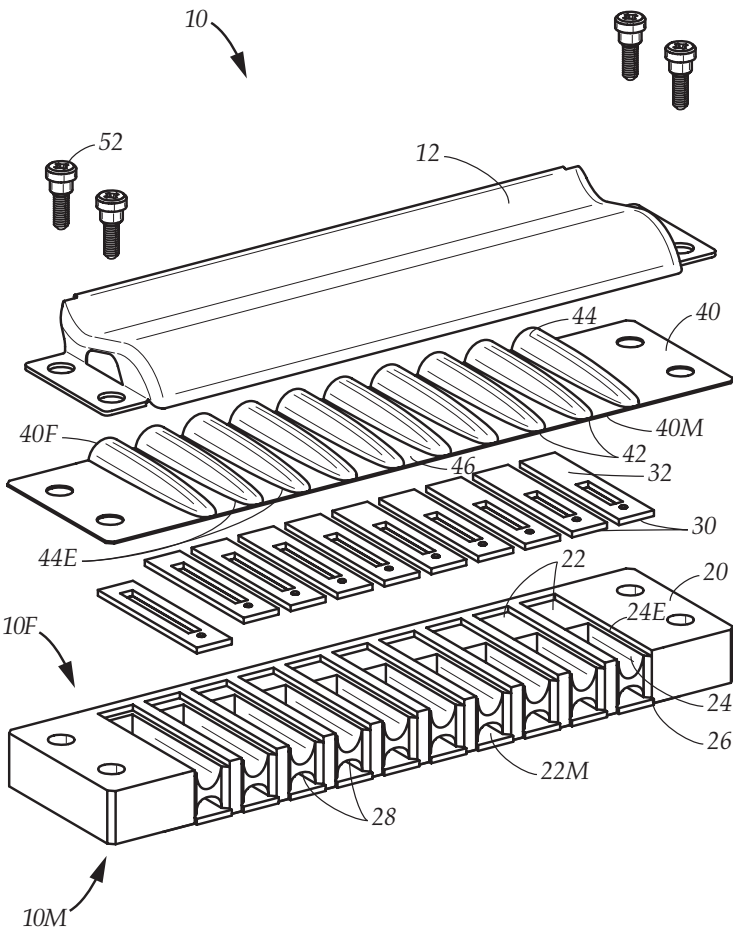


CHAPTER
1

Do You Need a Patent?



“I want to apply for a patent. How do I get started?” the caller asked me.
 “Why do you want to get a patent?” I inquired.
 Long silence . . . and then:
 “Isn’t that what you’re supposed to do when you invent something?”

If you do pursue a patent, it’s not going to be free! So it pays to first carefully consider and understand the real reasons you would do it.

TIP

What Can a Patent Actually Do?

In simple terms: a patent is a grant of rights by the government, for a limited time, that can be used to *stop others* from making, using, or selling your invention.

Here’s where we can begin separating myth from reality: having a patent *does not* give you the right to legally

make your invention! Said differently, having a patent is not a requirement for you to make or sell your invention!

What a patent can do, however, is give you the right to stop others from making, using, or selling it without your permission. Now that this is clear, we can take a look at whether the ability of a patent to stop others from making, using, or selling your invention is important enough to *your goals* to justify your decision to patent it.

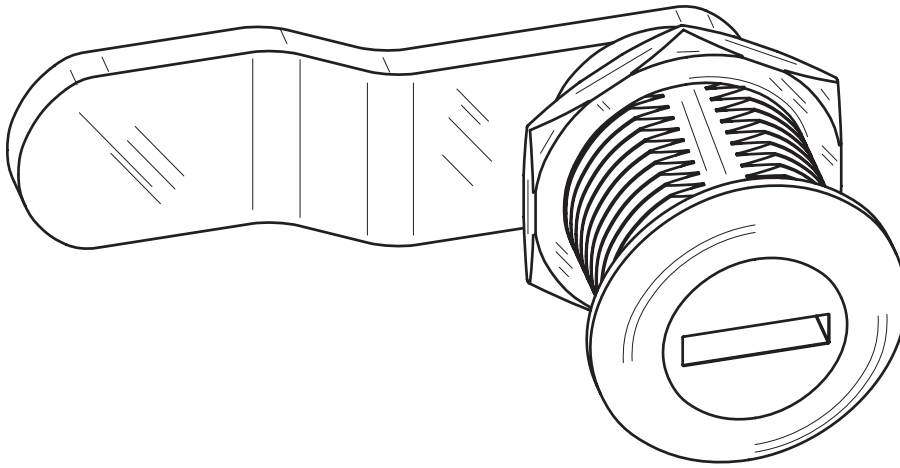
Reasons to Patent Your Idea

Right or wrong, here are some common reasons people and companies seek patent protection for an idea:

