventor, for either each unit produced or each unit sold (depending on the agreement).



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Many times inventors are underwhelmed by the percentage of royalties outlined in the licensing agreement. Licensing agreements rarely grant portions larger than 3% of the invention's revenue to the creator.

This may seem unfair, but you must keep in mind the investment required for a company to manufacture and distribute your product. The capital needed is much greater than your monetary investment and at the same high risk rate. Also remember that 1-3% of an great selling product is significant money.

The DIY Approach

Taking total control of your invention's future can be a daunting task. If you choose to follow this path, not only will you need to find a way to mass produce your product, you will also need to take control of marketing, advertising, and distributing it. Having a product to sell is only a small part of entrepreneurship, you must know how to get the word out and get people to buy it.

If you do take the Do It Yourself method, you can ease your workload by outsourcing or hiring others to help you, but of course this takes capital. Even if you have a great invention, you will not find many people willing to work for a chance of a profit - you will have to pay them upfront.



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Licensing Your Invention



The preferred way for many inventors is to find a manufacturer who wants to enter into a licensing agreement. This method maximizes profit on selling a product without losing the rights to it or requiring a large investment by the inventor.

The first step in procuring a licensing agreement is to find manufacturers who are able and interested in making your product.

You can start researching companies by visiting local stores that sell similar products, or by reviewing the patent assignees from your initial patent search results. Pick up some industry related magazines and note advertisements or companies mentioned in articles. You can of course find manufacturer information on the internet.

After you have compiled a list of manufacturers, you need to tailor a marketing pitch to send to each one. A good starting point is to send a letter or email to each prospective licensee. Make each letter personalized to that manufacturer and focus on how you think your product would be a perfect fit for their organization and why.

Include a copy of a professionally designed brochure and contact information should they be interested. Keep the letter short and to the point - your contact is likely to receive many such submissions and will not have the patience to sort through pages of “fluff”. Stick to the main features and market research results.

After your initial contact letter or email, try following up after a couple of weeks to 30 days. There is a good chance some or all of your contacts will not respond - this is just the nature of the business. Be careful to not get discouraged, research more companies and keep going!



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If you do get a positive response, do not attempt to complete licensing agreement negotiations by yourself. You have come too far to lose a great opportunity that could be secured by a licensing agent or attorney. Licensing agreements can be very complex, or deceptively simple.

You need to make sure you have the appropriate clauses that protect you. One of such terms is an agreed expiration date on the agreement. You could find that you obtain a licensing agreement for little money up front, and the manufacturer “shelves” the project for the duration of the contract. So you not only do you not make money from royalties, you also lose time on your patent.



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Don't Forget The Business Plan

A business plan is a document(s) that outlines what you want your business to accomplish and how you plan to do it. A solid business plan is essential for success and for many finance institutions.

Business plan details should include everything from how your management will be structured to how you will establish your brand. Financial projections and their supporting numbers will be key in attracting investors and getting the credit you need to launch your business.

A comprehensive business plan will include a description of the company and product(s), a marketing strategy, financial statistics, and a management plan. A analysis of an potential competitors is also a typical component of a good business plan.

Having a well formed business plan is important in the invention process even if you have no intention of starting your own business. Plans may change, and you may find yourself in a position where it would make sense to have your own business.

More importantly, having a business plan makes you and your presentation look more professional and ready to withstand the tough scrutiny of industry experts.

Short on Cash?

Launching a new product is an expensive venture. Many inventors find that their ideas require a bigger budget than is available. There are a few options available for inventors who lack the necessary capital. You could try reaching out to local investors or known leaders in your industry.



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Start with either an email or letter with a brief introduction and request an appointment for a meeting or phone call. You can start with local inventor groups, they are well informed of any local funding that may be available. Lastly you can try school programs or government assistance. There are several government programs that cater to small businesses and new inventors.

Remember, there is no such thing as free money. Venture capitalists often require a large stake in your property rights in exchange for their contribution. Even a great product can be a risky investment, and they need to see an acceptable potential return on their money.

We hope this ebook has been helpful to you with your new venture, for more information on the invention process visit our website at www.invents.com!