Inventors DIGEST

NOVEMBER 2017 Volume 33 Issue 11

THE PATENT ATTORNEY

- 5 Tips for Your First Consultation
- An Inventor's Story • Pro Bono Help

Scanner Can Detect Threats to Planes

TUDOR TECH AERIA HAS WORLDWIDE RENOWN

A Better Mousetrap?

CENTURIES OF HISTORY SHOW IT ISN'T EASY

NEW THIS MONTH:

IP Market

LATEST ON TRENDS, COMPANIES

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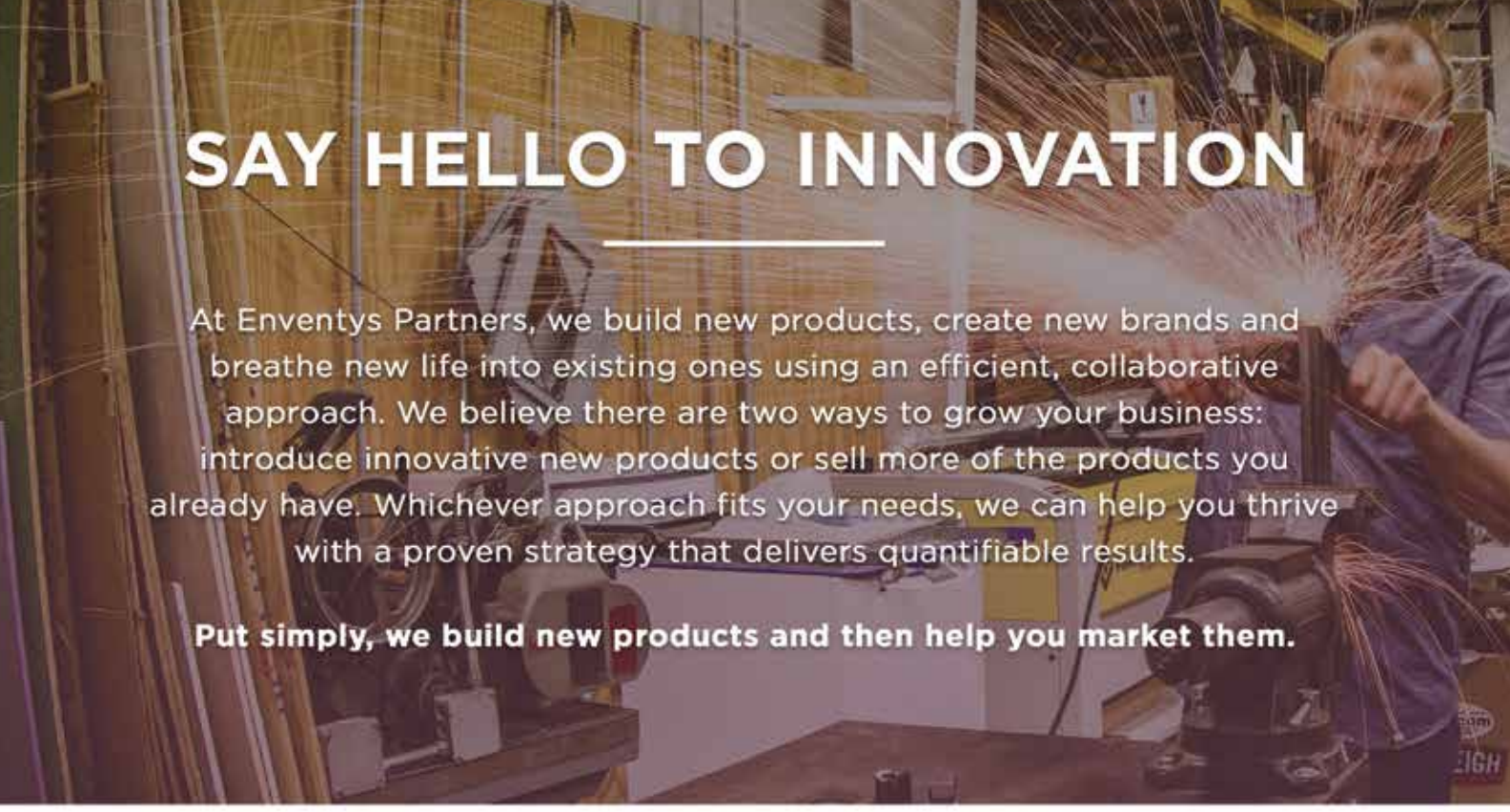

SAY HELLO TO INNOVATION

At Enventys Partners, we build new products, create new brands and breathe new life into existing ones using an efficient, collaborative approach. We believe there are two ways to grow your business: introduce innovative new products or sell more of the products you already have. Whichever approach fits your needs, we can help you thrive with a proven strategy that delivers quantifiable results.

Put simply, we build new products and then help you market them.

WHAT WE DO

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Be informed, and be protected

There is no law that says you must have a patent attorney to file or get a patent. There is also no law that says you must be a licensed electrician in order to rewire your house.

Bzzzzzzzzt!

If you decide to tackle the complex circuitry behind your home's walls while armed with a few tools and some healthy curiosity—but no knowledge of electronics—don't be shocked if that doesn't work out well for you. There are too many factors you will be unaware of, too many things that can go wrong. It can be the same if you decide to save some money and navigate the complex patent process on your own.

Yes, this has been done successfully, and no, retaining a patent attorney is no guarantee that your invention will be successful. But there is a reason that the many experts who write in *Inventors Digest* and the many inventors who have told their stories on our pages strongly suggest enlisting the help of a patent practitioner: It generally provides you the best chance to emerge with a patent that satisfies all legal requirements and is well protected.

Simply attempting to write an application that satisfies the numerous rules, statutes and case law that are part of patent law is daunting enough; successfully navigating all of the infringement minefields is also not generally a DIY project. That's why in this month's issue, we're helping inventors better understand the relationship with a patent attorney from both sides of the experience: how to best approach that relationship; important firsthand takeaways; basic dos and don'ts; possible options if you are sure you can't afford one.

Whether or not you decide to hire a patent attorney, everyone in the IP community agrees that you should make every effort to be informed about the patent process. This is the best way to ensure no important details are left out and to protect the integrity of your idea. And if you have retained a patent professional, it will make working with him or her that much easier because you will have more of a shared understanding of this arduous process.

The November issue is well timed for the *Inventors Digest* debut of Louis Carbonneau, a former patent litigator who has joined our monthly stable of contributors.

The founder and CEO of Tangible IP, a patent brokerage and strategic IP advisory firm, Louis has nearly 30 years' professional U.S. and international experience in all facets of intellectual property law and business. Among other accomplishments, he spent 15 years at Microsoft Corp., where he was general manager of IP licensing. For six straight years, the British magazine Intellectual Assets Management has named him one of the world's leading IP strategists.

Enjoy his expert insight. And whenever you can, let the patent pros be your rubber soles.

—Reid
(reid.creager@inventorsdigest.com)

INGENUITY IS AMERICA'S MOST VALUABLE RESOURCE.

DON'T TREAT IT LIKE A CHEAP COMMODITY.

Our strong patent system has kept America the leader in innovation for over 200 years. Efforts to weaken the system will undermine our inventors who rely on patents to protect their intellectual property and fund their research and development. Weaker patents means fewer ideas brought to market, fewer jobs and a weaker economy. We can't maintain our global competitive edge by detouring American innovation.

SAVE THE AMERICAN INVENTOR

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Photo illustration by Jorge Zegarra.

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BRIGHT IDEAS

TreePod

NEXT-GENERATION HAMMOCK

mytreepod.com

TreePod is a combination lounger and cabana, with only one hanging point and diameters of 5 feet or 6 feet.

The TreePod offers a 360-degree view through mesh walls, as well as shade. It is durable and packs down to the size of the average tent. Each unit comes with a fabric pod, hand strap, frames, quick link, hanging rope and guy-line (tensioned cable).

To get set up to a solid tree or structure, insert the frame into the openings of the fabric pod, as you would with a tent; secure the hanging rope to the top of the TreePod; toss the rope over your hanging location and pull to desired height; and secure the hanging rope to a sturdy support.

The retail price will be $250, with shipping to begin this month.

"Name the greatest of all inventors. Accident." —MARK TWAIN

Apollo

SPACE-INSPIRED REGULATOR WATCH

fund-apollo.com

Apollo is a series of four regulator watch models—Eclipse, Full Moon, Uranus and Neptune—all inspired by space, solar system planets and their satellites.

Apollo's design features a seamless, pebble-like shape and domed crystals that rise above the case. Shatterproof hesalite crystal, which has gone into space on many occasions, is on both the front and back. The background is a map of the Northern Sky, with 12 different stars that indicate the hours.

Eclipse and Full Moon are limited editions, with 999 pieces; an Earth version is limited to 17 pieces to commemorate each Apollo mission, with each watch hand-painted by artist Chris Alexander.

Uranus and Neptune will retail for $359, Eclipse and Full Moon for $399. Earth will retail for $699. Delivery dates will vary through March.

EAZY Bike

ELECTRIC CONVERSION KIT

producthype.co/eazy-bike

The EAZY Bike kit can purportedly be attached to traditional bikes in less than 2 minutes to make travel easier and more powerful. It comes with a battery, motor and pedal sensor (a throttle button is also available on U.S. models).

As the rider pedals, the motor kicks in when the speed reaches 3 mph. The motor (weighing only 4.5 lbs.) lowers onto the tire to help it move, and rises off the tire and reduces power when you stop pedaling. The U.S. version of the motor is 350 watts, pushing the bike up to 20 mph; in Europe, it's 250 watts and 16 mph.

The battery charge can last up to 30 miles. EAZY Bike will retail for $399 including shipping for the European version and $419 for the U.S. version. Early backers can buy for only $159 and $169, respectively, with shipping set for April.

NeuroPlus

BRAIN-SENSING HEADSET

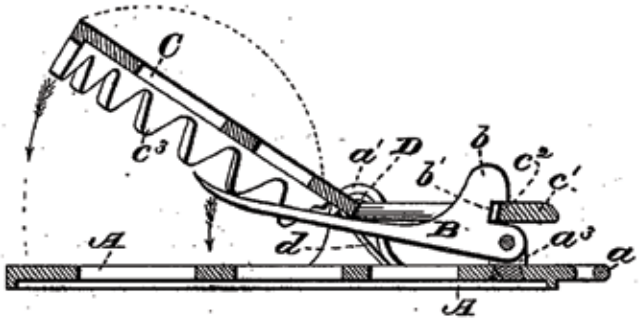
neuro.plus

NeuroPlus combines neurofeedback, biofeedback and cognitive training exercises with mobile training games that users control by wearing a brain-sensing EEG headband. (EEG stands for electroencephalogram, a test used to determine problems related to electrical activity in the brain.) The goal is to improve attention and self-control; the project's creators say these benefits have been clinically proven.

NeuroPlus measures both EEG and muscle tension (EMG). It aims to help people of all ages maximize their brain power, from kids with attention problems to older people whose focus can decrease. Players get real-time feedback on their focus level, relaxation and stillness while playing fun training games.

The headset and one-year subscription to the training games will retail for $489. Delivery is scheduled for December to backers, so long as the crowdfunding goal is met.

A Better Mousetrap? Hmmm



CENTURIES OF INNOVATION HAVE PRODUCED MOSTLY LACKLUSTER RESULTS **BY REID CREAGER**

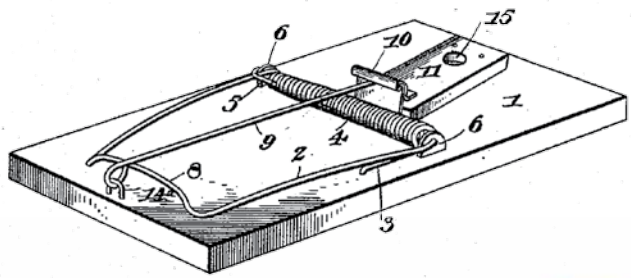
Ralph Waldo Emerson didn't know it at the time, but this late-1800s quote attributed to him set a trap for inventors: "If a man can write a better book, preach a better sermon, or make a better mousetrap than his neighbor, though he build his house in the woods, the world will make a beaten path to his door."

It sounded so simple. But although well over 4,000 mousetrap patents have been issued—reportedly more than any other invention—it is commonly held that only a dozen or so have made any money. A prime reason is evident in a typical Tom and Jerry cartoon.

Although humans are smarter than mice, the rodent's intelligence is not proportional to its tiny brain. In the novel "A Hitchhiker's Guide to the Galaxy," mice were considered the most intelligent species on the planet. They are capable of learning, can be taught tricks such as sitting up for food, and are curious and highly social.

Above: James M. Keep's Royal No. 1, U.S. Patent No. 221,320.

Below: William C. Hooker's spring-loaded trap, U.S. Patent No. 528,761.



Old-style versions

The spring-loaded trap, widely considered the classic version, was the theme of several well-chronicled patents in the late 1800s.

The identity of the first patented mousetrap inventor is unclear, based on conflicting claims. James M. Keep of New York patented Royal No. 1, a set of spring-loaded, cast-iron jaws, in 1879, but the patent description makes it clear this is not the first patent of its ilk. Others say the spring-loaded trap was first patented by William C. Hooker of Abingdon, Illinois, in 1894; still others credit British inventor James Henry Atkinson for his trap, the "Little Nipper," patented in 1898.

These traps all involve the gruesome results of many of their predecessors that date back centuries. This poses a moral dilemma for some people that is reminiscent of a scene in the movie "Annie Hall," when Annie (played by Diane Keaton) is upset that Woody Allen's character smashed a big spider in her bathroom. "What did you want me to do," Allen says, "capture the spider and rehabilitate him?"

Newscientist.com cites creative but vicious death traps that used nails to crush or stab the captured mouse; wires for strangulation; and a block of wood to crush it. There were even miniature French guillotines.

©TALAJ/SHUTTERSTOCK

Despite the well over 4,000 mousetrap patents, it is commonly held that only a dozen or so have made any money. A prime reason is evident in a typical Tom and Jerry cartoon.

Avoiding violence

In 1924, Austin Kness devised a way to catch mice without hurting them and sans the grotesque spectacle of that result: the Kness Ketch-All Multiple Catch mousetrap, which doesn't use bait or harmful chemicals and can purportedly catch up to 15 mice alive before it needs to be reset.

The metal Ketch-All—still available today—is a spring-powered wind-up trap about 7 inches long, 5 inches wide and 5 inches high. Mice that enter through a small hole in the side find a round tunnel. One side of the curved wall is part of a spring-powered paddle wheel. When the mouse steps on a panel in the floor of the trap, the paddle wheel scoops up the rodent and plops it in an adjacent holding room.

The wheel has three paddles. When one mouse is scooped up, the next paddle moves into place to await the next arrival. Mice can then be released unharmed in the outdoors.

Several other vintage options don't involve an ugly result. "Mouse-house" traps feature a door that is held open until the mouse finds its way inside, then snaps shut. Glue traps also go way back—a piece of paper that features a super-sticky glue—but mice tend to urinate when they can't move. This can be messy, among other issues.

Higher-tech options both painful and not include electronic mouse traps that send a lethal jolt of electricity to the mouse, causing instant death. Ultrasonic devices emit a sound that is too high-pitched to be heard by humans but bothers mice to the point that they leave the area.

