

Want to Protect Your Idea? Three Things to Consider Early On

by Joseph Evans

A patent is a powerful tool that can give you an advantage over your competitors. Patent rights enable you to exclude others from manufacturing, distributing, selling, or even using your invention or product. Patents can also increase the value of your company and be used to attract investors and funding. In order to take full advantage of the rights that patents may provide to you or your company, there are a number of things you need to think about early on in the product development process.

Timing

You should think about seeking patent protection as early as possible once you begin developing or even brainstorming your new idea or product. You can even seek patent protection before you have prototyped or built anything. Ideally, you want to make sure you have filed for a patent before you publicly disclose your invention. Public disclosure can take the form of offerings for sale, presentations at tradeshows, published catalogues that advertise your new product for sale, academic research publications, or any other form of publication or revelation of your new idea or product to the general public. Waiting to publicly disclose your product may seem contrary to traditional business strategies that favor quickly pushing new ideas and products out the door and early advertising to beat the competition. To avoid adversely affecting your business strategy or market timing, begin thinking about patent protection from the first stages of product development. Doing so will help you position yourself advantageously in the market and ensure the long term success of your product.

Filing for a patent before you publicly disclose your new idea or product is the best way to go about seeking protection. This is especially true if you anticipate seeking international patent protection. However, you are not completely out of luck if you publicly disclose your invention before filing for a patent. In the United States, at least, you have a one-year grace period to file for a patent after your own public disclosure. For example, if you present your new invention at a trade show for the first time, and you have not yet filed for a patent, you have one year from the date of that presentation to file for a patent in the U.S. After one year has passed, you cannot gain patent rights.

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Type of Protection

There are a number of different ways to protect your new idea or product. A utility patent is a common type of patent that protects the functionality of your invention. If you were patenting a new kitchen gadget, for example, you can file for a utility patent to protect the way your gadget works, how your gadget was made, or how to use your gadget. Typically, a utility patent is an effective tool to protect things that competitors could easily reverse engineer.

Design patents, on the other hand, protect the ornamental design of your new idea or product. If you determine that the look or design of your kitchen gadget is where its value lies, then seeking a design patent may be the way to go. Design patents will not protect the functionality of your product but will give you the right to stop others from making a kitchen gadget that has the same “look and feel” as yours.

Also, as a side note, trademarks and copyrights are other forms of intellectual property can help you protect your logos, slogans, literary and artistic works, and other valuable assets. These rights are separate from patent rights, and may not be applicable to the functionality or design of your kitchen gadget, but may be used in tandem with patent rights to strengthen your product’s brand.

Money

Of course, you need to think about money. In a perfect world, you have all the money you need to seek all the types of patent protection for all of your great ideas! However, this is most often not the case. You should focus your resources on ideas and products that you think are most valuable. If you are not sure whether your new idea or product is going to pan out or make any money, there are ways to begin seeking patent protection with a limited budget. One thing you can do is file for a provisional patent, which may be somewhat cheaper than filing and seeking a non-provisional patent (or “real” patent). A provisional patent provides you with a priority date and gets something on file so you can begin publicly

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disclosing your “patent pending” product and testing the market. Once you have a provisional patent on file, you are free to advertise, sell, present your idea to investors, or otherwise publicly disclose your invention without losing your ability to seek full patent protection, as discussed above.

A patent examiner does not examine provisional patents. Rather, a provisional patent is a type of filing that gives you a priority date from which patent protection begins if a non-provisional patent is ultimately granted to you. Once you file a provisional patent, you have one year to test the waters and decide whether you want to move forward with a full non-provisional patent, which will require more money to obtain. Within that year, you may find that your new idea will be very lucrative, in which case you may want to move forward with the non-provisional filing. However, if during that first year you find that nobody wants to buy your kitchen gadget, you may decide not to spend any more money on pursuing full patent protection.