- The fear that others will steal it
- To generate licensing revenue (royalties)
- To prevent or reduce competition
- To maintain or acquire market share
- To enhance company valuation
- Because investors want it
- For business credibility or marketing
- For personal credibility or vanity
- For the experience
- Because someone told you that you should
- To avoid infringing someone else’s patent

Knowing *your* reason can help you decide whether it is worth the time, money, and effort to seek a patent. It can also help you and your attorney pick the right strategy in the beginning of the process, as well as make appropriate decisions along the way.

Let’s consider the merits of each of these common reasons for seeking a patent. As we take a closer look, some of them are more compelling than others. When people talk about diet or exercise, they generally talk about “healthy choices” and “unhealthy choices” (rather than “good” and “bad”). So let’s talk about these reasons in that way. As an entrepreneur, for your business, some of



these reasons are “healthier” than others. Let’s just say a few of them are somewhat unhealthy—and at least one of them is dead wrong!

The Fear That Others Will Steal It

Immediately after realizing “I have an idea,” nearly every inventor thinks, “But I don’t want anyone to steal it!” With the notion that patenting is the way to stop other people from stealing ideas, many inventors quickly decide: *I need a patent.*

While often there are practical reasons why someone stealing your invention would be a bad thing, it’s usually the actual fear—that is, the emotional/psychological part—that’s the most powerful and the most compelling. Since this is probably the main motivation for most individuals seeking patents, let’s get a little psychological here for a moment to better understand this dynamic:

Gripped by the fear of losing out, inventors generally never examine how—or whether—having someone else pursue their invention without their permission (i.e., “steal their invention”) would actually have a real impact on their goals.

Most of the remaining reasons discussed below describe real scenarios where having someone else “steal it” would actually undermine some goal or result that you are attempting to accomplish. Before we consider those other reasons, we want first to notice *just how powerful the fear itself is* so that we can understand its grip over us. Then we can put the fear aside and take a measured look at the other, more logical reasons that getting a patent would help you reach your goals.

To get an immediate sense of what this fear can feel like, imagine a future where you created something with the potential to take you places—to bring you wealth, fame, and prominence in your field. Then imagine that instead, in this future, you never get to enjoy any of it because someone else steals your idea and reaps the benefits of your creation. Thinking about this scenario, do you feel a little sick to your stomach? Well, this is exactly what most inventors imagine, which leads them to hastily decide, *I NEED a patent!*

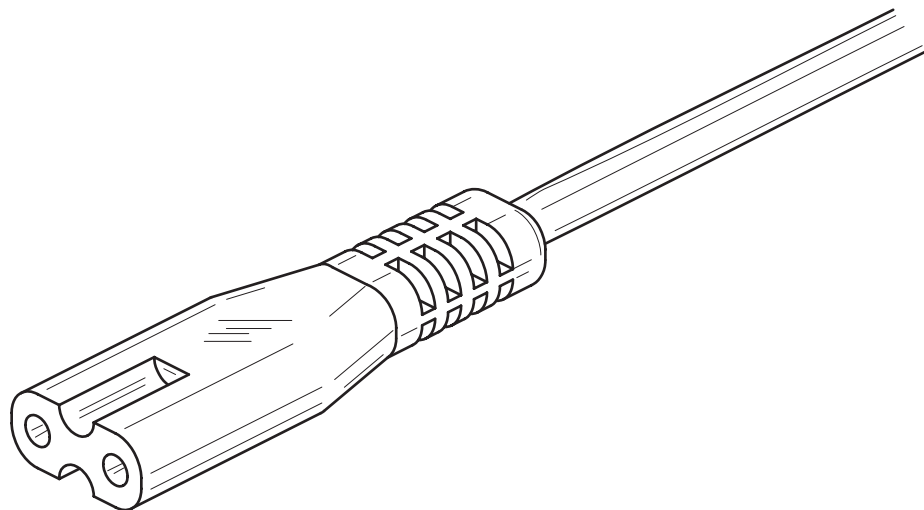
Ultimately, there's nothing wrong with seeking a patent to avoid the devastating experience of knowing your idea was stolen. It's helpful, however, to know whether that's your *primary* motivation. Knowing your motivations gives you more choice in the matter—and then at least you'll be clear about what you're paying for! Also, understanding your motivations allows you to make choices that are more conscious, more deliberate, and a better fit for your current circumstances.