One man's pursuit

In December 2012, Gus Lubin tested the building-a-better-mousetrap theory after a protracted battle with a mouse in his apartment and reported the results on businessinsider.com. The experiment underscored how smart and daring mice can be.

He said his exterminator tried plastic mouse snap traps, a simpler and safer version of the spring-loaded trap. After that didn't work, Lubin moved on to spin traps with preinstalled baits that allegedly lure the critter into a chamber that spins shut and immediately kills it. No go. "Clearly the mouse I was dealing with was smart," he wrote.

The third approach was a poisoned bait that the mouse eats, then retreats into the wall and dies. But once Lubin read about the unpleasant smell of decomposed mice, he aborted that plan. Next, he bought eight glue boards for his kitchen (with the aforementioned spin traps still present), and the mouse only got more bold—at one point almost climbing onto the living room couch.

Finally, he chose standard wood spring traps, using a dab of peanut butter as bait. Two nights later, he found the dead rodent in the trap's metal jaws. "You can't beat the classics," he wrote.

Your results may vary, of course. But don't overestimate humans' intelligence when it comes to building a better mousetrap. And don't underestimate the mouse's ability to thumb its little nose at centuries of innovation.

INVENTOR ARCHIVES: November

NOVEMBER 10, 1981

Scott Abbott (left) and Chris Haney (right) playing Trivial Pursuit.

LIBRARY AND ARCHIVES CANADA/BAC-LAC.GC.CA

The board game **Trivial Pursuit** was trademark registered, almost two years after it was conceived. Chris Haney, a picture editor for the Montreal Gazette, and Canadian Press sports journalist Scott Abbott came up with the idea while playing another board game (Scrabble).

In order to win the game, players answer questions in six broad categories to collect six colored pie wedges. By the time Hasbro bought the rights to the game for $80 million in 2008, more than 100 million copies had been sold in 33 countries. Time magazine called Trivial Pursuit "the biggest phenomenon in game history."

The first copies of Trivial Pursuit were sold at a loss; each game cost about $75 U.S. to make and were sold to shops for $15. Haney, who quit his job to work full-time on the game in 1980 with an infant son and another child on the way, at one point was redeeming empty beer bottles for cash and had a nervous breakdown.

When the game was licensed to Selchow and Righter in 1983, it became a worldwide craze with a strong boost from a major marketing and publicity campaign. "I was the architect and Chris was the general contractor," Abbott said in a Washington Post story. "I invented it, and he made it happen." Abbott is the owner of the North Bay Battalion team in the Ontario Hockey League.

Haney, who died in 2010, characterized himself as a beer-drinking high school dropout whose biggest mistake was quitting school at 17. "I should have done it when I was 12," he was often quoted as saying.

Strike while the Iron is Hot

THE INVENTING CLIMATE HAS NEVER BEEN BETTER FOR FILING FAST AND OFTEN BY JACK LANDER

The adage "Strike while the iron is hot" dates to the days when a blacksmith heated iron in his forge, then hammered it into a horseshoe or other useful items that a person couldn't purchase off the shelf at a hardware store. The point was that the hotter the iron, the softer the horseshoe, and the easier to beat into its final form.

That's a lesson for filing your patent application. File quickly and file often, as patent professionals preach today. The world of ideas is moving at an increasingly fast pace. The computer and its printer enable us to create ideas on paper in a few hours. And instantaneous access to prior art in the form of patents, published information and products provides the background we need for preparing our applications and defending them.

If you intend to license your invention rather than produce and market it yourself, you'll need to submit your invention to a company at some point. This process is daunting for most inventors, and discouragement often sets in early.

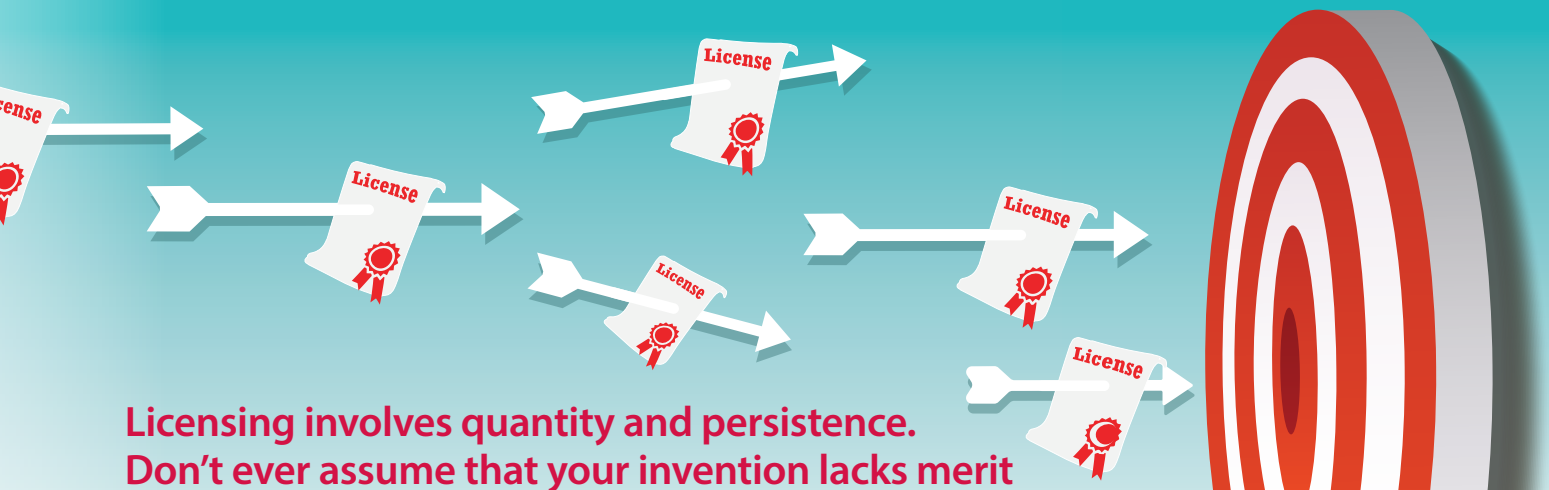
The process of submitting and getting a conclusive response is often slow—and more often than not, the answer is "no thanks." Rejection is especially discouraging, so many inventors stop trying after a few failures and their invention dies of old age.

A 'no' may not be about you

Here's how you can increase your odds of success in licensing. First, understand that licensing involves quantity and persistence. Don't ever assume that your invention lacks merit until you have enough consistent feedback to be convincing.

Among the reasons for rejecting a good invention:

- The company's marketing structure doesn't fit your invention/product. Just because the company makes products similar to your invention doesn't mean that it markets to the kind of customers who would buy what you've developed.
- The company is not open to suggestions from outside. Some companies have a smugness about this. They feel that they know their field better than any amateur outsider could. That attitude is changing, but most companies aren't yet soliciting submissions from the outside.
- The company has a large backlog of products that it is developing and doesn't have the need or desire to take on more.
- The company may be losing money and has no taste for investing in new products.
- The person charged with reviewing submissions has a greater incentive to protect his butt than risk failure by introducing a new product. Or it may be sent to an unsympathetic department. For example, if the engineering department reviews your invention, jealousy may prevail and influence a poor evaluation.
- The company has no internal procedure for handling submissions. This is especially true of medium-size and smaller companies. Your submission may pass from desk to desk without anyone taking charge to know where it is at all times, to ensure the review gets done and that you get a timely answer. I've heard a number of horror stories of lost correspondence, even lost prototypes.
- The company has lost its initial creative spirit and concentrates on well-established products. It lacks



Licensing involves quantity and persistence. Don't ever assume that your invention lacks merit until you have enough consistent feedback to be convincing.

foresight and the will to risk developing and introducing new products.

Volume, volume, volume

Persistence and quantity are keys to success. Make up your mind that you must submit to several companies—maybe 10 or even more—in order to conclude a license agreement. Corporations are known to take their time in responding, and you have a right to know that your submission is being acted on and not collecting dust on some procrastinator's desk. You might state in your submission that you will give the company a one-month exclusive offer. If you don't have reassurance that a license agreement is probable at the end of that month, contact your next best choice.

It's tricky to contact two or more companies at the same time. If both are interested, you could end up offending both and failing to satisfy either.

Going in through the "back door" greatly increases your odds of a fair evaluation. If you can gain the ear of the director of marketing or even the company president, obviously your chances of success are greater. And it's not as difficult as you might think. These people are often at their company booth at trade shows. A marketing director, who would be protected by a "gatekeeper" at his or her office, will likely shake your hand and give you a minute or two of conversation at a trade show.

Caution: Nearly all companies of significant size will have a policy and procedure for submitting ideas and inventions. Always contact your list of prospective licensees and ask for their submission procedure. You'll have to sign a statement that limits your rights to only what is covered by your issued patent. By having submitted your signed agreement, and carrying copies with you to trade shows, you can overcome any objection that such an agreement must be processed before any executive can talk with you face-to-face.

If you can't attend trade shows and you feel that you must operate through your prospect's mailroom, call and ask for the correct spelling of the director of marketing's name. In any event, don't just mail your sell-sheet and cover letter to a title. That almost guarantees they'll end up in the "round file." If the instructions are to return the signed agreement to the legal department, be sure to send a copy of it along with your submission to the marketing director.

To wait or not to wait?

I'm frequently asked whether to wait for your patent to issue, or to negotiate based on your application. This question doesn't have a pat answer.

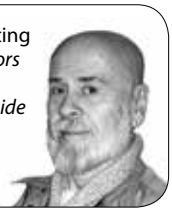
If your invention is high-tech and state of the art, exposure before you have the patent in your hand may stimulate the research for alternative ways to achieve your invention's objective. In other words, your prospect will be alerted to an opportunity that it may have otherwise missed. But waiting two or three years for the patent to issue may enable a company with an approach that's not as good as yours to take over the market.

If you're going to get "the early worm," you may need to submit your proposal based on your application—and the hope that it will result in an issued patent that protects its commercially valuable claims. Another advantage is that the costs of rebutting the patent examiner's rejection of several of your claims, which commonly occurs, will be borne by your licensee.

I'm often contacted by inventors whose patents are five years old, seven years old, or even older. Potential licensees have a suspicion about such patents—that they've been shopped all over the place and no one wants them. In most cases, it's simply that the inventor lost faith and the courage to go on. Knowing what to do, and persisting in doing it, will prevent an indecisive end to your invention.

Strike while the iron is hot, and keep striking until the shoe fits the horse.

Jack Lander, a near legend in the inventing community, has been writing for *Inventors Digest* for 20 years. His latest book is *Marketing Your Invention–A Complete Guide to Licensing, Producing and Selling Your Invention*. You can reach him at jack@Inventor-mentor.com.



Social Media Helps Mom Launch Clothing Line

FACEBOOK, INSTAGRAM SPREAD THE WORD ABOUT MINT STANDARD **BY ELIZABETH BREEDLOVE**

"I actually didn't tell anyone outside of my immediate family and didn't post anything on social media until I had the product in hand."—KELLEY WENDELBORN

As a busy mom of two little girls, Kelley Wendelborn was often faced with a problem: The clothes she needed to wear to work didn't fit her needs as a mom.

Her job required a certain level of professionalism, while her kids needed her to play with them on the floor, outside and everywhere in between. The lack of clothes that fit a woman's complete lifestyle inspired her to create a brand called Mint Standard.

"It seems as though we have gym clothes, we have work clothes, and we have clothes we wear when we're going out with our friends, and we have to change outfits for every different scenario," Wendelborn said. "As women, we're expected to do so much and be so much, whether that's working, having children, volunteering, or taking care of an elderly family member. We just don't have clothes that can do it all."

She created fashionable, stylish dresses that are made from the same material as high-end athletic wear. They're stretchy, but the fabric is brushed so it looks and feels soft and doesn't look like you're wearing athletic wear. The dresses have deep pockets because busy women have things they need to hold onto or carry with them, and having pockets makes day-to-day activities much simpler.

Once the Charlotte resident began to pursue her dream of making these dresses, she began to think about how to spread the word and get the product in front of other women and busy moms. That's where social media came in.

Timing the launch

When she started, Wendelborn didn't immediately take to social media to promote her product.

"I actually didn't tell anyone outside of my immediate family and didn't post anything on social media until I had the product in hand," she said. "I knew so many people would want to give me advice, and I was worried that I might not go forward with my idea if I listened to some of them. So I decided not to tell a soul until there was no turning back."

Once she felt ready, she used social media the week of launch to tell everybody and create a buzz. She focused on Facebook and Instagram and quickly saw a great return.

"Social media marketing has helped Mint Standard grow more than any other marketing effort," she said. "It started with a Facebook post on my personal page about what I was doing, the new adventure I was going

PHOTO COURTESY OF KELLEY WENDELBORN

on. My Facebook friends then shared my post along with the website to help support me, and that first week of sales was huge.

"As people received their dresses and really liked them, they posted about it on Facebook or Instagram, and word began to spread from there. I did my first craft show recently, and that was the first time I had done any sort of marketing outside of social media."

Quality takes time

So, what can others launching a clothing line learn from Wendelborn's experience using social media to sell her products?

Her primary advice is to have the right expectations.

"Everything takes so much longer than you think. I spend a lot of time going over samples and getting them right. Getting the quality that you want takes a lot of time and a lot of back-and-forth.

"Make sure you keep your expectations realistic when it comes to your timeline."

Details: mintstandardclothing.com

Elizabeth Breedlove is content marketing manager at Enventys Partners, a product development, crowdfunding and inbound marketing agency. She has helped start-ups and small businesses launch new products and inventions via social media, blogging, email marketing and more.

The Influence of Influencers

Kelley Wendelborn encourages inventors and clothing brand creators to look for social media influencers, regardless of platform.

"The biggest piece that is helping my brand has been social media influencers"—brands and individuals who have an influence over your target audience. In Wendelborn's case, this often looks like other busy moms. They may be bloggers, they may write for publications that busy moms read, or they may just have an engaging social media profile with a large number of followers.

Influencer marketing is one of the most effective ways to reach potential buyers, especially because buyers tend to prefer this type of messaging as opposed to more traditional advertising.

"I think people like to hear from other people," she said. "It's why reviews are so popular to read through. Hearing from others how they wore my dresses, where they wore my dresses and how they styled my dresses seems to be the biggest driver of sales."

Her five tips for working with influencers:

1. **Find influencers that your target audience is already following.** When marketing a new product, your primary goal is to get your product in front of the people most likely to buy it. In general, people follow influencers similar to them, so try to look for influencers who fit your target demographic.
2. **Let influencers be creative.** When you reach out to influencers, offer your product for review but don't tell them exactly what to do with it. Let them find a way to incorporate it into their own brand.
3. **Look for audience engagement, not just followers.** Unfortunately, it's pretty easy for influencers to buy "fake" followers on Facebook and Instagram. Typically, these are inactive accounts created by companies overseas. Make sure that the influencers you are reaching out to have an engaged audience. This means you should be paying more attention to likes and comments than the number of followers an influencer has.
4. **Collaborate for contests and giveaways.** Contests and giveaways are beneficial for both brands and influencers, because they get more eyes on both. Consider sponsoring a contest or giveaway in which users are asked to share or engage with the influencer's content. This is a great way to get more follows for the influencer and more sales for your brand. Contests and giveaways can increase your social media followers, too!
5. **Measure ROI.** Every piece of your marketing strategy should have a measurable return on investment, including any influencer outreach you do. Track how much money and time you're spending on influencer marketing and how much you're making in sales that are directly attributable to each influencer. Use the information you have about ROI to make future decisions about partnering with influencers.

