

Inventors

DECEMBER 2018 Volume 34 Issue 12

DIGEST

FIGHT TO THE FINISH

Inventor Josh Malone Makes Gains
In His Quest for Patent Equality

Holiday Card History
HOW THE TRADITION BEGAN

The Truth About Licensing
KEY TERMS, REFUTING MYTHS

2018 Inventor Awards
IPOEF, DYSON WINNERS



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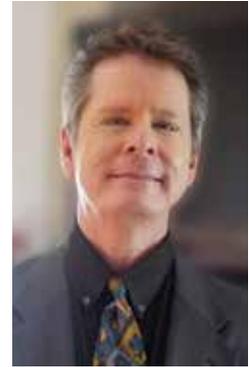
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Inventing's Greatest Gift: Helping Others

That old holiday standard nailed it: It's the most wonderful time of the year.

Not just because of the presents, the time off work, or even spending important time with family and friends. It's mainly because there's something magical about the holiday season—a feel-good aura of hopefulness, savoring our blessings, kindness (“good cheer,” if you will) and helping others.

Students in an engineering class at Petosky (Mich.) High School got into the spirit a little early this year to help a 6-year-old girl.

Stella Malpass was born with a rare muscular disorder called Arthrogryposis Multiplex Congenita, a joint condition that limits her ability to fully extend and flex her arms and legs. Even after five surgeries and physical and occupational therapy, she still has limitations. One of the most frustrating is going to the bathroom on her own, because she doesn't have the strength to pull up her pants.

Jodi Carroll, Stella's occupational therapist, eventually realized the need to invent something.

She researched a solution and contacted the engineering department at Petoskey High in search of help. Within a week, the class designed a prototype and 3D-printed it: a device featuring a plastic piece with collapsible pins on the top and bottom that attach to Stella's pants. All she has to do is grasp the top bar of the device with her thumb, and pull her pants up and down.

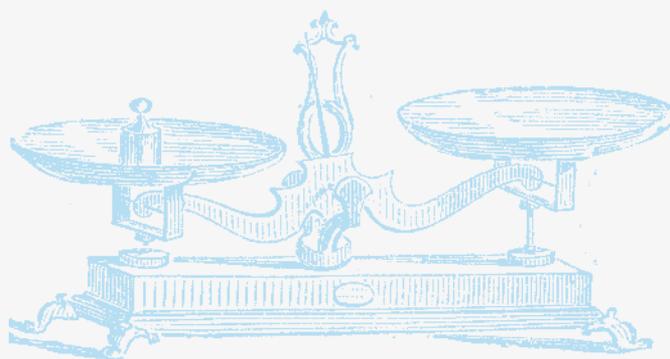
The students' invention wasn't an immediate success. It required lots of trial and error, and three prototypes. But utilizing the inventor's hallmark of perseverance and determination, they eventually came up with a device in November that works well.

It's true that for some, the holiday season can understandably be challenging or even sorrowful because of difficult memories or life situations. Leave it to a group of teenagers to ensure there is one fewer person to endure that challenge.

Merry Christmas, Happy Hanukkah and Happy Kwanzaa.

—Reid
(reid.creager@inventorsdigest.com)

American innovation needs to hit the gym



Weakened patent protections have reduced the value of American inventions. To bolster the strength of US intellectual property, support the STRONGER Patents Act—legislation designed to restore strong Constitutional patent rights, limit patent lawsuits, and end the diversion of USPTO fees.

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AMERICAN
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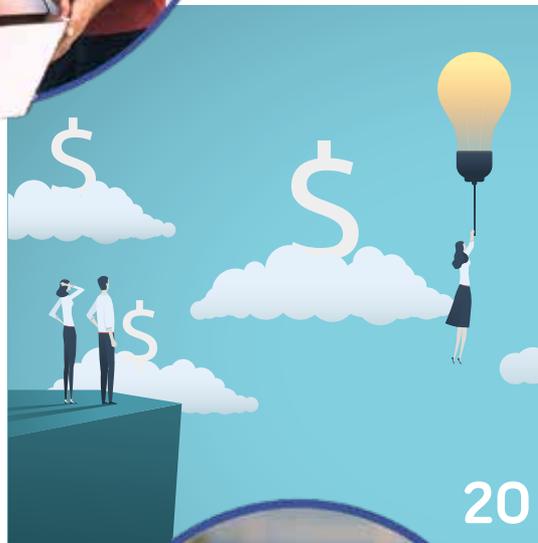


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Josh Malone speaking to congressional staff in August 2017; photo by Elizabeth Malone



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Focus on the Fun and Fascinating

BRIGHT IDEAS

Sparq

VITAMIN INHALATION
SMOKING ALTERNATIVE

sparqlife.com

Sparq bills itself as the world's first eco-friendly vitamin inhalation device, trading nicotine for vitamins and botanicals. The three blends are Fuel, Melt and Pure. All come in two natural flavors, including strawberry and vanilla.

