

# The Mysterious World of Patents, Trademarks and Copyrights

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Many people seem to think that if you invent something and get it patented, then “Ch-Ching!”, you can sell it to some big company and start making big the bucks. This persistent myth imbues patents with an aura of magic. But there's nothing magical about them, and they are not always a smart investment.

First we'll cover what a patent really does and how it might make money for you. Then we'll look at when you might need one (and when you don't).

For the record, when I refer to a patent here I'm talking about a "utility" patent. Utility patents are not the only patents, and they are not the only tools available to protect your idea. I'll explore some of the others later.

## What is a Patent?

A patent is an anti-competition tool.

If someone wants to copy your invention but sees that it is patented or has a "patent pending", they have 3 choices:

1. they could decide not to copy it;
2. pay you for permission to use your patented idea which means you grant them a license to do so, or
3. copy it anyway thereby defrauding you of justly due compensation.

The power of a patent will scare off copycats on the theory that most rational people don't want to get sued for patent infringement. It's the ones that aren't scared off you have to be worried about.

Patents are a kind of intellectual property, sometimes called "IP", and like other property patents can be sold (assigned) or rented (a license is a temporary right to use the patent in exchange for money). And like other property, they are assets with a monetary value that adds to the net worth of your company.

**The Basic Deal:** In exchange for the inventor's showing the public her new and useful invention, the government grants her a 20- year monopoly on the innovation claimed in the patent. That means during the term of the patent the owner of the patent has the right to sue anyone who is using or selling her invention (in the U.S.) without her

consent. Then, after the patent expires, the invention is donated to the public. It can't be extended and it can never be patented again.

## **What a Patent Does NOT Do**

You don't need a patent to make, sell or market your invention. But you should first investigate to make sure you're not infringing someone else's patent.

## **When a Patent May Not Be Your Best Move**

If your invention involves components, formulae, know-how that cannot be easily reverse-engineered by someone with the product in front of them, then you should be aware that a patent application will require you to disclose these proprietary secrets (see The Basic Deal. above).

If that sounds like your invention, consider protecting your invention as a trade secret. Most patent applications are published around 18 months after filing, at which point any secrets are disclosed. Even if you request for your application to remain unpublished, if and when a patent issues your invention will be disclosed. Then, once your patent expires they will no longer be proprietary.

Trade secrets last as long as you keep the information secret (under lock and key. disclosed only on a need-to-know basis to people who have signed a confidentiality agreement). So they never expire and they cost far less to secure. On the other hand, trade secrets are vulnerable to disclosure, and once disclosed lose value. The longer you "practice" the secret and the more people who learn it the higher the chance it will be disclosed in full or part.

Some very valuable trade secrets remain carefully guarded and intact despite decades of use by large manufacturers: the recipe for Coca Cola and the recipe for KFC's special blend of herbs and spices come to mind. As you might guess from these examples, recipes are best protected as trade secrets. They are not patentable or copyrightable (more about copyrights, below).

Another time a patent may not work for you is if you are not willing to invest several thousand dollars in protecting your invention. I say "not willing" because, ultimately, if you are truly committed to doing something you can find the money even if you don't have it sitting in a bank account. Getting a utility patent costs money and getting a patent that actually works for you will probably cost you more than getting a patent that doesn't.

## When a Applying for a Patent Makes Sense

If your invention is easily copied once it hits the market then a 20-year monopoly makes more sense. It can keep would-be copycats away or at least slow them down and increase the risk and cost of launching a competing product. And that's what might be worth buying or investing in.

## What is Your Idea?

**Define the problem you will solve and the beneficial results a customer will receive in three sentences or less.**

Every invention can be described as a new solution to an existing problem. Sometimes the value of an invention is largely in identifying the problem to be solved: sometimes the allure of an invention is in presenting an “outside the box solution to a problem many have tried to solve. And sometimes the value of an invention is simply in the incremental improvement over the current way of doing something if that incremental improvement adds up to significant dollars for a particular industry.

So even if you haven't thought about your invention this way in the past, engage in this exercise and write down your answers to these questions on the worksheet in the back of this book. I promise you will learn valuable insights that will help you make decisions and take action as your business develops.

If you insist that your invention cannot be described as a solution to an existing problem, then it's possible it's not really an invention but rather a different kind of creation or innovation - such as a work of creative expression (protectable by copyright) or a business name, slogan, product line or brand (protectable by trademark) or a new design of something that offers aesthetic improvements or innovations but not functional ones (protectable by design patent or in some cases trademark or copyright). We'll talk more about design patents, trademarks and copyrights in \_\_\_\_\_, later in this book.