She Took Home 3 Gold Medals To Go

HANDHELD CUSTOMIZABLE SEALER A BIG HIT AT NATIONAL INVENTION SHOW

BY EDITH G. TOLCHIN

I was a judge, a member of a pitch panel, and a Resource Center expert at America's largest invention show this past June in Pittsburgh. I've participated in INPEX (the Invention & New Product Exposition), a truly amazing annual invention convention, for the past 16 years and am always thrilled to meet the hard-working inventors.

Juli Lank needed a disposable, customizable bag that would hold both dry and liquid items.

Juli Lank certainly enjoyed the show, winning three gold medals for her To-Go Customizable Sealer. Although I didn't meet her at this year's event, nor did I judge the same categories for which she won her medals, I came upon her story in the *Ormond Beach (Fla.)* Observer a few weeks after the show and contacted her for my own interview.

Edith G. Tolchin (EGT): What is your background, and how did it influence your invention?

Juli Lank (JL): I am a nurse, and I had lost 150 pounds on a very specific food plan (that I also invented, by the way). I use a lot of my own custom dressings and sauces. When I would pack my lunch for work, I needed a lunch box the size of a suitcase to fit all of the plasticware I carried. If I used Ziploc bags for liquids, they would leak. When I got home, I had the pleasure of washing them all out. To maintain my weight loss, I wanted something I could not only take to work but to restaurants as well. I needed a disposable bag that would hold both dry and liquid items—bags I could customize myself.

I was at work one day using a pill-crushing bag. It's a durable bag you can put a pill in, crush it, then put the contents into something soft so patients can swallow the medication. I thought, "These bags are FDA approved, durable and a great size for salad dressing or sauces. I wonder how I could seal them to make them like a condiment packet?" I tried the little handheld potato chip re-sealing device, and that was a disaster.

I forgot about it for a few months until one day I was flat ironing my hair and I remembered those bags and thought, "I wonder if I can heat-seal that bag closed with this flat iron?" Well, not with these bags. The iron is way too hot and those bags aren't designed for that, so they would stick and melt to the heating plate. But two years later after matching the perfect heat with the perfect bag, the To-Go handheld sealer was finally born! The shape of the sealer was also important to me, since it allowed me to put unsealed bags on a roll so that I could customize the size I wanted.

EGT: How does the product work? Is it used with regular plastic bags?

JL: The patent-pending product will be cordless and rechargeable. You will have the option of purchasing a roll of unsealed bags in different lengths. You roll out your desired-length bag, apply the heat sealer, heat-seal the bag closed, then slide the cutter across the bag. You will have then created a bottom for your current bag and a bottom for the next bag on the roll. You can then fill your bag with any product, liquid or solid, then apply the heat sealer across the top for an impermeable seal. These are specific heat-sealing bags designed to meld together when heated. They are also FDA approved, BPA free, and most are recyclable.

There will be an online store to purchase other custom sealable bags as well. They are waterproof. You can seal your cell phone without using bulky waterproof covers while at the beach. You can still talk and text, but your phone is safe from sand and water. If you seal a slight bit of air in the bag, it will float.

It's great protection at the gym, fishing, hiking or anyplace you don't want it to collect moisture or debris. Then just discard it when you're done. It's great for priceless documents or pictures. A fireproof safe doesn't protect documents from water damage.

PHOTOS COURTESY OF JULI LANK

These bags hold liquids without leaking, ever. I am an inventor, so I am usually broke. I "smuggle" liquor in these bags everywhere I go—planes, cruises, dinner, girls' night out. Who is not paying $12 for a cocktail? This chick. Liquor is, by far, the most popular requested reason people want to purchase this product. Apparently, I am not the only "broke chick" out there.

EGT: How did you create your prototype? Did you have many versions?

JL: With a flat iron, a crimping iron, a voltage regulator, a Dremel tool, molding instruments and other materials. I had four different versions before I perfected it. As the applications became more varied, the need to expand its ability to accommodate those purposes became necessary.

That's why I amended the patent to make the sealers handle separately from the heating element. It needed to be able to accommodate different lengths and heating plates for different bags, for different purposes.

EGT: Tell us about your experience exhibiting at INPEX.

JL: I won gold in the kitchen category, which was my initial reason for the invention—and that includes household items such as shampoo and conditioner. I also want to take my own hair and bath products on trips without 20 different plastic bottles I won't clean. The judges liked the fact that it is an economical product as well.

You can buy bulk items such as baby formula or instant coffee and make your own individual packets—even peanut butter and jelly packets. Just microwave them first. It will save people a lot of money.

By the time I got to the show, I had already realized how versatile the product had become and didn't want the product to be categorized only as a kitchen item. I wanted that to come across in my display. It must have, because the second gold was for Best Crafting Idea. I've had a lot of feedback from crafters who sell items via the internet or at shows who would love to purchase this sealer.

You can fill your bag with any product, liquid or solid, then apply the heat sealer across the top for an impermeable seal.

"These bags hold liquids without leaking, ever. I am an inventor, so I am usually broke. I 'smuggle' liquor in these bags everywhere I go—planes, cruises, dinner, girls' night out. Who is *not* paying $12 for a cocktail? This chick." —JULI LANK

I won the third gold in medical because I wanted to find a way to send one unit of liquid medication home with a child without using scary, pre-filled, expensive syringes at the hospital. I also wanted to be able to pre-sort my father's medications into individual packets, even if someone else helped administer them. I filled them, so I was certain they were the correct doses. Also, I could pre-crush the ones that were too big for him to swallow. If he was going somewhere, he could just take the packets he needed, not the entire medicine cabinet.

INPEX was great. I am somewhat of a novice myself and I not only wanted to get my product out there, I wanted to educate myself on what types of opportunities were moving into the production phase. I gained invaluable information from the show and made a lot of inventor friends.

I was able to pitch to Cuisinart, which has shown some interest in the product. I have also heard from a representative from QVC; I'll have a meeting with representatives from the largest sealing company out there; and I have set up three other meetings with licensing firms. Winning three gold medals was incredible. I would have been happy with one.

EGT: What product safety issues are involved with this product, which comes in contact with food?
JL: I purchase bags made in the United States that have undergone FDA approval.

EGT: Have you encountered any obstacles in developing this product?
JL: Social media and website development are difficult for me. I'm terrible at those things.

EGT: Tell us about your patent process.
JL: I use a patent attorney. He and his associates have been life-savers for me. It can be difficult to try and explain the vision in your head to someone who is going to bring it to life on paper. Beyond their legal knowledge, they are patient and great listeners—two qualities that are imperative for me. If I don't think I am being heard, I am thinking you don't have a job. As litigious as our society has become, I view a patent attorney as a wise investment. I know that isn't something everyone has financial access to, but if you do, that would be my recommendation.

EGT: What are your plans for selling this product?
JL: I only have a prototype. There isn't anyone who doesn't see the To-Go sealer who doesn't want one. That is why I am so anxious to get it manufactured, online and into stores.

EGT: Do you have any other possible additions to your product line?
JL: I have a couple other products coming out soon, and I have a list of about 50 I am anxious to get started on. I'm hoping to fund those projects with this product. I invent things all the time.

My mind never stops. I look at things every day and think, "I can think of a better way to do that." I listen. That is so important. I listen to people all the time. I eavesdrop. I want to hear what people complain about, what inconveniences them. I also pay attention. I watch people living their daily lives and the things they struggle with. I have a couple of medical inventions I would like to bring to market just based on paying attention to people. My husband says, "Someone should just invest in your brain. That's where the money's at."

EGT: Any advice for our readers?
JL: Protect your ideas and get sound advice from legitimate resources. Educate yourself before executing anything. Don't get overwhelmed by the entire process of bringing your concept to development. Take one step at a time. Don't let the fear of failure paralyze you.

This was a daunting journey for me. It is complicated and expensive, but I feared dying and doing nothing with a concept I was passionate about a lot more than I feared failure. I knew the success rate of having an invention actually become a viable, saleable, profitable product was 2 percent. I just always believed my product was within that 2 percent.

Details: startsealing.com

Books by **Edie Tolchin** (egt@edietolchin.com) include "Fanny on Fire" (fannyonfire.com) and "Secrets of Successful Inventing." She has written for *Inventors Digest* since 2000. Edie has owned EGT Global Trading since 1997, assisting inventors with product safety issues and China manufacturing.

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Strategy Avoids the 'Death Squad'

TRANSFER OF PATENTS TO U.S. INDIAN TRIBES CIRCUMVENTS PTAB

BY LOUIS CARBONNEAU

What do Big Pharma and American Indian tribes have in common? Until recently, not a lot. But that was before pharmaceutical giant Allergan transferred the patents for its blockbuster eye drug Restasis to the Saint Regis Mohawk tribe.

Why? The key is sovereign immunity. Tribes can invoke this in proceedings that seek to invalidate their patents and thus obviates the dreaded patent "death squad" that the U.S. Patent Trial and Appeal Board has become for patent owners.

What many call a publicity stunt on the part of Allergan actually is founded on interesting legal grounds. It follows in the footsteps of a few recent decisions in which U.S. universities used the same argument to successfully fend off the PTAB jurisdiction seeking to invalidate their patents. It didn't take long for others to follow suit with Taiwan's nonprofit Industrial Technology Research Institute, transferring 40 patents to the similarly obscure North Dakota's Three Affiliated Tribes (the Mandan, Hidatsa and Arikara Nations), which has now sued Apple, seeking a royalty on every iPad sale.

Exposing a larger issue

For those who discount the above as ridiculous, it is important to understand the context in which it is happening. Since its inception five years ago, the PTAB has had a kill rate still exceeding 70 percent—which has wreaked havoc in the patent community and has introduced a great deal of uncertainty in the U.S. patent system. Despite some feeble recent attempts by the U.S. Court of Appeals for the Federal Circuit to rein in some of the most egregious decisions, innovation is cooling down and data are rapidly piling up showing that venture capital is leaving the country and looking for jurisdictions more supportive of inventors.

Contrast this with a recent announcement in China that 82 percent of plaintiffs in patent infringement cases were successful, and it doesn't take a genius to understand why people would go to extremes to avoid having their patents turned upside down by a tribunal that many have lost any confidence in (excluding its direct beneficiaries).

While selling patents to American Indian tribes (or universities, for that matter) is a way to fight one

Recent IP activity

There has been a flurry of activity in the marketplace:

- Litigation financier **Fortress IP Group** recently took possession of several portfolios from publicly traded IP companies Marathon and Inventergy that were securing loans it made and is sending strong signals that it will be enforcing them soon.
- After coming off settlements with ARM and Broadcom that brought in some cash, Japan's sovereign patent fund **IP Bridge** has also doubled down by suing Intel for allegedly infringing several of its semi-conductor patents.
- **Blackberry** announced that it had doubled its licensing revenues in the last quarter, while losing its IP enforcement chief.
- Chinese ride sharing company **Didi Chuxing** acquired several patents from Hewlett Packard, recordings show, while another other Chinese company, Sanan Optoelectronics, bought into Sony's portfolio. This continues the trend by many Chinese companies that are building substantial war chests of patents.
- In Canada, both large NPE Conversant IP and Quarterhill's unit **Wilan** announced settlements in current litigations, which would seem to indicate a renewed willingness for defendants to avoid the gamble of a trial.

Lost in all of this news was the acquisition by **Google** of HTC's mobile assets, largely its research and development staff and related patent portfolio for $1.1 billion. This is an interesting twist for Google after it bought and then resold

The selling of these patents clearly demonstrates the need for a permanent solution that will restore some faith in a U.S. patent system that a few years ago was the envy of the world.

extreme with another extreme and may not last very long, it clearly demonstrates the need for a permanent solution that will restore some faith in a patent system that a few years ago was the envy of the world.

The U.S. Supreme Court will have the opportunity to swing the pendulum back where it used to be in the Oil Sands case, to be heard this fall. It will have to decide whether patents are private property rights that cannot be taken away without a jury trial, as it would otherwise violate the constitution. Depending on how it adjudicates, its decision could have the most profound impact on patents as the cornerstone of the innovation engine and as an asset class.

Louis Carbonneau is the founder & CEO of Tangible IP, a leading IP strategic advisory and patent brokerage firm, with more than 2,500 patents sold. He is also an attorney who has been voted as one of the world's leading IP strategists for the past seven years. He writes a regular column read by more than 12,000 IP professionals.

Motorola Mobility (taking a massive loss) and further consolidates the handset market between Apple, Samsung and a few other distant thirds.

Another surprising announcement surfaced from the proposed U.S. tax cuts announced in late September by the White House. Buried in the massive document is a proposal to make the **United States Patent and Trademark Office** an independent agency, a bit like NASA. (For more information, see page 40.) Given that the USPTO has been accused by so many lately of harboring a bias against the inventors it is supposed to serve, the call for its independence (although mostly for budget diversion than political neutrality) seems timely. Either way, this promises to be a fall season that is bound to affect the market in a way we have not seen for a long while.

PROTECTING AGAINST TERROR IN THE AIR

ROMANIAN DEVELOPS FIRST SCANNER FOR COMMERCIAL AIRPLANES

BY EILEEN MCDERMOTT

This article was originally published Sept. 6, 2017 in Innovator Insights, *a blog interview series of the IPO Education Foundation. For information, visit www.ipoef.org.*

A plane carrying hundreds of passengers crashes into the Mediterranean Sea, most likely due to an undetected bomb on board. An unsecured scrap of metal falls from an aircraft's body and causes a Concorde jet to catch fire and crash. These are real-life scenarios that Mircea Tudor's award-winning scanning technology for commercial airplanes, Tudor Tech Aeria, is intended to avoid.

Tudor grew up in a small village in Romania and worked alongside his older brother in a TV repair workshop, where his interest in electronics quickly evolved into his life's pursuit. At 16, he built his own

Mircea Tudor speaks at the International Civil Aviation Organization's Global Aviation Security Symposium in Montreal in September.

oscilloscope—an instrument used to display and analyze the waveform of electronic signals—because he could not afford to buy one. Later, while working for Romania's national railway company during the communist era under Nicolae Ceausescu, Tudor was forced to redesign defective parts for complex equipment systems on his own because the Romanian economy was shut off from the Western world and he could not obtain the original replacement parts. The two-year crash course provided the foundation for Tudor to begin designing his own more complex technology solutions.

In 1994 he founded MBTelecom Ltd., where he created large-scale security systems that included scanning technology for cars and trucks at border-crossing points. Tudor spent years working on a way to scan large objects such as aircraft, and by 2013 he had a fully operational prototype. The next year he founded Tudor Scan Tech, the parent company of MBTelecom, and today he is in negotiations with a U.S. company to sell his aviation scanning technology on a global scale.

The Aeria won the 2013 Grand Prix at the International Exhibition of Inventions at Geneva—the first time in the competition's history that the same competitor had received the award twice (Tudor also won the award in 2009 for his robotic mobile scanning solution for trucks).