Fuel contains natural power boosters such as L-choline, L-theanine and beta alanine; Pure has two pre-eminent anti-aging nutraceuticals, grapeseed and blueberry extract; Melt combines antioxidants and botanicals such as acai berry and green tea, known for metabolism-boosting properties.

Shipping for the three-pack, which will retail for \$54, is to begin this month.



PHOOZY

THERMAL PHONE CAPSULE

phoozy.com

The PHOOZY XP3 Series prevents iPhone, Galaxy or Pixel devices from being damaged by intense heat or cold temperatures. It also features drop protection and buoyancy; it will float at the surface of the water long enough for you to grab it before damage occurs.

The XP3 Series comes in RealTree EDGE and Realtree Fishing camo with a multi-point attachment system for wearability. It's made of materials that were developed to protect astronauts from the extreme environment of space.

PHOOZY XP3 has a suggested retail price of \$49.99.

CZUR Aura

HIGH-SPEED SCANNER, LAMP

czur.com/en

Aura allows you to scan anything—books, documents, objects—in high quality in minutes. Using AI algorithm and software technology that straightens book curves, you can scan 300 pages in 20 minutes (about 2 seconds per page).

Weighing a little more than 3 lbs., the product is foldable and operated via foot pedal to save desk space. Accessories include a charger, USB cable, finger cots, side lights for scanning glossy materials, and a black work mat.

Aura doubles as a lamp, with four light settings. It will have a retail price of \$299, with shipping to crowdfunding Rewards backers to begin this month.



**Mindless habitual behavior
is the enemy of innovation.**

—ROSABETH MOSS KANTER

MasterSous

8-IN-1 SMART COOKER

producthype.co/mastersous

MasterSous is a Wi-Fi-connected, automatic stirring multi-cooker that can sous vide, deep fry, simmer, sear, saute, boil, steam and slow cook—all while autonomously stirring the food.

The product is hands-free, small, and can be controlled from anywhere. Just turn on MasterSous, using the digital dial; find the pre-set for your recipe; and use the digital dial or app to stir when needed. You will be alerted when the food is done.

The MasterSous multi-cooker will retail for \$400, with shipping for crowdfunding Rewards backers set for October 2019.



Holiday Spirit: It's in the Cards

THE TRADITION—NOW FOR CHRISTMAS TO HANUKKAH TO KWANZAA—BEGAN IN 1843 **BY REID CREAGER**

"HAPPY HOLIDAYS," read the front of a card a friend sent me one Christmas. Puzzled, I opened it. "Or as the old carol goes, NO L."

This probably isn't what Sir Henry Cole had in mind when he conceived and sent the first commercial Christmas card in 1843—although that card, which featured adults and even children hoisting what look to be glasses of wine in toasting the season, certainly was an unconventional display.

A popular figure in early Victorian England social circles who founded the Victoria and Albert Museum (among other accomplishments), Cole didn't want to ignore the correspondence of his many friends who sent him a traditional Christmas and New Year's

letter. But he knew that responding to all of the letters would take an inordinate amount of time.

He commissioned London artist John Calcott Horsley to illustrate a card that he could send to his friends. Horsley's design had two side panels and a centerpiece: The panels depicted clothing the naked

and feeding the hungry, and the centerpiece showed the family celebrating with holiday spirits (much to the displeasure of the British temperance movement).

The inscription simply said, "A Merry Christmas And A Happy New Year To You," with an area where a name could be filled in. About 1,000 cards were printed, with a dozen reportedly still existing in collections.

America was late

Printed cards quickly caught on in England, then Germany. Not so in America; it wasn't until 1875 that German-born Boston lithographer Louis Prang began publishing cards and became known as "the father of the American Christmas card." Today, similar cards are sent to celebrate winter holidays that include Hanukkah, Kwanzaa and the winter solstice.

Prang's cards were a departure from the originals in England, in that the images were not what most people associate with Christmas. His original card showed a painting of a flower. Other early U.S. Christmas cards depicted animals, nature and non-winter settings.

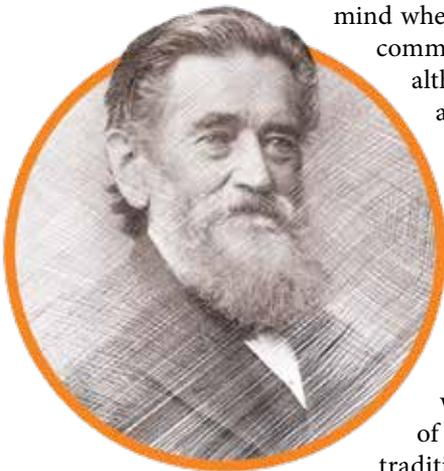
The U.S. Christmas card market took off in major way about a century ago—a phenomenon with such vast appeal that Salvador Dali, Norman Rockwell and even Grandma Moses got in on the act.

