On the Fundraising Circuit? NDAs are a Bad Idea; Do This Instead.

by Paul Norton

I find that a lot of inexperienced entrepreneurs are concerned (borderline paranoid) about somebody stealing their idea. At some point, they heard whispers in the wind about this magical document called an NDA (**N**on-**D**isclosure **A**greement) that will protect them from the idea thieves masked as their friends and neighbors who are set on taking their cherished idea for their own. They look to an NDA as a protection against idea theft or as a means to avoid loss of IP through public disclosure.

A healthy dose of paranoia can be good, and an NDA has its place, for sure. But if you're on the fundraising circuit as an early-stage company and want to see an investor get up and walk out of your pitch, slide an NDA across the table.

Whether a solo angel investor or an organized venture capital firm, investors' livelihood is based on finding the next big thing, and that means talking to ***a lot*** of companies. In a typical year, an active VC firm looking to make 10 investments will review around 1,200 companies, leading to approximately 500 face-to-face meetings. Signing an NDA with each company they meet would be counter-productive to their business model and open them up to unnecessary legal risk. Besides, investors aren't interested in stealing your idea or competing with you. They'd rather see you bring it to life and give them a reason to invest.

That being said, you can (and should) take steps to protect your invention. One good way to do so is by filing a provisional patent application. In the context of fundraising, a provisional patent application can serve as a temporal stake in the ground indicating when you invented the next biggest thing and remove any doubt about who the inventors are. It allows you to speak freely about aspects of your invention disclosed in the provisional without fear of the investor claiming the invention as their own and can offer a bit of flexibility to allow you to further develop some of the details surrounding your core invention. It can also serve as a priority document for follow-on patent applications that can potentially mature into issued patents for excluding any pesky idea thieves that popped up along the way.

As for avoiding any loss of rights resulting from a public disclosure, your best bet is to file a provisional patent application before having any discussions. Having a provisional patent

application on file can provide additional benefits during fundraising. Foremost, investors know that it can take years for a patent application to mature into an issued patent, and by filing a provisional patent application early on, you demonstrate foresight and an understanding of the patent process. You are taking steps now to protect your technology by fortifying your colloquial moat against competition and setting the stage for an actionable IP portfolio that can be an asset (to your company and the investor) down the road.

Provisional patent applications are a very useful tool when used properly. Jon Richards wrote a recent piece addressing some common misconceptions about them, so before you decide to file a provisional patent application, be sure to check it out.

And don’t listen to the wind. It doesn’t know as much as it thinks about NDAs.