Tudor spoke with Innovator Insights about how the technology works, its implications for commercial, general, and military aviation, and why inventors should "dream big."

Innovator Insights: What is the Tudor Tech Aeria?
Mircea Tudor: The Tudor Tech Aeria is the first-ever scanner for commercial airplanes, designed as technological support to be used in civil aviation in the fight against international terrorism. The scanner is able to show dual-view, high-resolution radiographies of the fuselage and wings of an airplane within minutes, and is capable of detecting a bomb or any other hidden objects on board or inside the "technical cavities" (areas that are inaccessible under current inspection procedures) of the airplane. Twenty to 25 percent of the volume of an airplane is represented by these so-called technical cavities, which are accessible for service and maintenance but not for security inspection. For a B747, that's the volume of an average-sized house that goes uninspected. This represents a systemic vulnerability in global civil aviation.

Our aircraft scanner fixes this vulnerability and offers fast and reliable clearing of civil airplanes under bomb threat, or for fast security inspection of airplanes arriving from low-security/high-risk origins of fly (about 30 percent of airports in the world are considered a low security level within a high-risk region). These scenarios aren't just theoretical; terrorist attacks and equipment malfunctions have happened before and can happen again anytime. There is no way to supervise hundreds of engineers doing service repairs over a period of weeks, and that's a huge threat to safety.

II: How does it work?
MT: The system generates simultaneous top and side view radiographies of the airplane using state-of-the-art, multi-energy X-ray generators, detector boards, and proprietary imaging software. It is a mobile, non-intrusive system that uses a dual-collimated X-ray beam oriented towards vertical and horizontal detector lines. The system is so precise and accurate that it can "see" objects as small as 1 millimeter and can automatically recognize organic materials, as well as targeted substances—such as explosives, narcotics, and cash—that are made of organic materials. The scanner also automatically recognizes heavy metals like uranium or tungsten, which

The scanner can show dual-view, high-resolution radiographies of the fuselage and wings within minutes.

> **"I began to search for solutions by first asking questions. I asked why it was that we scan luggage, cars, trucks and containers but not the planes themselves."**
>
> —MIRCEA TUDOR, INVENTOR OF THE TUDOR TECH AERIA

are often used in military-grade weapons.

For a medium-sized airplane, the scan takes five to seven minutes, and for a B747 or larger plane it takes around 15 minutes. A standard manual inspection can take up to 10 hours.

II: How did you come up with the initial concept?

MT: The idea came to me in 2009 after being invited by the U.S. Department of State to Washington, D.C., to present our truck-scanning solution. A Customs and Border Protection official asked me during a coffee break whether we could build a scanner for aircraft. At that time, he was concerned about private aircraft heading from South America to North America that were involved in drug trafficking and money flowing south as payments for illegal transactions. I told him we didn't have a solution yet, but that I'd look for one.

I began to search for solutions by first asking questions. I asked why it was that we scan luggage, cars, trucks and containers but not the planes themselves. After years and years of effort, the team of researchers I lead succeeded in generating a final concept—and later on, a prototype. The initial prototype is much different than the current commercial version, which has been in testing for three years in various operational scenarios and climate conditions, and is ready to market.

On August 8, 2017, a large consortium of civil aviation authorities, security agencies, security aviation stakeholders, academic representatives, aviation industry representatives and scientists from the aviation and aerospace fields performed the last official trial conducted on an international airport by scanning commercial airplanes in various security and safety scenarios. The trials also proved the system's ability to reveal some mechanical and structural anomalies of the airplane. The scanner would be able to detect if even one screw was missing or if hydraulic oil is leaking, for example.

II: What is the ultimate goal of the invention and how will it help the aviation industry?

MT: The goal is to make global civil aviation safer and better secured, by reducing the security inspection time from 10 hours to a few minutes and by increasing the reliability of inspection results from the current 60 to 70 percent to nearly 100 percent. As the scanner can reveal mechanical and structural anomalies of the airplane as well, it could potentially help to detect the kinds of defects that can result in tragedies. If even a single bomb is discovered in the future, or a single mechanical anomaly, this will save the lives of hundreds of innocent passengers and our efforts will be rewarded.

II: Are there applications for it in other industries?

MT: We have been building truck and car scanners for 15 years already. Tudor Tech Aeria evolved from those solutions. We won the Grand Prix at the International Exhibition of Inventions at Geneva in 2009 for the first robotic scanner for trucks—a mobile scanner with no human presence in the scanning area that still today is the only solution of its kind. This means professionals are not exposed to ionized radiation and (it) eliminates potential casualties in case of explosion of the inspected vehicle.

II: What patent(s) cover the invention?

MT: The invention is covered by two international patents, which have been accepted in more than 45 countries without any comments or opposition.

II: Did you have any experience with patents/IP prior to this experience, and do you have patents on other inventions?

MT: I'm very familiar with IP rights in general and with patents in particular. I can say that I'm a "serial inventor," as I am the named inventor on more than 20 national and international patents in the fields of security, medical technologies, traffic engineering solutions and more.

II: Is the Tudor Tech Aeria currently in production? How have patents helped you in the process of bringing it to market?

MT: Yes, Tudor Tech Aeria is now in production, and the first unit will be supplied to our client—a royal

family from the Middle East—by the beginning of next year. The patent is a way to prove our capacity to generate intelligent new solutions and protect my commercial interest as an investor in R&D, but it also helps in the marketing of our products and solutions.

II: What advice do you have for aspiring inventors?
MT: My advice is to never stop dreaming and to never stop looking for ways to make their dreams a reality—even if sometimes it seems impossible. The harder you work, the closer the "impossible" will come to being possible. Secondly, have the courage to set their goals as high as they can imagine. The human imagination can never dream big enough. There is an infinite intellectual space in front of us to be conquered.

Innovator Insights is IPOEF's forum for inventors and other IP stakeholders to discuss their work and the role IP plays for them, and to help educate the public on the link between strong IP protection and robust innovation. Read more at www.ipoef.org.

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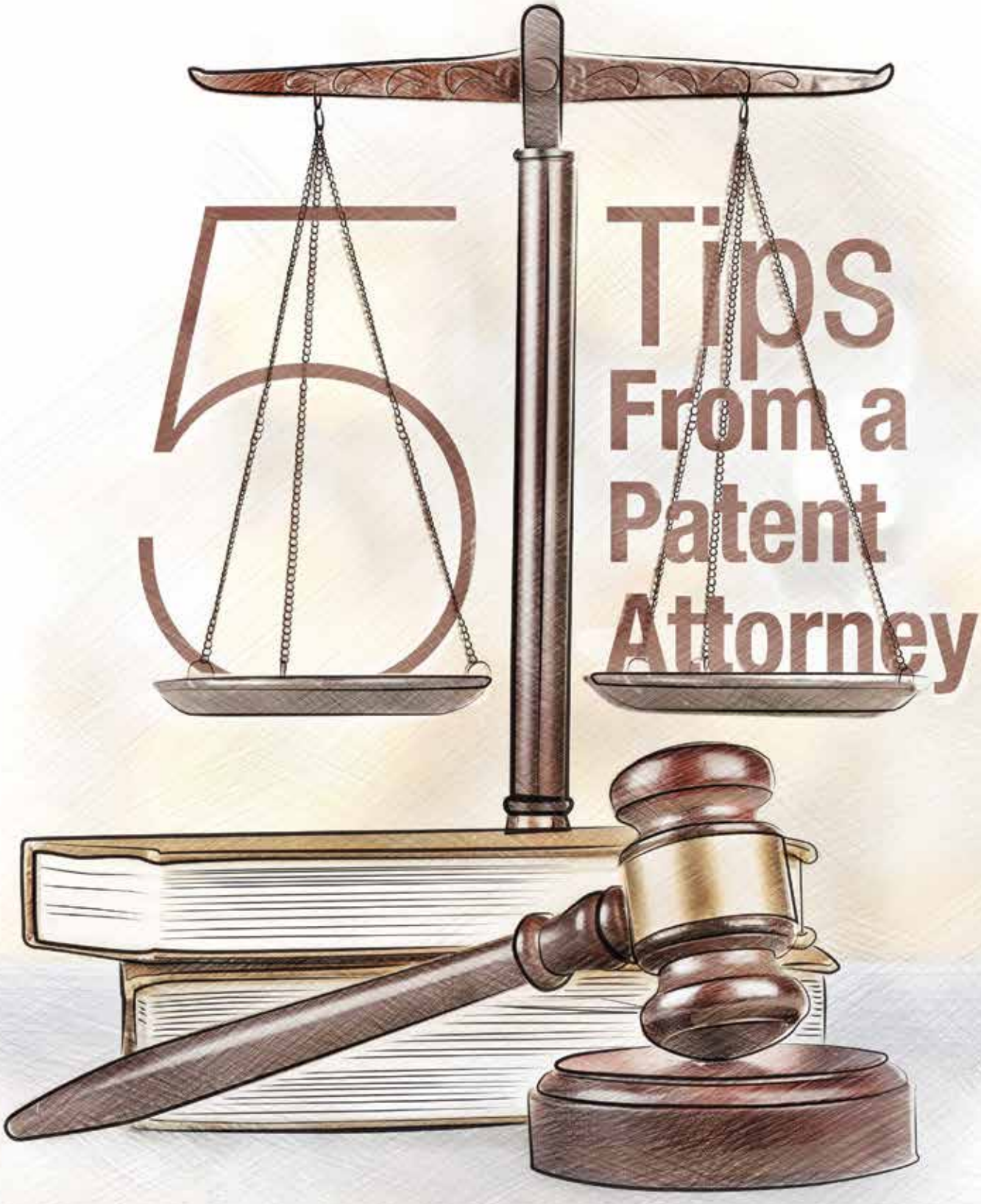


5 Tips From a Patent Attorney

INVENTORS MEETING WITH A LEGAL PRACTITIONER SHOULD BE INFORMED AND REALISTIC

BY GENE QUINN

One of the problems independent inventors can face when seeking representation from a patent attorney is an unfavorable stereotype—about inventors. This stereotype based on a minority paints an unfavorable picture of the majority.

There is no easy way to say this, so I'll just say it. If you want competent representation from a patent attorney or patent agent, you cannot come off like a crazy inventor: out of touch with reality and/or combative. Sure, even an inventor wearing a tinfoil hat may eventually be able to find a desperate patent practitioner to represent him or her, but you'd rather be working with the professional of your choice.

So remember that patent attorneys are frequently on guard when dealing with independent inventors, just as the inventor may be wary. The more you know in advance, the better prepared you can be.

1 CONFIDENTIALITY GUIDELINES

Patent attorneys and patent agents are required by federal regulations to keep confidential the information they obtain from clients. Confidentiality requirements embodied in federal regulations specifically applicable to patent attorneys apply not only to those who are clients but to prospective clients. A prospective client is anyone who comes to a patent attorney seeking help, advice or direction on a legal matter.

You do not need a confidentiality agreement when speaking to a patent attorney as a client or a prospective client—and in fact, most patent attorneys/agents do not sign confidentiality agreements. Federal regulations already in place are stronger than any confidentiality agreement anyway.

If you insist that a patent attorney sign a confidentiality agreement because you do not trust the mandatory requirements placed on patent practitioners by federal regulations—something many inventors have told me over the years—that is a quick way to be viewed as someone with whom working will be difficult. It is a big red flag.

Having said this, some patent attorneys prefer an initial consultation be non-confidential. Usually, this is because patent practitioners represent existing clients. So without knowing what your invention deals with, there is no way to know whether there is a conflict of interest that would prevent the attorney from representing you.

For that reason, it is perfectly reasonable to ask whether an initial conversation will be treated as confidential under the previously mentioned federal regulations, or whether the initial conversation is non-confidential. If the patent attorney or agent tells you he/she prefers to speak in a non-confidential capacity until it is determined whether he/she can proceed with representation, you should not disclose anything confidential. Such a disclosure today would create many potential problems under first-to-file laws.

2 HOW TO PREPARE

Obviously, you should come to any meeting with a patent agent or a patent attorney prepared with information relating to your invention. More important, be prepared.

One of the most difficult things for patent practitioners is when they are representing someone who cannot or will not help them. This can actually take several forms: an inventor's inability to assist (i.e., language barrier); never being available; and an inventor who is trying to be so helpful that he/she dumps huge amounts of disjointed and rambling information onto the patent practitioner, expecting the legal professional to sort through it all and make sense of everything.

The patent attorney you hire is there to represent you, and needs your assistance. If you really have an invention, you know the invention better than anyone. Cooperation and communication are crucial. The opportunity to establish a working relationship starts with the first meeting or contact; hence the need to be prepared.

Everyone reading this will likely have different inventions, so it is hard to give general advice on what type of information should be prepared. But the patent attorney needs to know the basic configuration of the invention, as well as any optional enhancements that can be added.

Pictures can be particularly helpful if your invention is conducive to photography; a picture really can be worth a thousand words. If there are key pieces or aspects of your invention, consider taking pictures of those. If you have any artistic talent or drawing skills, line drawings can be quite effective to convey information.

If you are having difficulty coming up with a package of information to provide your attorney, consider the Invent + Patent System™. One of the perfect uses for the system is to help inventors collect their thoughts relating to an invention so they are cohesive and manageable.

Having a package of information that describes your invention in writing, together with photographs and/or line drawings, will go a long way toward establishing a sincerity about your pursuit. It will also reduce at least some of the time any patent attorney will have to spend sorting through disjointed information, providing you added value for how much you are spending.

3 BE PREPARED TO PAY FOR SERVICES

Expect to pay for services rendered. You are going to a professional to seek professional assistance. Patent attorneys and patent agents do not sell products; they sell services, which means all they have to sell is time.

Many inventors spend copious amounts of time looking for representation on a contingency basis, but the reality of patent practice is that patent practitioners do not represent inventors on that basis. There are many things that can and will present challenges between the completion of the invention, obtaining a patent and ultimately making money on the invention. When attorneys take cases on a contingency, they do so because there is a virtual guarantee that there will be at least some money recovered or obtained—which is why contingency representation is so popular with personal injury attorneys.

In the innovation world, very few inventions actually make more money than invested in the invention. That doesn't mean you shouldn't try to succeed with your invention, and it doesn't mean that your invention isn't going to be in the 1 percent to 2 percent of all inventions that make money. But those odds are not good for patent attorneys who would need to work many hours for free based on the hope that at some point in the future a payday may arrive.

A slight variation of the request for contingency representation goes like this: "I want to let you in on my invention and we can be partners." Randomly going to a patent practitioner asking for contingency representation, or for a partnership, is going to get you nowhere fast.