Joyce (J.C.) Hall had started a picture postcard business in the early 1910s, later joined by his brother, Rollie. Even after a 1915 fire—which destroyed their office and inventory and left Hall Brothers \$17,000 in debt—they stayed the course and developed high-quality valentines and Christmas cards in envelopes.

The company, which eventually became Hallmark, adapted a new format for the cards: 4 inches wide, 6 inches high, folded once, and inserted in an envelope. Before long, holiday greeting cards were as ubiquitous as candy canes.

Norman and Grandma

The Rockwell-Hallmark connection is historic and personal. Last holiday season, the Hallmark Art



Louis Prang (above), father of the American Christmas card, furthered the practice started by Sir Henry Cole in England three decades earlier.

DID YOU KNOW?

- It may not be surprising that according to the Greeting Card Association, the most popular seasonal cards are Christmas cards, with 1.6 billion units purchased (including boxed cards). Next on the list is not Mother's Day or Father's Day, but Valentine's Day (145 million units, not including classroom valentines).
- Hallmark says that an image of three angels—two praying with eyes closed, the other with open eyes—from 1977 has become the most popular card of all time, selling more than 34 million copies. And that was as of three years ago.
- Every May at the National Stationery Show, the Louie Awards (named after Louis Prang) are given out to honor cards with maximum design excellence, emotional impact and "sendability."



Top: Norman Rockwell's painting called "Freedom From Want" was also known as "The Thanksgiving Picture" or "I'll Be Home for Christmas."

Above: Grandma Moses's "Snow Drift" depicts a joyful winter scene. She and Norman Rockwell, who were friends, both had their works reproduced on Hallmark holiday cards.

The first commercial Christmas card drew criticism because it showed adults and children hoisting what appeared to be glasses of wine.

Collection displayed a Rockwell exhibit in Kansas City, Missouri, that featured the artist's holiday cards and provided insight into his work process. There was even personal correspondence between Rockwell and Hall, the latter who initiated the contact about the artist creating images for greeting cards.

Rockwell's painting for the Christmas cards capture the spirit, warmth and humor that made him perhaps the most influential illustrator of the 20th century. His connection with Hallmark extended to Grandma Moses, another 1900s painting icon.

In the late 1930s, art collector Louis J. Caldor noticed Moses's work in the window of a drug store in Hoosick Falls, New York. He bought every piece for \$3 or \$5 each; a year later, three of her paintings were included in a New York Museum of Modern Art exhibit.

Soon after, Hallmark bought the rights to reproduce her paintings on its greeting cards—a key impetus for her decades-long popularity before she died in 1961 at age 101. She and Rockwell, who lived close to each other near the New York-Vermont border, became friends. He even included her face as part of a crowd scene on a December 25, 1948, Christmas-themed cover for *The Saturday Evening Post*.

Rockwell remembered her fondly, writing: "When I knew her, she was over 85 years old, a spry, white-haired little woman. Like a lively sparrow."

The emergence of the internet in the mid-1990s has hit the holiday card market hard; the latest available figures say they fell from about 1.9 billion in circulation in 2012 to 1.4 billion in 2014. But their iconic appeal, especially to traditionalists, all but ensures they will be a fixture for years to come. 📧

INVENTOR ARCHIVES: DECEMBER

December 2, 1969: U.S. patent No. 3,482,037 was granted to **Marie Van Brittan Brown** for a home security system.

She and her husband, Albert Brown, did not work standard hours, and their Queens, New York City neighborhood had a high crime rate. Police responses to crimes were often slow.

According to blackpast.org, her security system "was the basis for the two-way communication and surveillance features of modern security." Her original invention was made up of peepholes, a camera, monitors, and a two-way microphone. An alarm button could be pressed to contact police.



My Favorite Tools and Resources

USING THESE PLATFORMS AND SOFTWARE CAN HELP OPTIMIZE MARKETING RESULTS **BY ELIZABETH BREEDLOVE**

RECENTLY celebrated four years in my current position, which had me thinking about some of my favorite, tried-and-true resources for managing social media. Below is a list of these tools and resources, along with a brief description of why I like them or how I use them.

Fortunately, most of these are free, offer free versions, or are relatively affordable—making them perfect for the inventor trying to market his or her invention using social media.