For example, say that sometime after you filed your patent application, you come to the realization that “fear of theft” was the thing that originally drove you to seek protection. Then, at some later point in the process, perhaps you determine that it's unlikely that anyone will steal your idea, or that if they did, it wouldn't actually interfere with your plans. Knowing now that there isn't a real *economic* reason to keep pursuing the patent project, when the expenses start adding up, you might make a conscious choice to drop it—and stop spending money unnecessarily on a patent you realize you don't actually need.

To Generate Licensing Revenue (Royalties)

A frequent strategy for profiting from an invention is to find a company that will manufacture, market, and distribute the product, and pay the inventor a *royalty*. This highly sought-after arrangement is called “licensing.” The way it works is, you sign a contract giving another person or company the right to use your idea in exchange for royalty payments to you that continue for the term of the contract. But to get a licensing deal, you must first establish that you hold the rights to the idea—because those rights are the thing that the company would license from you. Most typically, it's *patent rights* that are the subject of the licensing agreement.

It's not just inventors who follow this strategy. Many major corporations have licensing as a central part of the company's business model. Most large companies that research and develop new technologies patent their ideas, without ever intending to actually produce products from many of them. Instead, these companies actively seek out “licensees”: other companies that would like to use



the technology in exchange for a royalty. Following this strategy, some companies have licensing portfolios containing thousands of patents, and they collect billions in licensing revenues.

If your prime reason for seeking a patent is to license it, there are a few things you should consider. First, *you* must be the one to find a company that wants it and is willing to pay you for your idea. In particular, you will need to find *the right person at the right company*—a person who appreciates the value of what you have created and is in a position to manufacture, market, and distribute it. Finding this person will require that you knock on some doors. A common misconception is that there are agents willing to make this connection for you. In reality, it's something you need to do yourself. One truth you should realize as an inventor is that no one will be as passionate about your invention as you are! Before pursuing a patent with the sole intention that you will license it, ask yourself: are you prepared to spend time knocking on doors to find someone willing to license it?

To Prevent or Reduce Competition

As an entrepreneur launching a new product, you want to sell as many units of your product as you can. Clearly, your efforts can be slowed by others competing for the same customers. Preventing or reducing that competition could make selling your product a lot easier.

Talk to anyone who has a company that's been in business for a few years. Ask these business owners: if they could go back a few years and do whatever they possibly could have done to stop the competition they're experiencing now, would they do it? Yes, of course they would! This is because they understand that, now that they are farther down the road, it costs a whole lot more to thwart the competition. Once the competition is breathing down their neck, these business owners constantly have to invest in developing new and better products, and spend more on marketing, to stay competitive.

Often, experienced entrepreneurs launching their products will file patent applications even when the odds of getting a patent are less than 50 percent. They know that for just the *chance* that they will get a key patent, whatever they spend now will be worth it a few years down the road, when they are competing head to head with other companies.

The key to this approach is being able to discern whether you have a *special solution* that could prevent or reduce competition. You may think your invention provides a "special" solution. But the test of whether it's truly special is whether it's something that consumers of products like yours *really* want or need. If your invention does provide the solution that is most wanted, needed, and requested by consumers, your competition will want to do exactly what you're doing! When they can't do what the consumer wants them to do—or include the product feature that the consumer wants them to include—because you hold the patent, you have effectively prevented or reduced competition.

One of the great benefits of even just applying for a patent is the uncertainty that it creates for your competition. When it's not clear whether they

can safely copy your product—because they don’t know exactly what’s in your patent application—they are less likely to make the risky decision to copy it.

To Maintain or Acquire Market Share

Similar in concept to *preventing or reducing competition*, a patent on an important feature can be your foot in the door in a very competitive market. It can also be the reason why a winning product remains relevant in the marketplace.

Many times, companies innovate to become—or to remain—relevant to consumers. When these innovations are patentable, the company’s *patent portfolio* provides a kind of *market share insurance*. To consider the effectiveness of this “insurance,” the question to ask is: do the features embraced by the patents in their portfolio make their product compelling to the consumer?