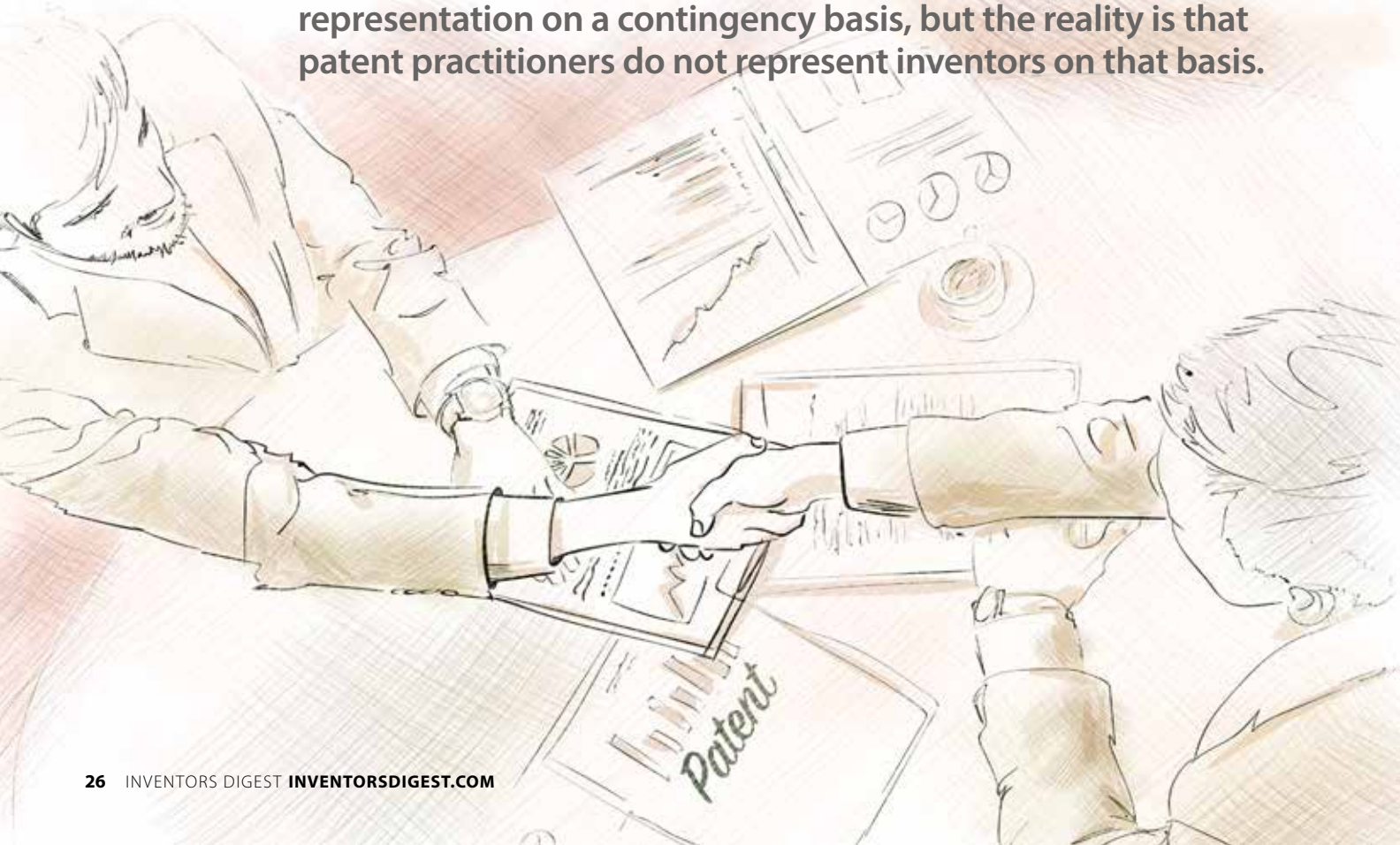
4 HOW TO SHOP AROUND

There is nothing wrong with shopping around to find the right patent attorney or patent agent. But be careful how you do it, or you risk alienating competent, experienced patent attorneys.

Everyone has a budget, so it is hardly a shock to learn that independent inventors must keep costs reasonable. Patent attorneys and patent agents should be able to tell you roughly how much it will cost through filing a patent application with relatively close precision after learning a little about your invention. (For some ballpark information, see The Cost of Obtaining a Patent in the US on IPWatchdog.com.)

After you've practiced long enough, you know about how long it will take to provide the kind of information required in an appropriately detailed patent application. So it is reasonable to ask early in the process about costs, because if the cost is too much for a particular budget it is a waste of everyone's time.

Many inventors spend copious amounts of time looking for representation on a contingency basis, but the reality is that patent practitioners do not represent inventors on that basis.



However, I've been put off when I get an email, letter or message via LinkedIn from a prospective client who asks me to bid on a project. Competent, qualified patent attorneys are going to determine how much work legitimately needs to be done and will give you a fair and reasonable quote. If there are legitimate ways to pursue a more austere path, those can be discussed, but you must realize you are never going to pay for a Kia and receive a Lamborghini. The only way to keep costs low in the patent world is to do less work, which can be a recipe for disaster. Inventors must be mindful that a race to the bottom for the lowest-cost provider guarantees inferior quality.

Then there's the request for a bulk discount. It seems many inventors have been told, or have independently surmised, that if they tell a patent attorney or patent agent they have 10 or 20 patent applications ready to go in the near future, that will get them a discount on the first patent application. Like all industries, bulk work does receive bulk discount pricing—but bulk pricing actually requires bulk work. You cannot give a bulk discount for a single piece of work; inventors who ask for this come across as insincere and send the wrong message every time. They are not taken seriously.

5 BE INFORMED ON THE PROCESS

Let's return to the theme of preparation. Previously, I referred to preparation in terms of being organized about the information you have on your invention. Now it is important to understand the importance of being informed with respect to patent law and process.

Obviously, you are hiring a patent attorney or patent agent to represent you so you don't have to do it yourself, but that shouldn't absolve you of the need to understand what is going on. The more you understand, the better you will be able to participate in important decisions, and the better understanding you will have about the information required. This, in turn, will make it easier for you to provide the best, most relevant information that will ultimately lead to the best product (i.e., patent application and ultimately a patent).

Be realistic. This can come in many forms, from realistically estimating the market size—which many inventors fail to do, immediately turning off knowledgeable industry professionals—to realistically appreciating the differences between the prior art and what the invention contributes. Serious professionals steer clear of inventors who have unrealistic expectations that can never be met.

Gene Quinn is a patent attorney, founder of IPWatchdog.com and a principal lecturer in the top patent bar review course in the nation. Strategic patent consulting, patent application drafting and patent prosecution are his specialties. Quinn also works with independent inventors and start-up businesses in the technology field.

Attorney Provides Infringement Protections

'THE PATENT LAWYER SAW THINGS WE NEVER WOULD HAVE THOUGHT OF,' INVENTOR SAY

BY REID CREAGER

It's probably the most consistently repeated advice from inventors: Hire a patent attorney. Even a teenager could tell you that.

In this case, the teen is 15-year-old RJ Batts of Salisbury, Maryland. He and his mother, Lori Batts, learned via firsthand experience how a knowledgeable patent attorney can be the difference between true security about an innovation concept and vulnerability to infringement.

"When we started out, we tried to do it ourselves," RJ said. "We couldn't even get a patent number after a month or two. Then someone at my mom's work told her she had a daughter who is a patent lawyer. The patent lawyer saw things we never would have thought of."

'Completely covered'

RJ noticed three years ago that his father, a professional chef, always had knife cuts on his fingers—on one occasion requiring stiches. The teen conceived the idea for Tip Tough, a kitchen tool to protect fingers up to above the second knuckle when using a knife and to aid in stabilizing and cutting food. Tip Tough can also be used by hunters and anglers on their catches and game.

The product for professional cooking environments consists of a sheaf of stainless steel big enough to cover four fingers. The metal tapers down into a basket that houses the fingertips and is equipped with holes for drainage during washing. Spikes protrude slightly from the bottom to fasten the food being sliced into place.

PHOTOS BY JEN SEAY PHOTOGRAPHY

Their patent attorney, Megan Hurchalla of Hurchalla Law in St. Petersburg, Florida, quickly determined some aspects of the invention could be vulnerable to infringement. She pointed out modification options and nuances that would have eluded the inventors, said RJ, the CEO of his company Picklehead LLC.

Lori Batts was impressed and relieved. "She added a stipulation that made us completely covered," she said.

Help in multiple aspects

This was among the many ways that the patent attorney proved essential. "We have a bend in the knuckle bar on the Tip Tough at a certain angle, and she wrote it from 90 degrees to 180 degrees so that nobody could come in and change the bend," Lori Batts said.

Of course, providing infringement protection is just one of the patent attorney's services. After the Young Entrepreneurs Academy helped RJ develop a business plan, he used CAD software to design and then 3D-print a prototype of the first version of his invention.

When RJ Batts and his mother provided their patent attorney with CAD drawings, the attorney wrote an application that covered the invention's features. RJ said the attorney was "incredibly knowledgeable" and knew the precise language for drafting a claim. He said in a recent interview with the United States Patent and Trademark Office that the nonprovisional design application for Tip Tough has been assigned to a U.S. patent examiner and is in line to undergo examination.

"We're going to trade shows to get the product out there," RJ said. Earlier this year, he became the youngest inventor ever at the International Home and Housewares Show in Chicago when Tip Tough (now trademarked) was featured there. He was a featured speaker at this year's USPTO's Invent-Con event; other honors include start-up funding last year from Salisbury University's Shore Hatchery Competition and grant support from TEDCO (Technology Development Corp.). Tip Tough was also named the fan favorite in the Start Up Maryland Pitch Across Maryland competition.

Growing and secure

As they continue to spread word about the product, RJ and his mother have introduced a molded plastic version of the Tip Tough for home use, at a lower price than the original. That product, still in testing, includes a small size that they found works for kids.

They're finding success with traditional marketing methods. "We find we're doing better growing from here, from word of mouth, trade shows, meeting up with buyers," Lori Batts said. "We've almost finished our packaging, and we've got a couple of stores that want to start carrying us that are part of larger chains.

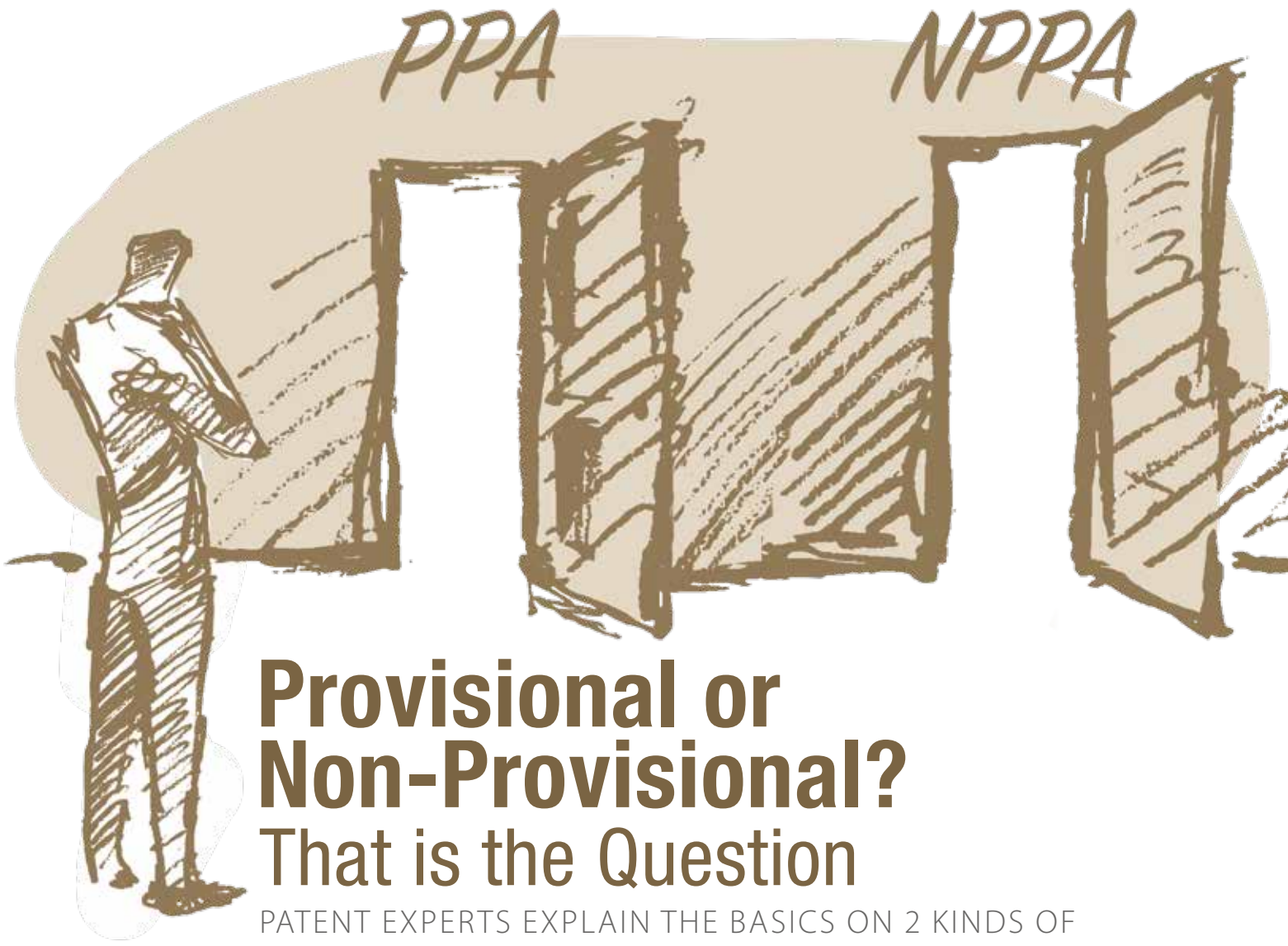
"We're growing small, but we're growing. In the last few months, we've equaled last year's sales. It's a process; you've just got to grind it every day. A lot of kids hang out on the weekends. RJ goes out and sells Tip Tough. He has a great work ethic."

They find comfort in the fact that they can focus on selling the product without worrying about their idea being stolen. "There are just so many things that the average person does not think about when trying to protect their idea," RJ said.

When RJ Batts and his mother provided their patent attorney with CAD drawings, the attorney wrote an application that covered the invention's features.

Above: Tip Tough is a kitchen tool to protect fingers up to above the second knuckle when using a knife, and to aid in stabilizing and cutting food.

Left: Fifteen-year-old inventor RJ Batts and his mother, Lori Batts, learned firsthand the value of a skilled patent attorney.



Provisional or Non-Provisional? That is the Question

PATENT EXPERTS EXPLAIN THE BASICS ON 2 KINDS OF UTILITY APPLICATIONS

BY MARK H. PLAGER AND MICHAEL SCHACK

The question of whether to file a provisional patent application or a non-provisional patent application is common for new inventors. The question first requires an understanding of the difference between the two forms.

Both applications are a form of utility patent application. Neither provisional application can be used for the registration of a design patent.

A PPA is an optional, informal utility patent application, comprising a detailed description of the invention with informal drawings (in most cases). There is no requirement for claims defining the invention, although in many instances at least one claim is included when provisional applications are drafted by attorneys. In some instances, inventors may want to file formal drawings, though this is not required. A PPA only provides patent-pending status for 12 months, is not examined by the United States Patent and Trademark Office for patentability, and is not enforceable for purposes of infringement.

A PPA will not be approved or rejected. It is simply a place in line at the patent office—which, assuming you file the non-provisional patent application, gives you a priority date ahead of those who file after your provisional patent application for the same invention, as well as precluding the patent examiner from looking at inventions created after you filed your application. If you file a PPA, you must file the non-provisional patent application *no later than 12 months after filing the provisional application*. Our firm, Plager Schack LLP in Huntington Beach, California, recommends starting the non-provisional process at least three months before your deadline to avoid the stress of a last-minute filing.