Bit.ly

One problem you may have encountered while managing social media accounts is that links can sometimes look clunky or messy in posts. Bit.ly allows you to easily shorten and customize links so that they look cleaner. On top of that, you can also track clicks to determine your post's effectiveness.

Canva

Images are crucial to engaging, effective social media posts. Canva is a design software that makes it simple to create beautiful graphics to post on social media. It comes in both a free and paid version. The paid version is better in the long term, but the free version is a great place to start.

Click to Tweet

If you frequently ask others to send out tweets on your behalf using their accounts, try Click to Tweet. This allows you to pre-construct a tweet exactly as you like it. Then you can just send out a link, and the person who clicks it will be prompted to post the tweet you wrote. This platform also offers basic tracking and reporting information.

Display Purposes

When I post on Instagram, I typically put most or all of the hashtags I use in the first comment. This

makes the caption appear cleaner and shorter, which can boost engagement. Essentially, it helps keep readers from scrolling right past it to the next post. To clean this up even further, I use Display Purposes to format the comment. The website has a text box where you can add all of your hashtags, and it adds five lines with a small dot per line above the hashtags. Posting this in a comment will make your comment collapse and keep your caption looking clean. Display Purposes can also suggest hashtags you may want to use.

Grammarly

If you struggle with grammar, spelling or typos, be sure to install the Grammarly Chrome extension. This extension catches mistakes and offers suggestions to help make your writing grammatically correct and error free. Grammarly works for more than just social media, too; it analyzes everything you write to help polish your copy.

Hashtagify and RiteTag

When managing a Twitter or Instagram account, it's important to use hashtags to expand your reach. So it's crucial to thoroughly research hashtags to ensure that you use the best ones and get the most bang for your buck. Hashtagify and RiteTag are two tools that I love to use to search and analyze hashtags. RiteTag is more helpful for finding and comparing hashtags, while Hashtagify is better for analyzing hashtags.

iStock and Shutterstock

Social media posts with images perform better. However, sometimes you don't have the budget for taking the number of photos you'll need for a good social media presence. This is where stock photography can help. If you are struggling to come up with enough photos to post with your content, see if you can find any stock photos that will work.



© LENKA HORAVOVA/SHUTTERSTOCK

LastPass

If you're like me, you have to keep track of a lot of passwords. Between different social media accounts, marketing software I use frequently, email and other platforms, I'm logging into a lot of different sites each day. LastPass helps me safely and securely keep track of all my different passwords so I can easily switch between websites, platforms and accounts throughout my day. This saves me valuable time and energy as I manage social media accounts and take care of my other daily tasks.

Link My Photos and Linktree

Unfortunately, the only way to include a link with Instagram posts is to place it in your bio, and bios only have room to include one link. Link My Photos and Linktree offer a great workaround. Simply place the link to your Link My Photos or Linktree page in your bio, and you'll be able to easily add links to each post. Then you can direct your followers to click the link in your bio to find whatever you are posting about.

Semrush

Semrush is a marketing software with a ton of functionalities, but it's great for social media marketers in particular. I primarily use it to schedule posts on Facebook, Twitter and LinkedIn. I like this software because it lets you schedule the same post multiple times. Reusing content that performs well is an important social media tactic, and with Semrush I can go back to effective posts and reschedule them several times. Since I began using this software, my weekly time spent on social media marketing has

dramatically decreased while my engagement results have increased. Semrush also features a social media tracker that helps you monitor and analyze your efforts and results.

Social Media Examiner

This site posts practical, accurate, up-to-date information on a wide variety of topics related to social media in order to make your social media marketing more effective. Read these articles often, and you'll be sure to improve your efforts.

TweetDeck

If you spend a large amount of time on Twitter, you should use TweetDeck. It allows you to customize a dashboard to keep up with tweets from your followers, monitor hashtags, keep up with notifications, send out tweets and much more. You can also schedule tweets in advance! If you manage more than one Twitter account, it's very helpful for switching between accounts and keeping track of all of them.

Some of these tools I've been using for four years; others are much newer. But all provide immense value to my day-to-day work life. I'm excited to see what tools will be added to my list in another four years! 📌

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 Luddites Are Coming!

FEAR OF AUTOMATION WON'T MOVE INVENTORS FORWARD

BY JACK LANDER

THE LUDDITES ARE WAITING TO POUNCE.

Call me a conspiracy theorist if you wish, but I'm telling you that the robots are their next victims. Armed with sledgehammers, the group, directed by a contemporary "General Ludd," will flatten the latter-day tin men like frogs that didn't make it across the highway.

Who? What?

The Luddites were English mill workers who feared losing their skilled jobs due to the increasing use of semi-automated looms. They broke into the mills at night and smashed the looms in order to discourage mill owners from adding more. Some even torched the mill.