One preliminary step: in order to answer these questions, you'll need to have some idea who your customer is. We'll get deeper into that later, but for now just think about all the different groups that would benefit from your- invention. You can be general at this stage but know whether your invention is targeted to end consumers, or manufacturers, or companies in a certain role in a particular industry (i.e. dress designers; advertising agencies; attorneys; dentists; caterers; ISPs).

1. What problem does your invention solve?

2. What is the current way of doing things (either the current way that problem is solved or the current way of doing things that leads to the problem solved by your invention)?
3. What benefits does your customer (or user of your invention) receive from using your invention

Once you've written down all your ideas answering these questions, distill this all down to no more than three sentences. Ideally you can distill it down to a single problem solution statement in the format:

My invention is directed toward \_\_\_\_\_ (type of customer) and solves the problem by \_\_\_\_\_ using/providing/\_\_\_\_\_.

A few examples using known inventions:

- a) My invention is directed toward traveling pet owners and solves the problem of keeping their pet's' food with fresh food and water while they are away by providing an automatic pet feeder with stay-fresh food and water storage reservoirs and a mechanism for making sure fresh food and water are delivered at desired intervals throughout the day and night or when the cat's food or water bowls are empty.
- b) My invention is directed toward overworked housewives and solves the problem of hands chapped and dry from prolonged exposure to dish soap and water by providing a dishwashing soap that moisturizes hands rather than drying them.
- c) My invention is directed toward overworked housewives and solves the problem of hands chapped and dry from prolonged exposure to dish soap and water by providing an automatic dishwashing machine that allows the user to wash a meals worth of dishes by placing lightly rinsed dishes upon specially adapted trays in the machine, adding special soap by pouring from the package, closing the machine and pushing a button.
- d) My invention is directed toward overworked housewives and solves the problem of hands chapped and dry from prolonged exposure to soap, cleaning fluids and water by providing comfortable, waterproof gloves that protect the user's hands and wrists from dirt, soaps and water without interfering with the user's ability

to grasp dishes or cleaning tools or otherwise go about her ordinary cleaning movements.

If your invention is useful or valuable to a few different kinds of customers, you could have a problem-solution statement for each.

**Describe how it works i.e. how the beneficial results will be delivered.**

You'll notice in the problem solution statement for the automatic pet feeder above, we've just said "a mechanism for making sure fresh food and water are delivered at desired intervals throughout the day and night or when the cat's food or water bowls are empty." We haven't said anything about how this is accomplished.

Answering this question really gets to the heart of your invention. If you can't answer this question then chances are that what you have is not idea for an invention but not an invention itself. This is an important distinction, because you cannot protect an idea.

Note that in the problem solution statements directed at overworked housewives, above, all three of the inventions are directed toward the same customers and solve the same problem but the three solutions are entirely different.

Note also that these statements are also vague about how the results are delivered. They are ideas for inventions, but not necessarily inventions yet. They must be developed into a specific solution which answers the question "How does my invention deliver these beneficial results to the user?"

For the moisturizing dish soap invention it might be:

"My moisturizing hand soap invention delivers this result (moisturized hands) by making use of non-drying detergents such as----- and combining them with non-greasy moisturizers such as in a water-based base." I'm not a chemist so I'm not even going to attempt this one, but if this is your invention you will need to learn and experiment until you can answer this question. This might mean you need to enlist the help of a chemist - so you can add that to your list of professional helpers.

Some of you might be resisting the notion that you can't protect an idea - either someone has told you a story about their Uncle Lou who made a fortune because he came up with the idea of putting reflective paint on roads or a story about their Aunt Jennifer who came up with the idea of individually wrapped cheese slices and the big company stole it from her. Such stories are part of the mythology surrounding the

American dream, such as “build it and they will come” or “build a better mousetrap and the world will beat a path to your door ”.

But don't be fooled - inventions are more than mere ideas. They are a specifically developed solution to a problem. Until you have that you do not have anything worth protecting.

### **Explain what makes your idea different from any other solution available**

Here is where you will drill down into what is potentially patentable and also marketable about your invention.

If you have already developed your USP then you have a major head-start here.

The whole point of getting a patent or trade secret protection, if that's in your plan, is to protect the feature or features of your invention that have the most value in the marketplace. Those are the features the copycats will most want to copy.

If you haven't clearly identified those features and articulated why and how they improve the customer's life, then you will waste time and resources investigating patent protection on features that nobody would want to copy anyway.

Here's hoping you can monetize your idea to create personal wealth.

### **Note about the author:**

Intellectual Property and Business Attorney Catherine Cavella created IP Works PLLC to help innovative startups and early stage companies get the legal advice they need to compete with the big guys.

IP Works levels the playing field by providing practical guidance and legal solutions focused on your needs at rates your CFO will appreciate.

If you would like to learn more about how to monetize your idea Call 1-855-IPWORKS or visit [ipworkslaw.com](http://ipworkslaw.com).