Non-provisional is formal

The non-provisional patent application is the formal utility application. It requires a detailed description of the invention, formal drawings, and a complete set of patent claims defining the invention. Unlike a PPA, the non-provisional is examined by the USPTO to determine whether a valid and enforceable patent will be granted.

To start the utility patent application process, you need not start with the PPA and can just start with the formal non-provisional application. The optional PPA would be filed before the non-provisional.

The cost of preparing the PPA is generally less than the cost of the non-provisional application. The government filing fee for a provisional application starts at $65 for a micro-entity; the non-provisional application fees start at $400.

Which form is best for you? We recommend the non-provisional application if: (1) your invention is complete without the expectation of additional tinkering or modification due to further research and development, beta-testing or market studies; (2) you are assured of market success; and (3) you have the financial ability to pay for the more expensive application.

However, if your invention is still undergoing beta-testing, further research and development or market studies potentially leading to design modifications, you should pursue a PPA until the invention is final. Also, if you lack sufficient funds for the non-provisional application despite having a final invention in hand, choosing a provisional application can provide you with patent-pending status while you get necessary financial backing via investors, sales or licensing royalties. If you have sufficient funding but question the likelihood of commercial success to get a return on your investment for the preparation of a formal application, a PPA may be appropriate to enable you to market the product with the protections of patent-pending status to achieve a return on your future investment associated with preparing a non-provisional application.

Ultimately, your choice is best made in conjunction with the advice and assistance of a registered patent attorney or agent. The guidelines provided above are not a substitute for legal advice provided by a registered patent lawyer or agent who is intimately familiar with the extent of your invention's development, your financial wherewithal and your expectations as either a manufacturer or licensor of the invention.

AFFORDING A PATENT ATTORNEY ISN'T HOPELESS

USPTO, LEGAL PRACTITIONERS WORK TO PROVIDE PRO BONO HELP

RJ and Lori Batts have no illusions about the many costs associated with getting a patent. "Sometimes it seems like the expenses never end," Lori Batts said.

When the two attended the annual Invention-Con at the United States Patent and Trademark Office's Alexandria, Virginia, headquarters in August, "we learned that there are pro bono attorneys for people if you meet a certain (lower) income level. That's important for folks to know. Most people who are inventors don't have a clue as to how to get a patent."

The USPTO has this resource link for pro bono attorneys: **uspto.gov/patents-getting-started/using-legal-services/pro-bono/inventors**. The USPTO emphasizes that among other qualifications, you must have an invention, not just an idea.

Jim Patterson of Minneapolis-based Patterson Thuente, one of the United States' leading IP law firms, is among the many IP professionals who have long been committed to providing pro bono legal services.

"In 2010, our firm hosted David Kappos (then the director of the USPTO) for a seminar here in town," Patterson said. "I got to have lunch with him, and we spent the whole hour talking about pro bono."

Momentum escalated quickly. Section 32 of the 2011 America Invents Act stipulated that IP organizations throughout the United States work with the USPTO to form pro bono programs. The pilot program, the LegalCORPS Inventor Assistance Program, launched in Minnesota almost immediately; the first patents from the program began issuing in late summer 2013.

Patterson not only was instrumental in developing the country's first pro bono patent law program, he is the chair of the America Invents Act Pro Bono Advisory Council. The task force coordinates the efforts of 20 regional pro bono programs and is helping to implement patent pro bono task forces throughout the United States.

Lori Batts adds that there is other hope for those lacking in financial resources:

"There are also a lot of grants out there if you're careful and you know where to look—through the federal government, local colleges, the internet. There are a lot of venture capitalists who are looking for the next big thing because they're not making any money putting their money in the bank. That's why you have 'Shark Tank.'"

She said she and her son got both their patent and trademarks for less than $10,000. "People often go to what they see on TV when they look for their patents, but that can be expensive," she said. "We borrowed money, and we were so lucky to find a rock star attorney."

Use Precise Language, or Your Patent May Be Cooked

INFAMOUS 2004 CASE SHOWS IMPORTANCE OF SAYING WHAT YOU MEAN IN A PATENT APPLICATION

BY GENE QUINN

Say what you mean and mean what you say is generally good advice, but it's especially crucial when dealing with patents and patent applications! That is the takeaway from *Chef America v. Lamb-Weston*, a decision by the United States Court of Appeals for the Federal Circuit in 2004.

No article on precise language can be complete without the nearly obligatory reference to *Chef America*.

Have you ever frozen dough and then attempted to thaw it and finish the cooking process? If so, chances are you have probably been dissatisfied with the final result. As U.S. Patent No. 4,761,290 explains, efforts to provide dough products that can be finished when cooked to a light, flaky, crispy texture after having been frozen have proven elusive. Of course, as you might expect, the inventors of the '290 patent came up with a solution, filed a patent application and were ultimately awarded the aforementioned patent.

Never assume

In this instantly famous case, which discusses the '290 patent, the federal circuit had to interpret the meaning of the patent claim phrase "heating the resulting batter-coated dough to a temperature in the range of about 400° F. to 850° F."

What should have been said was "heat the oven to a temperature in the range of about 400° F. to 850° F." Unfortunately, because what was literally said required the internal temperature of the dough to reach a temperature of between 400° F. to 850° F., the patent owner had a useless patent.

If you actually heated dough (not an oven) to between 400° F. to 850° F., as the patent claims explicitly required, the result would approximate a charcoal briquette. But that wasn't the federal circuit's problem. The words chosen had a specific and undeniable meaning, so a charcoal briquette was what was protected.

If you actually heated dough (not an oven) to between 400° F. to 850° F., as the patent claims explicitly required, the result would approximate a charcoal briquette.

It is easy to have sympathy for the inventors, and even for the practitioners who drafted the patent application. A method claim such as the claims at issue in the '290 patent are essentially written like one would write a recipe. That is how method claims are conceived and drafted. And if someone gives you a recipe, you would likely assume the temperature he/she mentions is the temperature to heat the oven because generally, when recipes are conveyed, that is a pretty common understanding.

But when drafting a patent application, it is dangerous to assume that the reader will fill in any ambiguous holes in the manner you want. If you do, you risk that your assumption will wind up meaning something very different than you intended because you did not go the extra step to remove all doubt.

Sometimes, inventors joke that it seems patent attorneys and patent agents get paid by the word. And perhaps at times, things do get unnecessarily verbose. What is more likely, however, is all of those extra words are there to guarantee that what is being said is what will be understood to the exclusion of anything else. Make no assumptions. Choose your words carefully to convey the most precise meaning.

2 tips to ensure clarity

This is easy to say, but how do you actually accomplish that? Here are two tips.

First, whenever you write an important document such as a patent application, you must draft it and then put it down and walk away – perhaps for a day or two. Then come back and re-read what you've written. The mistakes you've made will be much easier to identify after having a little space and time. Of course, when you return, you must read every word—no skimming! That is how you will pick up mistakes, incomplete thoughts and unintended (or dual) meanings.

In picking and using the right language to describe an invention in a patent application, having access to a dictionary and thesaurus is an absolute prerequisite. If you do not consult a dictionary and thesaurus, you are doing yourself, or your client, a tremendous disservice. By using a thesaurus and then checking definitions, you are far more capable of coming up with the precise language you need to both best describe the invention (or aspects of the invention) and distinguish the invention from the prior art.

A HOT FIELD? RESEARCH SAYS NO

The mass media has fallen in love with the art of the pitch and closing the deal on the next big idea. Technological innovation seems to be outpacing what we can even imagine. It's seemingly an optimal climate for a patent attorney.

Yet that doesn't translate to an overabundance of patent attorneys. A research paper by Kenneth L. Port, Lucas Hjelle and Molly Rose Littman written in late 2014 projected that by 2018, the number of new entrants to the patent bar will be half what it was in 2008.

One of the hypotheses on which the researchers built their premise was that a decline in those taking the Law School Admission Test would result in fewer new attorneys admitted to the patent bar. This was found to be true after examining data from the Law School Admission Counsel regarding students taking the LSAT; the United States Patent and Trademark Office; the Society of Women Engineers, and the American Bar Association.

The researchers continued the theme in a paper written on October 7 of this year. In that report, they claimed to establish that "the usual argument for why patent bar-eligible students are not coming to law school, that is, that there are too few jobs … does not apply. In fact, patent attorneys with the appropriate background (mechanical, electrical, chemical or computer engineering degrees) are quite attractive on the employment market. Yet, they still do not come to law school."

The 2014 paper noted the problematic aspects of this trend, concluding: "Policy makers need to respond to the impending severe shortage of patent attorneys. Further data is provided to show that while intellectual property grew at a very rapid pace in the last two decades, we are now seeing a remarkable decline in interest by students. This fact should again reshape the law school landscape as it responds to market realities.

"Considering interest in patent law by prospective students, we are clearly entering a time of a 'burst bubble.' This will ultimately lead to a severe shortage of people to do the very work that the America Invents Act encourages. It will lead to more expensive patenting, and it will chill the ability of Americans' ability to compete internationally."

34,218

The number of active U.S. patent attorneys, per the most recent data from the United States Patent and Trademark Office. By comparison, there were 1,315,561 registered lawyers in the United States as of 2016, according to the American Bar Association. Using those figures, about 1 in 38 attorneys is a patent attorney.

50%

The drop-off in number of new entrants to the patent bar projected for 2018 when compared to 2008, according to data by researchers Kenneth L. Port, Lucas Hjelle and Molly Rose Littman. It is expected that the ratio of women to men will not change; women will still make up about 30 percent of the patent bar.

YouTube for Inventors? Just Watch

OFF-BEAT CHANNELS INSPIRE LEARNING AND PROTOTYPES

BY JEREMY LOSAW

No more having to call my dad to ask for help when I need to fix something at home. Broken dryer belt? YouTube. Plumbing problems? YouTube. (Lawn mower problems? Call Dad. He is a savant when it comes to small engines.)

In "Plamo Tsukurou," model makers build plastic model cars, tanks and robots.

"The Backyard Scientist" pouring molten aluminum in a watermelon brings a surprise!

There is so much video content to help show us how to fix or do anything that YouTube has become our de facto teacher and mentor. I even use it to get inspiration and techniques for building prototypes.

Dork alert: One of my favorite things to watch on YouTube is the Japanese TV show "Plamo Tsukurou," in which ridiculously talented model makers build plastic model cars, planes, tanks and robots. It is all in Japanese with no subtitles, and each episode shows the complete build of one model.

I find it fascinating to watch them trim, sand, paint and detail the models. The best is Episode 11, in which my favorite modeler does a Tamiya kit of a Ferrari Formula One car. I watched this episode for the third time recently. I always glean some painting or finishing technique that I can apply to the prototypes we make in the Enventys Partners shop in Charlotte.

This show is probably not for everyone, but there are many other channels to help and inspire inventors. Here are some of my other favorite YouTube channels that can help you with your next prototype, or inspire you to build something just for fun:

The Backyard Scientist

"The Backyard Scientist" mixes high voltage and molten metal to create some extreme videos that show the fun side of physics. In his weekly videos, he performs unique experiments in his suburban back yard—such as adding rocket power to fidget spinners—and has gotten his channel to more than 2 million subscribers.

The videos are often dangerous experiments that only the most experienced maker should attempt to re-create. The video that first drew me was "Wood Burning with Lightning. Lichtenburg Figures!", in which he uses the magnetron from a microwave to send 2,000 volts through a piece of wood. The result is a beautiful fractal pattern that gets burned into the wood from both sides of the board. His most viewed

video came when he poured molten aluminum into a watermelon, resulting in an amazing sculpture that looks like pieces of coral.

Joseph's Machines

"Joseph's Machines" is funny, clever and inspiring. His Rube Goldberg videos show the machines he makes to accomplish mundane tasks.

My favorites are in his sub-category, "Life Devices," in which he creates machines to make his daily routine more efficient. In "The Stamp Licker—Life Device #1," he uses a combination of onions, a mechanical pencil sharpener and a pint glass to seal an envelope. "Fool-Proof Roast Turkey—Life Device #5" is another must-watch. His use of ordinary components in unordinary ways will set your mind alight with new ways to think about your prototyping challenges.

ElectroBOOM

Hosted by unibrowed Canadian Mehdi Sadaghdar, ElectroBOOM is a "Do not try this at home"-style channel that will teach you about the often curious nature of electricity. Sadaghdar performs wacky and sometimes outright dangerous stunts to show the power and curious nature of electricity. His one million subscribers proves how entertaining and skillful his videos are.

In "Dangers of Using Electronics in Bathroom, the Case of the Teenage Girl," he explains how you can get electrocuted in a bathtub, how to restore a submerged mobile phone, and solves a wrongful death case all in the same video. Perhaps the most impressive and potentially useful video is when he shows how to jump-start a car using only AA batteries.

In nearly all of his videos, he finds some way to shock himself so you don't have to. When you finally stop laughing, you realize how much you just learned about ohms and volts.

Add Ohms

The AddOhms channel is all about explaining electronics in simple language. If you don't know a capacitor from your left hand, this series is for you. Host James Lewis walks through fundamental electronics concepts—such as how to draw schematics, the difference between AC and DC power, and how brushed and brushless motors work. The soothing tone and

The Sauce Squirter—Life Device #4—is featured on "Joseph's Machines."

SUBSCRIBE 104K

Mehdi Sadaghdar demonstrates the pain of electricity (AC versus DC).

SUBSCRIBE 1.1M

"MOSFETS and How to Use Them" is the AddOhms channel's most popular video.

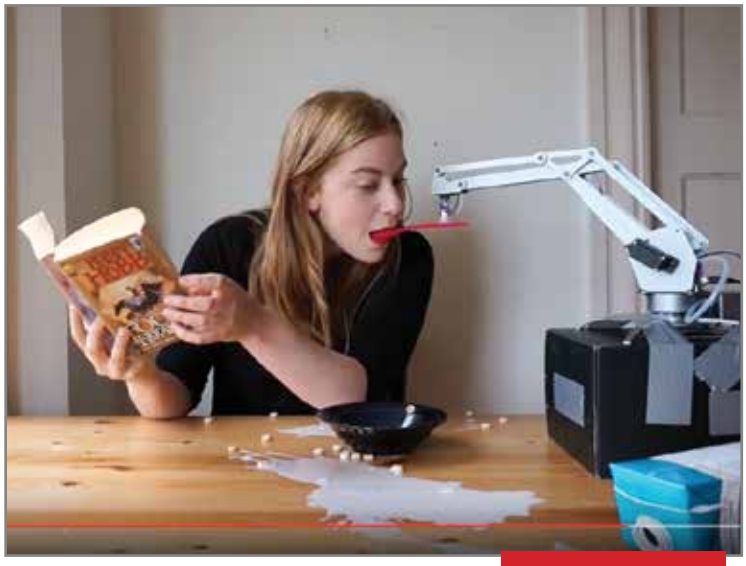
SUBSCRIBE 65K

Scott Miller's 13-part, 18-episode Design for Manufacturing course is a treasure trove of information.

SUBSCRIBE 4.3K

Simone Giertz made a popcorn helmet with Adam Savage of "MythBusters."

SUBSCRIBE 726K



"The Breakfast Machine," Giertz's most-watched video, is a shining example of the "shi**y robots" concept.