This occurred mainly in 1811-1813 and ended only after British soldiers captured or shot many of the perpetrators, hanged a few, and sent the rest to Australia. All of this stemmed from the 1804 invention of the card-controlled loom, by Joseph Jacquard of France.

An outdated equation?

The point is that workers usually consider automation that replaces them as evil. If a robot takes your job next year, you'll probably think it evil, too.

But holistically, automation appears to benefit us all. Lower product cost and worker safety are two advantages; also, it has been a proverb of executives that one job is created for every job lost to automation.

My muse keeps telling me that although in the past this has been approximately true, the equation may no longer be valid for all automation. It's difficult to see how a laid-off assembly worker can turn into a robot programmer, or a conveyor designer, overnight. It is also difficult to grasp that a laid-off worker will move to Salinas and pick lettuce.

Not all benefits of automation arise from efficiency. In England, child labor was deplorable. Children started in the mills as early as 8 and worked 12 hours a day, sometimes more. Although the adoption of semi-automatic looms caused job loss starting in

1811, it also freed up sufficient adult labor for other jobs, and fewer children were employed.

In 1833, The Factory Act limited work hours to nine for children 9-13. The fate of the child laborer gradually improved.

Manual looms were introduced to the United States in 1793, and children 7 to 13 were employed. (Child labor was a fact of life in America in those days. Imagine how fortunate we are to have been born at a time when we were only compelled to go to the fourth grade in elementary school, rather than to the weaving mill each day.)

A very real threat

When I toured a Wisconsin manufacturer of exhaust fans for kitchens and bathrooms a year ago, I was astonished by the proficiency of the production coming from robots and automated conveyors. The factory of the future is here.

Hopefully, the Luddites have had their day and are no longer arming with sledgehammers and torches. The weapons these days will be pen and paper. Why do we need self-driving cars when the sea level is rising, and half of Florida may disappear within a few decades?

I did somewhat change my mind on driverless cars when I read that all cars will be connected through one supercomputer. Two drivers going too fast, arriving at precisely the same time at an intersection that is without stop signs, won't collide. The "mastermind" in control of things will make a better decision—and make it sooner—than a human can, and collisions will be avoided.

I'm reading Yuval Harari's intriguing new book, "21 Lessons for the 21st Century." Harari ends the first chapter thusly:

"The technology revolution might soon push billions of humans out of the job market, and create a massive new "useless class," leading to social and political upheavals that no existing technology knows how to handle. All the talk about technology and ideology

We've got to spend more time becoming aware of change *as it happens* and thinking about where the opportunities lie.



might sound very abstract and remote, but the very real prospect of mass unemployment—or personal unemployment—leaves nobody indifferent.”

I can't imagine that Harari is on target with his estimate of “billions.” But even if it is millions of humans out of jobs within the next 10 years, we've got a problem.

Opportunity in change

So, where does all of this automation lead us as inventors? Hard to say. But we'll have to form a friendly alliance with robots for sure.

It will be darn hard to improve on work done by robots and other forms of automation. That leaves less sophisticated items for us to invent.

I've said it in previous columns: Change offers opportunities for inventions. We've got to spend more time becoming aware of change *as it happens* and thinking about where the opportunities lie, rather than dreaming up things that most likely are already to be found in the patent files.

If your doodles on a restaurant napkin appear to define a new paper clip, forget it. The four or five that have tried to compete with the traditional Gem have offered less than trivial competition. Also, it's an old, satisfied art. Different doesn't always mean better, and the older an art, the more that is true.

In other words, ideas we stumble across usually are less productive than ideas we pursue as a result of change. If we stumble across it, chances are that others have been there before us.

That doesn't mean that we can't be original; it just means our chances are less than in a new art.

The computer knows all

What's changing now, or on the verge? Driverless cars. Ugh! (There goes my Luddite conscience again.) But they're probably here to stay.

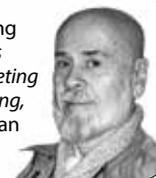
So, what will a driver of such cars be doing with his or her time when not pushing the gas pedal, or tweaking the steering wheel? Hopefully, not nodding off. But the computer will know even that and give permission.

Seriously, the backup camera screen could double as a TV screen. We might be watching the news or old “I Love Lucy” shows.

We cringe at the idea, but if the system is failsafe our main job will be knowing what to do, and doing it, if something does fail. We'll have time to get our eyes back on the road, our foot poised above the brake pedal. The system will blithely warn us that it's about to have the equivalent of a heart attack.

Meanwhile, if you see a flat frog or two when your self-driving car stops for your restroom break, don't be too concerned. The people who program the omniscient computer that slowed you to a non-jarring stop are working on it. 🐸

Jack Lander, a near legend in the inventing community, has been writing for *Inventors Digest* for 22 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.