As we discussed earlier, it’s important that there’s alignment between the features you’re patenting and what the market wants. The key is to patent the feature or features *that make a difference* and provide a solution to a widespread problem. Providing such a solution makes a product highly desirable in the marketplace or helps maintain its stature. It’s this overlap between marketability and patentability that provides the basis for the most valuable patents—and that can have the greatest impact on market share. If, however, the part or feature that’s being patented does not make your product significantly more desirable, others can simply provide their own just-as-good solution to the problem you identified and launch their product to compete easily with yours.

To Enhance Company Valuation

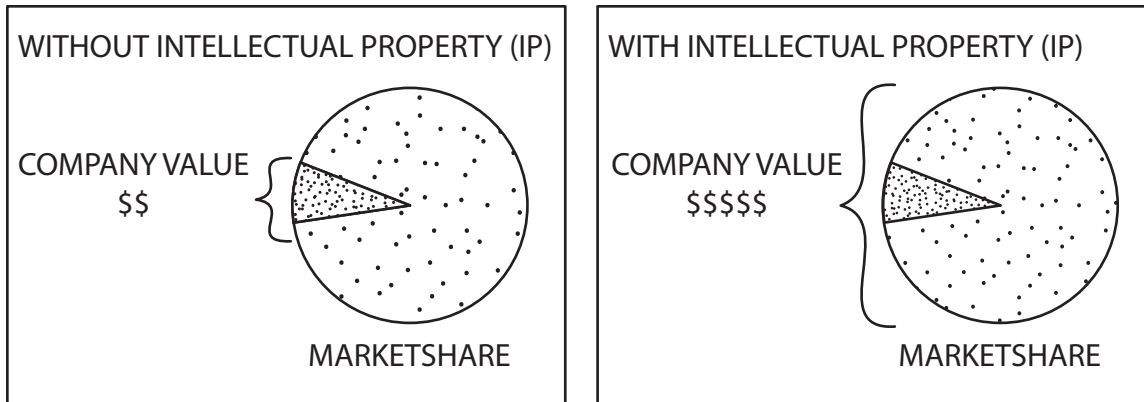
A patent can greatly enhance the value of your company because it represents an aspect of the company that others can’t freely duplicate. If you build a company with a certain number of customers, level of revenue, and market share, finance people can readily put a number on the value of your company. In part, the way they arrive at that value is through considering:

What would it take for someone else to start a company in your field and achieve a similar customer base, revenue level, and market share?

This is a fair way to measure the value of a company—*unless* there are patents or other *intellectual property* (IP) involved!

When there are patents involved in the key business of the company, and the company owns those patents, they are the part of the business that others can’t replicate. So the finance people can no longer calculate the value as just what it would take to build up a company *like yours*. If you own the key technology, you become “the only game in town.” Suddenly, the value of your company multiplies!

In the figure below we consider two examples considering the value of a company based on a pie chart that shows its market share. Often, the market share of a young company is very small, perhaps just a few percent. But when you consider the value of the company, whether it owns the patents on the key technology makes a huge difference. If the company doesn’t own patents, and markets



non-proprietary technology—as in the example on the left—the value of the company is based on its small percentage of actual customers; the small piece of the pie. However, if the company does have the patents, then the value of the company can reasonably be based on the other 90+ percent of the market that the company hasn't reached yet. In other words, with patents—as in the example on the right—the value can be based on the *potential* market share—the whole rest of the pie!

On this principle, a portfolio of patents can increase the value of a company, *provided they are good patents and relevant to the core business model*. Moreover, this portfolio can be a great bargaining chip if you decide to sell your company.

Because Investors Want It

On the popular TV reality show *Shark Tank*, individuals pitch billionaire venture capitalists to invest in their fledgling companies. When it's a product that the person is requesting for the "Sharks" to invest in, the first question the Sharks often ask is, "Do you have a patent?"

This is a common question from investors who aren't on TV, too! Potential investors in your idea or company will want to know that you've taken steps to protect your idea. They will be naturally leery of backing you if the primary business asset you have—your idea—is not protected. Before an investor puts money on the line to invest in your company, there has to be something *indispensable* about the opportunity in order to make the investor want to put money in *your* company. It may be you, yourself—and the investor's belief in your ability to capitalize on the opportunity. It also may be the success that your product is already experiencing. But if it's the idea itself that investors find most compelling, they naturally will want to know why putting money into your company is synonymous with putting money into the idea. If the idea is *proprietary* (you own the rights to it), that helps justify why they are investing in your company. If it's not proprietary, however, they will wonder what other options they have to still invest in that idea—*without necessarily investing in your company!*