SUBSCRIBE 726K

supporting Sharpie drawings in the videos help demystify electronic concepts.

Although the channel's most popular video, "MOSFETS and How to Use Them," is not as overtly entertaining as pouring molten aluminum, the practical knowledge it provides will help you understand circuits better and give you some great vocabulary for your next cocktail party.

Dragon Innovation

Dragon Innovation is a product development firm in Cambridge, Massachusetts, that has helped bring to life hit products such as the Pebble watch and the Makerbot 3D printer. Founder Scott Miller is a former Disney Imagineer with years of experience in bringing products to market, including the original Roomba.

The standout playlist among the channel's 51 videos is Miller's 13-part, 18-episode Design for Manufacturing course. This treasure trove of information breaks down how to select a manufacturer, project management and project costs, as well as an overview of a number of different manufacturing techniques. The lectures are great, and the slide decks from them are available on Slideshare. This is a must-see series for any inventor aspiring to see his or her invention through to manufacturing.

Simone's Robots

Born and raised in Sweden, Simone Giertz sees her "shi**y robots" as a perfect fit for our imperfect planet. "More recently I have found that there is so much sh** going on in our world...and I feel that needs shi**y robot solutions," she said in a Talks at Google interview.

In less than two years, Giertz has built her YouTube channel to more than 700,000 subscribers, with many videos topping 1 million views.

Most recently living in San Francisco, Giertz has used her interest in technology to build robots that attempt to help her perform mundane daily tasks. She cobbles together motors and robotic arms in comedic attempts to put on lipstick, paint her nails and chop vegetables.

Her most-viewed robot video, "The Breakfast Machine," features a robotic arm reinforced by duct tape that flings Cheerios all over the table. Finally, one piece of cereal is spooned into her mouth. Success!

Jeremy Losaw is a freelance writer and engineering manager for Enventys. He was the 1994 Searles Middle School Geography Bee Champion. He blogs at blog.edisonnation.com/category/prototyping/.

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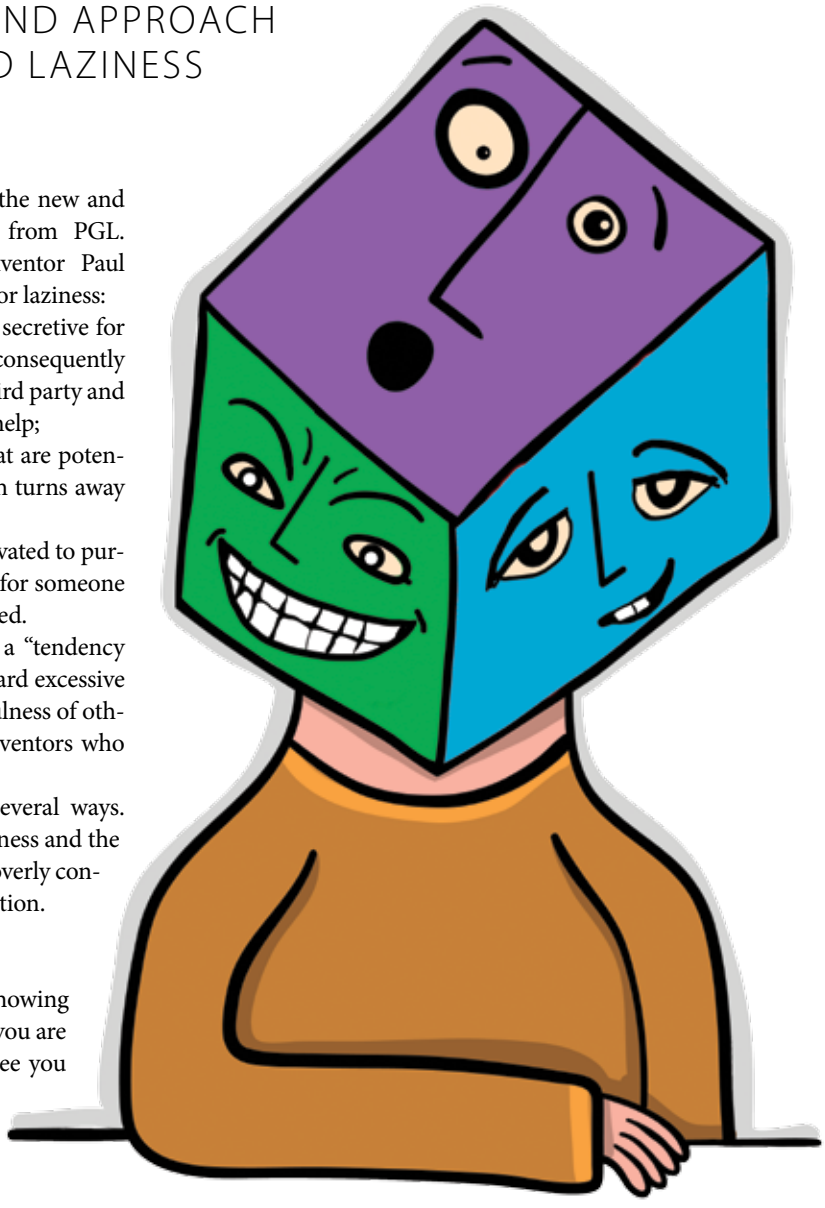
The ABCs of PGL

HOW TO RECOGNIZE AND APPROACH PARANOIA, GREED AND LAZINESS

BY JOHN G. RAU



Many inventors, especially the new and inexperienced ones, suffer from PGL. This is defined by toy inventor Paul Brown as showing either paranoia, greed or laziness:

- **Paranoia** in the sense of becoming so secretive for fear that someone would steal an idea, consequently refusing to discuss the idea with any third party and losing the opportunity to get valuable help;
- **Greed** due to revenue expectations that are potentially unrealistic or unattainable, which turns away investment and development partners;
- **Laziness** manifested in not being motivated to pursue a potentially good idea, or waiting for someone to present an offer that cannot be refused.

Merriam-Webster defines paranoia as a "tendency on the part of an individual or group toward excessive or irrational suspiciousness and distrustfulness of others." You've probably seen or heard of inventors who exhibit this type of behavior.

Invention paranoia comes about in several ways. Often, inventors overestimate their cleverness and the significance of what they do and become overly concerned that someone will steal their invention.

Paranoia relief

Though you should be cautious about showing the invention and what you tell people, if you are interested in talking to a potential licensee you will have to provide specific details of your invention. The standard approach in this situation is to get the potential licensee to sign a non-disclosure agreement or a confidentiality agreement, but most companies decline to sign such agreements for their own legal reasons that include potential liability. Sharing the details of your invention idea without such protection is a risk you may have to take. If you are dealing with a well-respected and scrupulous company, this is a small risk, generally speaking.

One protective measure is to file for a provisional patent application, which provides safeguards for claims you have cited in your application (but not necessarily for any subsequent improvements or changes that you might make). A key feature of the PPA, besides securing an early filing date, is that it allows you to claim patent-pending status in discussing your new invention's features with a prospective licensee. This implies that your basic idea is protected.

A paranoid mind-set does not enable you to get valuable feedback from the marketplace and your peers. Many inventors need assistance in order to further their concept. In a 2009 blog, Intellectual Village raised the question "Are inventors paranoid?" and provided this perspective: "The question is whether you want to sell your idea to someone, and take a small risk of it being copied … or hold the invention to your chest and have nothing to show for it for the rest of your life!"

Greed red flags

Two of the prime motivational factors for an inventor are the opportunity to make a contribution to society through his or her invention, and the potential revenue to be derived. Having unrealistic expectations for this revenue can lead to a greedy approach to your invention's commercialization, potentially minimizing your chances for success.

In terms of invention greed, you have at one extreme Benjamin Franklin, one of the architects of American independence who was a scientist, printer, writer, newspaper owner, philosopher and inventor. As an inventor, he is known for the lightning rod, bifocals, the Franklin stove, a musical instrument called the "glass armonica" and other inventions. He was the antithesis of a greedy inventor—a wealthy man who never pursued patents for his inventions. He did not want to make a profit. He wanted all people to benefit from his inventions.

At the other extreme, greed by first-time inventors can result in commercialization failure. If you want to turn your invention idea into money, consider these red flags that you might be too greedy:

- Thinking your invention is the greatest in the world, but no one agrees with you. In spite of this, you plan to move ahead anyway!
- Attempting to enter a marketplace that is already crowded with many competitors and similar products (the Red Ocean phenomenon), holding the assumption that "mine is better than theirs" without having adequate market justification.
- Trying to do everything yourself with minimal help from anyone so that you don't have to pay them.
- Unwillingness to listen to suggested changes and improvements by potential partners or investors, which could increase your costs and lower your profits.
- Refusal to build a necessary prototype because you want to save the expense—even though a working prototype will help support and demonstrate the functionality of your invention as well as potentially attract investors.
- Trying to negotiate a licensing agreement demanding royalties that are far in excess of the standard for your type of product or service.
- Having a viable licensing candidate who wants an exclusive agreement but insisting on a non-exclusive agreement so that you can make more money from other licensees, even at the risk of losing this potential deal.
- Attempting to develop, market and distribute your new product yourself while trying to limit profit margins of your manufacturer and supplier/vendor so as to maximize yours.
- Pricing your new product well above what consumers in your target market pay for similar products.

Getting into the business of inventing and selling your new product is a challenge. You will need the help of many individuals, and you must be flexible in your negotiations and relationships with these entities.

Laziness isn't all bad

Many see laziness as a vice, dating to America's earliest days. Among quotes attributed to Thomas Jefferson are "Determine never to be idle" and "It is wonderful how much may be done if we are always doing."

Of course, doing nothing to pursue an invention idea or waiting around for suitors is unproductive. On the other hand, businessman and author Fred Gratzon sees usefulness in laziness. "One can be lazy and accomplish nothing. However, one can also apply his or her God-given laziness to accomplish a great deal," he writes on his blog.

Having unrealistic expectations for revenue can lead to a greedy approach to your invention's commercialization, potentially minimizing your chances for success.

Gratzon claims that since the beginning of time, all progress in society has been driven by lazy people looking to avoid work. For example, the first person to put a sail on a boat was looking for a way to avoid rowing; the person who first hitched a plow to an ox was looking for a way to escape digging.

In her blog, communications specialist Amy Castro says that "laziness, not necessity, is the real mother of invention." Her examples are the car, microwave, remote control, escalator, calculator and countless other inventions that came about because people were too lazy to walk, cook, get-up and change the channel, climb the stairs and add numbers on their own. "Achieving maximum productivity with minimum wasted effort or expense implies that laziness is a requirement," she says.

You can overcome paranoia by doing things smartly and protecting your new invention idea as best you can as you move through the commercialization process. Greed and laziness can limit opportunities, though the latter has its uses!

John G. Rau, president/CEO of Ultra-Research Inc., has more than 25 years experience conducting market research for ideas, inventions and other forms of intellectual property. He can be reached at (714) 281-0150 or ultraresch@cs.com.

House Republicans Propose USPTO as Independent Agency

FREEDOM FROM COMMERCE DEPARTMENT WOULD HAVE ADVANTAGES

BY GENE QUINN

As a part of the proposed fiscal year 2018 budget, the House Budget Committee is proposing that the United States Patent and Trademark Office be made an independent agency.

The proposal was part of a non-binding budget blueprint released by the committee on September 29, titled "Building a Better America: A Plan for Fiscal Responsibility." On page 50 of the House budget proposal, under a heading discussing the elimination of overlapping Department of Commerce functions and consolidating necessary Commerce functions into other departments, the proposal includes the line item: "Establish the U.S. Patent and Trademark Office as an independent agency." The USPTO is currently an agency within the commerce department.

No further information is provided about how that might be accomplished. The budget proposal does say, however, that the commerce department and its various agencies "are rife with waste, abuse, and duplication"—which is why House Republicans are recommending a different approach for the federal government supporting commerce moving forward.

Proposal is praised

"This is a very good idea, making it similar to NASA or the GSA (General Services Administration)," said Q. Todd Dickinson, a partner at Polsinelli and undersecretary of commerce and director of the USPTO from 1999 to 2001. "This was basically the intent of the American Inventor Protection Act back in 1999."

According to Dickinson, under the AIPA the USPTO was still to be an agency within the Department of Commerce under the policy authority of the secretary, but by statute the USPTO was to retain responsibility for much decision-making. "Over time, however, Main Commerce basically abrogated the plain language of the AIPA and reasserted most managerial and budgetary authority," Dickinson said.

Among the advantages Dickinson sees is that an independent USPTO would likely free itself from fee diversion problems that have continually plagued the office. It would also alleviate the USPTO from the burden of engaging in so-called "shared services" with the Department of Commerce, whereby the USPTO is being asked to pay for services the agency will not use.

But some questions remain. "One outstanding challenge is whether the head of the office is still going to be responsible for IP policy issues in the administration," Dickinson said.

The USPTO is the federal agency charged with granting U.S. patents and registering trademarks, and falls within the Department of Commerce. The USPTO advises the president of the United States, the secretary of commerce and U.S. government agencies on intellectual property policy, protection and enforcement. The USPTO also promotes stronger and more effective IP protection around the world.

"Making the USPTO an independent agency confirms that patents are private property," said Peter Harter, a government affairs consultant. "This move echoes recommendations by the Heritage Foundations."

The change would likely free the USPTO from fee-diversion problems and having to share services with the Department of Commerce, said former USPTO director Q. Todd Dickinson.

Separate copyright office?

Meanwhile, there has also been at least some discussion of an independent copyright office circulating the halls of Capitol Hill. This past February 2, U.S. Rep. Tom Marino (R-Penn.), a member of the House Judiciary Committee, introduced House Resolution 890—the Copyright Office for the Digital Economy Act. H.R. 890. which has only two co-sponsors, would establish the U.S. Copyright Office as a separate independent agency in the legislative branch, to be led by a director appointed by the president with the advice and consent of the Senate.

On March 23, U.S. Rep. Bob Goodlatte (R-Va.), the chair of the House Judiciary Committee, introduced H.R. 1695. That resolution is known as the Register of Copyrights Selection and Accountability Act of 2017, which seeks to make the registrar of copyrights a presidential appointment.

The bill has 33 co-sponsors, with 29 of them sitting on the House Judiciary Committee. So it was no great surprise that six days later, the committee passed the resolution by a vote of 27-1. The House then passed H.R. 1695 by a vote of 378-48 on April 26.

No Surprises Seen in Iancu Timetable

2-4 MONTHS IS TYPICAL WAIT BEFORE NOMINEE FOR USPTO DIRECTOR IS CONFIRMED

Senate confirmation of Andrei Iancu as the new director of the United States Patent and Trademark Office may take the usual two to four months, according to the director of the USPTO's Silicon Valley branch.

John Cabeca addressed this and other issues at this year's meeting of the Association of Intellectual Property Firms in San Francisco on September 14.

"Typically it takes three months—plus or minus a month—depending upon what Congress has on their schedule. But we look forward to having Mr. Iancu on board," Cabeca said in response to the most common question he gets these days.

Cabeca's assessment on the Iancu timeframe is in keeping with everything I've heard. President Trump nominated the new director on August 25. Perhaps Iancu will find himself a part of some late-year nominee deal in the Senate, or perhaps he will be held over for confirmation until early 2018.