Inspiration in Her Sole

LORI BARZVI CONQUERED DISAPPOINTMENTS AND BECAME AN AMAZON TOP SELLER **BY HOWIE BUSCH**



THOUGHT WE'D TRY something new this month.

I love hearing stories from inventors about how they got their products to market. As someone who speaks to inventors all the time, I've heard some great, inspirational stories that include tips and tricks we can use with our own products.

One of those inventors is Lori Barzvi. Like so many inventors, she came up with a solution to her own problem. But her inventing journey took place over a number of years and involved a sea of highs and lows. Her tremendous entrepreneurial will and determination is strongly linked to a family tragedy.

On September 10, 2001, her brother, Guy—29 years old and making a six-figure salary at Cantor Fitzgerald in the World Trade Center—told her he was unhappy with his job. He was working 16-hour days, including a long commute, and felt he had no work-life balance. He wanted to do something more entrepreneurial.

He died the next day in the 9/11 attacks. To this day, she embodies the notion of loving what you do for a living and never giving up. That has made her product, My Solemate, the Amazon Top Seller it is today.

'Aha!'

It was 2008, and Barzvi was a salsa dancer who owned a Latin and ballroom dance studio in New York City. Her feet were always dry from dancing.

"Every day in the shower, I'd use a pumice stone and soap," she recalls. "I'd pick the soap up, use it and put it down and pick up the pumice stone. And I'd alternate that routine over and over every day.

"Then one day, I'm in the shower with a small piece of soap left over and I squashed it onto the pumice stone and used them together. It was definitely easier, but I didn't think much of it. The soap stayed on

the stone for the next few days, and that's when the lightning bolt hit me: 'Hey, if combining these two products makes my experience so much better, I can't be the only one.'"

Having come up with a simple, commonsense solution to a problem, she took the next logical step. (No pun intended.)

"I immediately Googled it to see if it was already out there, and I was surprised that I couldn't find anything. I started searching patents online and when I couldn't find anything, I went to an attorney and filed for both trademark and patent protection."

But Barzvi didn't know how to develop a product or get it to market. "So I started asking everyone I knew," she says—while keeping her eyes wide open.

"I had worked in direct marketing, so I called my old boss and shared the idea with him and he put me in touch with an Infomercial company. The infomercial company put me in touch with a manufacturer they knew in China. I sent them my hand-drawn idea of what I was looking for and over the course of the next year, we developed the product through a series of back-and-forth emails. Literally, it was all done over email.

"The infomercial company was showing me these incredible projections, and I was really excited. I spent a lot of money with them to develop a commercial, but in the end they produced a pretty bad commercial and I felt scammed because I knew that I just gotten swept up into the excitement of the projections they showed me where I would make millions. I severed ties with them pretty soon after that."

Though this learning exercise proved expensive, the company did help her find her first manufacturer. "In 2008, I'm not sure I could have done that

Amazon.com advertises SoleMate as a "2 in 1 Foot Pumice Stone Foot Scrubber And Callus Remover Cracked Heel Treatment With Lemongrass Moisturizing Foot Soap."

without them,” she says. “At that point, I worked with that manufacturer to bring in a few thousand units and started selling on my own website.”

Falling and getting back up

Remaining aggressive and with a nothing-ventured,-nothing-gained approach, Barzvi sent a sample to “Good Morning America” for review for a segment the show was doing on infomercial products.

“Lo and behold, they gave it an incredible review! Robin Roberts raved about it on the air. Over the next 24 to 48 hours, we did \$10,000 in sales, and I was on a major high. I was on my way.”

The end of an inspiring inventing story, right? Not quite. She soon learned the hard way about the difficulties of maintaining ongoing sales traffic.

“I thought I was set, but a couple of days after the GMA segment aired my sales went back to next to nothing. Literally nothing. And I was devastated.”

New hope emerged soon after when Barzvi was contacted by Time Life, which was looking to get into direct response television with tangible products.

“Someone at the company had seen My Solemate on GMA and thought it was the perfect product to launch their product line with. Time Life was a huge company, so I was reinvigorated. I licensed the product to them, and we did another infomercial. They put 100k into infomercials and another 100k into media.”

Little did she know that another dance with disappointment loomed.

“I was due to receive a 5 percent royalty, but they saw pretty quickly that it just wasn’t hitting the numbers they needed to be successful. When they called to give me the news that they were backing out and that the product rights would revert back to me, I was devastated. I knew that to be successful, I would have to start knocking on doors of places like Bed Bath & Beyond, and I just didn’t want to do that.

“I was exhausted. I needed a break from it. I called my warehouse that still had a couple of thousand pieces left and told them to destroy the product so I didn’t have to keep paying them storage fees.”

The pause that refreshed

In retrospect, the break gave Barzvi time to step back and re-energize, to look at her invention from a fresh perspective. She had put her project on the shelf for nearly four years and was back in Direct Marketing in 2014, when she saw another possible option that jibed with her long-term business goals.

“I saw a Facebook post about selling on Amazon. I had never even bought anything on Amazon, but I was intrigued. I wanted to do something entrepreneurial, so I took a course on selling on Amazon by buying products at off-price stores like TJ Maxx and Marshalls, and

Lori Barzvi’s story is a lesson in finding simple solutions, commonsense methods and smart aggressiveness.

selling them on Amazon for more than I paid.

“That became old really fast. I was selling things like lighters and other crazy stuff, and it was more trouble than it was worth. But I started learning the Amazon platform. And a few months later, it hit me: Why not try selling My Solemate on Amazon?”

She took a chance and called the warehouse that was supposed to have destroyed all of her product. Fortunately, that never happened.

“I bought the remaining inventory back from them. I employed all of my Amazon knowledge and tips and tricks I picked up in the course and while selling, and just a few weeks later became an Amazon Best Seller.”

Barzvi highly recommends selling on Amazon as a path to get a product to market, compared to licensing.

“If you want to control your own brand and develop product lines, Amazon is a great path,” she says. “I’ve even started consulting other brands, helping them crack the Amazon code. ...

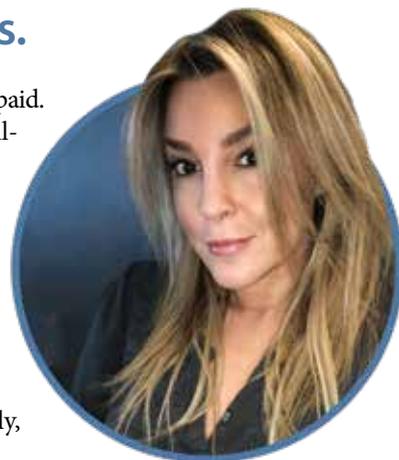
“But I don’t think of Amazon and licensing as being one or the other necessarily. Amazon’s a great way to prove the market. You can succeed as your own brand or you can prove the market by showing demand—and then you can license it and potentially get a better licensing deal because you’ve de-risked the market for potential licensees.”

Next: Adding categories

Currently she’s working on more products that she plans to license into different categories.

“I’ve gotten to know myself very well throughout this process, and I know what I’m good at and what I’m not as good at,” she says.

“I love creating, so rather than try to do everything by myself again, I’d rather create a bunch of different products and license them to other companies so I can move on to the next product.”



Howie Busch is an inventor, entrepreneur and attorney who helps people get products to market through licensing, manufacturing or crowdfunding. Possibly the world’s least handy inventor, he has licensed many products, run a successful Kickstarter campaign and appeared on “Shark Tank.”



Travel Rocker Meets Many Needs

PORTABLE DEVICE SOOTHES BABIES, SAVES MONEY AND SPACE

BY EDITH G. TOLCHIN

HERE'S AN INVENTION for parents on the go who prefer the rocking motion for soothing their babies and young children. RockEase™ is like a rocking chair in a box for locations that lack, well, rocking chairs.

Because I'm a manufacturer of baby product inventions in China, I have been trained in the safety aspects of such products. And as owner of EGT Global Trading since 1997, it has become second nature for my antennae to shoot upward if I detect safety issues with any new product on the market.

I spoke with Jenna Zielbauer about her invention.

Edith G. Tolchin (EGT): Tell us about yourself and how RockEase came about.

Jenna Zielbauer (JZ): While I was experiencing life with our first daughter, I struggled with traveling and overnight visits where a rocking chair was not readily available. Rocking had become an integral part of our bedtime, soothing and bonding routines, and very quickly became a “need”—not a “want.”

After extensive research and no great solutions, I decided to fill the “traveling rocking chair” void with RockEase but soon realized the applications for such a device ranged farther and much wider than one could have ever imagined. As a travel rocker, this affordable, lightweight and portable device will allow parents to rock their child in places where they otherwise could not have—hotel rooms, airports, dining out and grandma's house, just to name a few.

However, RockEase can also replace expensive and space-hogging baby gliders in the baby nursery. It's perfect for families on a budget, or for those who live where space is at a premium. If you are a mom who rocks, you get it, 100 percent. I strongly believe RockEase is a necessity, and you will, too.

EGT: I have read where many experts discourage rocking a child to sleep because it prevents them from learning to settle themselves down. But if they cannot fall asleep without the rocking, then what?