Other office updates

Working with Congress to get the temporary fee-setting authority extended is another priority for the office, Cabeca said. Current fee setting authority is scheduled to end next September. The USPTO's having fee-setting authority has allowed for a reserve fund and given the office the ability to have the funds necessary to do its work, Cabeca said.

In July, the office released a report that "did a very nice job of summarizing patent eligibility," Cabeca said. The USPTO is continuing to monitor the case law and continuing to train examiners. The office has also implemented a continuous public comment period, which allows for ongoing input from the community.

"While waiting for a permanent agency head, we are taking advantage of the time to do what we can internally." — JOHN CABECA, DIRECTOR OF THE USPTO'S SILICON VALLEY BRANCH

"While waiting for a permanent agency head, we are taking advantage of the time to do what we can internally," Cabeca explained.

One area the office is reviewing is Examiner Time Analysis. The office hasn't changed the classification of applications (i.e., complex versus simple) in a substantive way since 1980, although some tweaks were made in 2009. Unfortunately, in some fields of invention what was once considered complex is now simple, and what was once simple may now be complex.

Cabeca gave an example of a trash can, which used to be considered very simple. But today it might have various electronics associated—lights, lifts, batteries—making it more complicated than a simple receptacle. Cabeca explained that the office is reviewing this classification of applications and what time should be given to examiners, but it anticipates that a top-to-bottom reassessment will take it up to two years to complete.

—Gene Quinn

Patent Reform Discussion Needs Balanced Viewpoints

SENATE REPUBLICAN HIGH-TECH TASK FORCE HEARS FROM ONE SIDE AT MEETING BY GENE QUINN

U.S. Sen. Orrin Hatch (R-Utah) recently wrote an op-ed piece in *Medium* that explained he would convene a meeting of the Senate Republican High-Tech Task Force in order to hear from patent experts on the impact of the U.S. Supreme Court's May 22 ruling in *TC Heartland v. Kraft Food Group*, and to discuss what Congress can do in terms of additional patent reform.

According to Hatch (upper right), *TC Heartland* "struck an important blow against patent trolls. … The Court put a stop to rampant forum-shopping by these abusive plaintiffs, holding that patent litigants can bring suit only where a defendant is incorporated or has a regular and established place of business."

Senator Hatch wrote that this meeting would also address the inter partes review process, which he said "is an issue that warrants Congress's attention." (Inter partes review, conducted by the Patent Trial and Appeal Board, is a procedure for challenging the validity of a patent before the United States Patent and Trademark Office.)

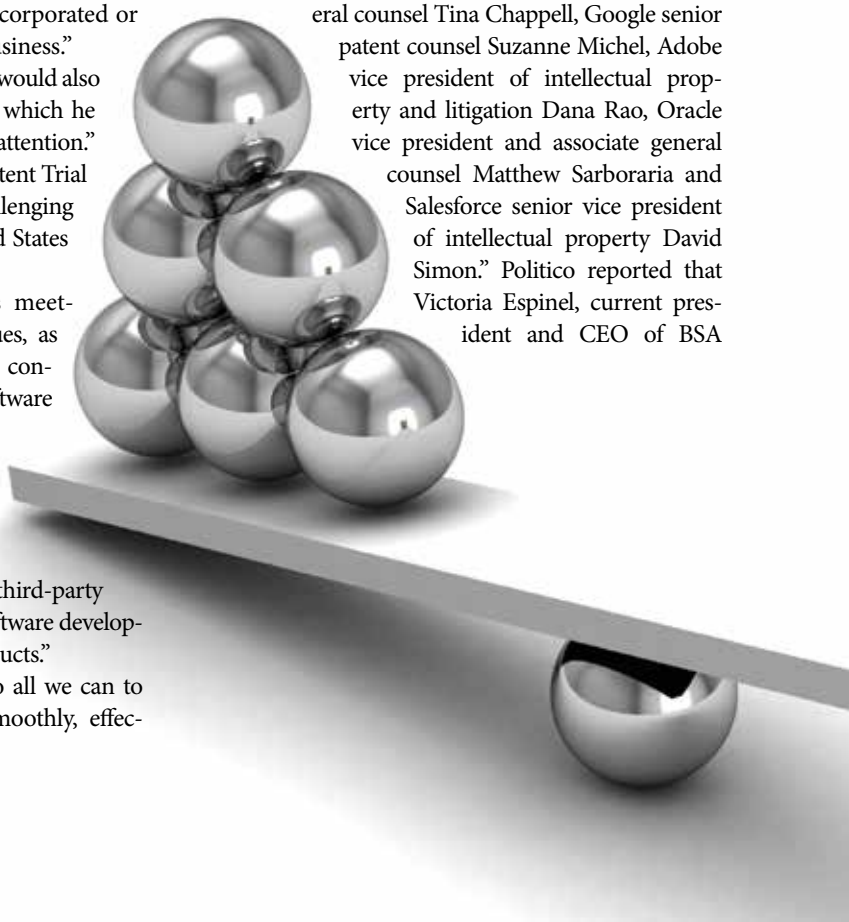
Finally, the senator wrote that his meeting would discuss patent eligibility issues, as he seemingly voiced concern over the consequences for drug companies and software patents. "If treatments derived from natural processes cannot be patented, life science companies may find their intellectual property rights sharply curtailed," Hatch wrote. "And if software patents for business methods like third-party escrow are wholesale invalid, business software developers may turn their attention to other products."

Hatch ended by saying: "We must do all we can to ensure our patent system functions smoothly, effectively, and efficiently."

Meeting has imbalanced input

The Hatch op-ed would seem to be music to the ears of beleaguered patent owners in the life science and computer implemented innovation areas, not to mention inventors everywhere who have seen the value of their patents decrease during the past several years. The problem, however, is with those the Senate Republican High-Tech Task Force heard from during this private meeting on October 2.

According to U.S. political journalism company Politico, the meeting of the task force featured a briefing from panelists "including Intel associate general counsel Tina Chappell, Google senior patent counsel Suzanne Michel, Adobe vice president of intellectual property and litigation Dana Rao, Oracle vice president and associate general counsel Matthew Sarboraria and Salesforce senior vice president of intellectual property David Simon." Politico reported that Victoria Espinel, current president and CEO of BSA



The Software Alliance and a former IP czar under President Obama, would moderate the discussion.

All of those identified by Politico are closely tied to the so-called patent infringer lobby—the group of companies known for using the patent rights of others without taking a license. To call their views on the patent system one-sided would be putting it mildly.

What about the other side?

Although there is nothing wrong with interested individuals and companies lobbying Congress on issues of importance, there is something fundamentally wrong when Congress continues to hear only from one side: those preferring weaker patents, easier invalidity challenges, and less to be patent eligible.

Hopefully, Senator Hatch—who has historically been a defender of the patent system and a friend to innovators—will reach out to the other side in order to offer a balanced perspective to the Senate Republican High-Tech Task Force. Such a briefing should include highly successful independent inventors who can authoritatively explain the need for strong patent protections (i.e., Dr. Gary Michelson, Jay Walker, Dean Kamen); technology transfer officials from major universities with an established track record on innovating (i.e., Wisconsin Alumni Research Foundation); major corporations that believe in a strong patent system (i.e., IBM, Qualcomm), and thought leaders who are critical of recent legislative changes and Supreme Court decisions (retired Chief Judge Paul Michel, David Kappos, Adam Mossoff).

There are obviously others who qualify to provide their viewpoint to Congress, but in each instance those identified are well known on Capitol Hill, well versed and respected.

Only through a balanced presentation of what has become a truly devastating reality for innovators will Congress get any true sense of what needs to be done to achieve a fair and functional patent system that operates effectively and efficiently.

All panelists identified at the private meeting are closely tied to the so-called patent infringer lobby.

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5 Years Are Enough: Disband the PTAB

IT'S THE ONLY FIX FOR A RUNAWAY TRIBUNAL

BY GENE QUINN

The Patent Trial and Appeal Board of the United States Patent and Trademark Office recently celebrated its fifth anniversary. Brought into existence by the America Invents Act that was signed into law on Sept. 16, 2011, by President Barack Obama, the PTAB and the various post-grant challenge procedures ushered into being by the AIA did not take effect until the first anniversary of the act.

It is difficult for me to imagine a tribunal causing more damage in less time than the PTAB has brought to bear on the U.S. patent system. In short, the PTAB is a kangaroo court, with the type of processes that you might expect in a third-world nation suffering from a collapse of the judiciary. With every passing day, there seems to be fresh evidence of a tribunal so thoroughly compromised that it is difficult to believe it exists within the U.S. system.

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Long list of problems

There is a fundamental lack of due process at the PTAB. Decisions are arbitrary and capricious; the PTAB refuses to consider timely submitted evidence; the tribunal has misapplied the law of obviousness, determining that an MRI machine is an abstract idea as if the huge machine that takes up an entire room in a hospital is a figment of the imagination; and it has ignored the law with respect to what is a Covered Business Method patent and instead created its own test that goes directly against the dictates of the statute. (A CBM patent is one that claims a method, apparatus or operation used in the practice, administration, or management of a financial product or service.)

Of course, the USPTO is not without fault with respect to the PTAB. As an institution, the USPTO has allowed very serious conflicts of interest to exist at the PTAB in which administrative patent judges are deciding post-grant challenges brought by former defense clients—which at a minimum creates an inescapable appearance of impropriety that compromises the integrity of the processes. Worse is the seemingly intentional deletion of pro-patent eligibility decisions from the PTAB database. Still worse, the USPTO has admitted stacking PTAB panels to ensure outcomes desired by the director. This fundamentally violates the requirements of the Administrative Procedures Act, which requires decisional independence. And in one of the latest blows, the PTAB refused to follow Supreme Court pronouncements on indefiniteness in *Nautilus v. BioSig Instruments*, which is being backed by USPTO policy.

More mundane but nonetheless proof of problems caused by a runaway PTAB are the tribunal issuing inconsistent rulings dealing with the same issues on the same record and between the same parties; shifting the burden to prove patentability to the patent applicant and failing to explain or

articulate reasoning to support its decision making, and failing to consider material evidence. Each of these transgressions were highlighted by United States Court of Appeals for the Federal Circuit decisions within the past few months.

A strong wake-up call

It is no wonder that global pharmaceutical company Allergan recently partnered with an Indian tribe to protect its drug Restasis from challenges at the PTAB. This brilliant move is something I've been suggesting patent owners consider ever since the PTAB ruled it did not have jurisdiction over university-owned patents. I hadn't considered it with an Indian tribe, but perhaps this in-your-face move that insulates Restasis from the death squad known as the PTAB will wake up other patent owners and Congress as well.

Hiring senior associates to be administrative patent judges was a mistake; hiring so many senior associates from the same firm was an even bigger mistake. Making it clear that their job was to kill patents at all costs was inexcusable. Interpreting the rules at every turn to be disadvantageous to patent owners is un-American, violates fundamental notions of fairness of procedure, and tilts the balance so heavily toward challengers that the PTAB has become more feared by patent owners than any government agency or body.

In short, the Patent Trial and Appeal Board has destroyed the U.S. patent system and the value of U.S. patents. In my opinion, the only solution for the very serious transgressions of this board is to disband this runaway tribunal.

IoT Corner

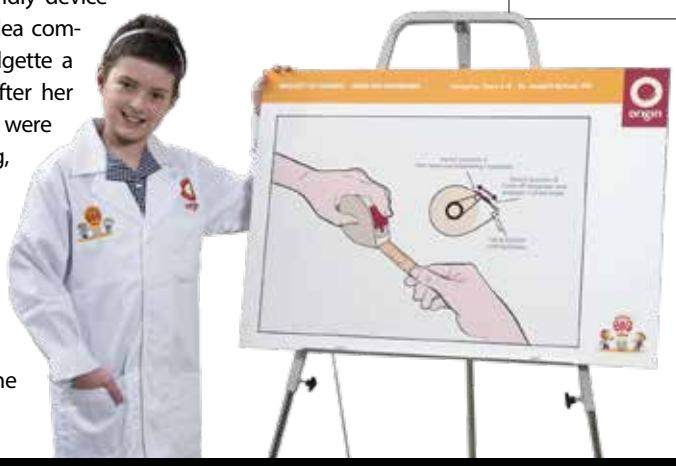
The IoT ecosystem got wilder recently. Tech organization **Internet of Life** released details about its rhinoceros tracking device that is being used to help preserve populations in Rwanda and Tanzania.

Rhinos in Akagera and Mkomazi National Parks are tranquilized, and solar-powered beacons are bonded into a cavity carved into the rhino's horns. The system uses the LoRaWAN protocol (Low Power Wide Area Network) and solar-powered gateways that can track the animals 15-30 km away. The system gives park rangers near real-time GPS tracking data on the population, as well as environmental data where the rhinos are.

The team hopes that the devices will help rangers track these endangered beasts and help curb the poaching epidemic. —*Jeremy Losaw*

Wunderkinds

A 10-year-old who was undergoing chemotherapy for leukemia, **Bridgette Veneris** was thinking of others. After watching her parents and nurses struggle to remove the backing from bandages, the Melbourne, Australia, girl invented an adhesive bandage dispenser. With Faster-Aid, users simply pull the dispenser to the perforated edge—as with sticky tape—and tear off the adhesive plaster. The eco-friendly device won last year's littleBIGidea competition and earned Bridgette a trip to NASA this year after her 18 months of chemo were finished. "She had long, beautiful brown hair," he father, Steve Veneris, told the London Daily Mail. "She lost all those curls; she lost her ability to walk. She has been the most positive person. She is my hero."



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What IS that?

For many people, the phone is always with them—and their privacy takes a big hit. (Not to mention the fact that others nearby often have to listen.) **HushMe** is a personal acoustic device that keeps conversations private when speaking on the phone in crowded public spaces, such as the office. Sure, it's kind of goofy looking. But as Albert Einstein was quoted on the HushMe Kickstarter page: "For an idea that does not first seem insane, there is no hope."

1675

The year that a recipe for **pumpkin pie** was first published in an English cookbook, by Hannah Woolley in "The Gentlewoman's Companion." Such recipes were not printed in American cookbooks for another hundred years. The original concept/invention of pumpkin pie dates to around 1500, when pumpkin was stewed with sugar and spices and wrapped in pastry.

WHAT DO YOU KNOW?

1 **True or false:** The original Kermit the Frog—copyright registered on Nov. 2, 1955—was made from part of an old tent.

2 Which came first—a patent for a motor carriage, or a patent for an electric razor?

3 An automatic mashed potato system was patented in:
A) 1946 **B)** 1970 **C)** 1988 **D)** 2007

4 Mildred Lord was granted a patent for a washing machine on November 27 of which year?
A) 1894 **B)** 1910 **C)** 1924 **D)** 1939

5 **True or false:** James Naismith, the inventor of basketball who was born on Nov. 6, 1861, was the first basketball coach at the University of Kansas.

ANSWERS: 1. False. Kermit was made from an old coat belonging to Jim Henson's mother. (The eyes were made from Ping-Pong balls.) 2. Henry Ford received a patent for a motor carriage on Nov. 5, 1901; Jacob Schick patented the first electric razor on Nov. 6, 1928. 3. D (Patent US7172335). What took them so long? 4. A. 5. True—and he is the only men's basketball coach in the program's history with a losing record (55-60).

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