JZ: It has been scientifically proven that rocking triggers a calming response in the parasympathetic

nervous system. Rocking is used to soothe, bond with and calm babies and even children as they develop.

RockEase gives parents the ability to calm their baby while on the go or at home; all they need is a standard four-legged chair. Our product gives those parents who do rock their children all the way to sleep the ability to do it wherever they go, but one does not have to rock their child all the way to sleep if they prefer not to. Rocking also provides a meaningful bonding opportunity for the parent and child. Parents know their children better than anyone else, and they should find the balance that's right for them.

EGT: What is RockEase made of?

JZ: After much research and safety testing, we have chosen to manufacture RockEase in an ABS nylon blend sturdy enough to hold 400-plus lbs.

EGT: How many prototypes did you prepare?

JZ: We went through three different prototypes and two different engineering firms. It was a long and tedious journey, but we are happy to have made it. Our final one rocks—pun intended.

EGT: Where are you manufacturing RockEase? Domestically or overseas?

JZ: We have plans to manufacture domestically. With that being said, it is hard for the little mom-and-pop businesses to compete, price-wise, with the Fisher-Prices of the world so we will do our best.

EGT: How have you addressed CPSIA (Consumer Product Safety Improvement Act) standards of production testing and certification?

JZ: RockEase will be safety tested by an independent safety testing corporation. We will follow all safety standard protocols for the type of product we are bringing to market.

EGT: Wouldn't this be best for non-air travel (where 50-lb. weight limitations for check-in luggage might be a factor, taking into consideration that

an average suitcase with wheels already weighs between 10-15 lbs.)?

JZ: RockEase was designed for everyday use and air travel. It was designed to be lightweight and compact enough to carry in your diaper bag or large purse. Weighing in at under 5 lbs., a parent traveling will decide which method of storage is best for them, but because of our lightweight design either would be suitable.

EGT: How is the product packaged? Is it patented?

JZ: The product will be boxed with a drawstring carry bag to prevent damage to the interior of your diaper bag or purse. In the future, we will offer carrying cases that can double as a travel or diaper bag. We are proud to say RockEase is patent pending.

EGT: What is the selling price?

JZ: \$99.

EGT: What type of market research have you done?

JZ: We have worked with several parent groups to determine the need for the product, and features that would be most helpful to a stressed traveling parent. Our outreach efforts have also opened new avenues to target potential

customers we didn't anticipate—such as people will multi-level homes who don't want to buy two rocking chairs, people with small apartments who have space constraints, people who do not want or cannot spend \$1000-plus on a baby glider for the nursery, even autism clinics that are on a budget and need several rocking solutions.

EGT: Who is doing your PR for RockEase? What has worked, and what has not?

JZ: Our PR is done in-house. In the social media society we live in, regardless of how amazing or innovative your product may be, everyone wants to be paid for a shout-out, which makes it interesting for any start-up.

EGT: Have you encountered any obstacles in developing this product?

JZ: Developing a product that was sturdy enough to hold 400-plus lbs. but also break down and fit in a diaper bag was our biggest hurdle. If you are a parent, you know that with children comes stuff—and lots of stuff. We wanted to provide a sanity-saving product that wouldn't be a burden to travel with and/or carry daily. I am thankful for our amazing design and engineering team, Zewski Corporation, for listening to my needs and getting us over that hurdle.

RockEase allows parents to rock their child in places where they otherwise could not have.

“Developing a product that was sturdy enough to hold 400-plus lbs. but also break down and fit in a diaper bag was our biggest hurdle.”

—JENNA ZIELBAUER





RockEase's many applications make it much more than a portable rocking chair.

EGT: Are you planning to add products to your product line?

JZ: After our initial launch of RockEase, we will expand the line based on customer feedback and additional market research.

EGT: What guidance would you offer novice inventors, especially inventors of products for babies or children?

JZ: As a mom entrepreneur, I think it is important to note that any mom or parent contemplating entrepreneurship of any kind needs to think long and hard before making the leap. Make sure you are passionate about whatever it is you are going to embark on. Your entrepreneurial journey will cost you sleep, time away from your children and your partner. It will still sting to miss those moments, but if you are truly passionate about it, it won't sting as badly.

If you plan to invent something, make sure to research the space to ensure it actually has NOT been done before. As much as you might be trying

to pinch pennies, spend the money on a quality intellectual property search; you'll be shocked as to what's already been done before.

Also, research the safety protocols for the type of product you are inventing. There are many with products for babies and children. And I cannot stress enough to do your due diligence on whomever you hire to design your product. Make sure you are 100 percent on the same wavelength about what the expectation is at the completion of the project. Is the final prototype really something you can bring to a manufacturer to produce? If not, you might find yourself starting from scratch.

Lastly, hire a great lawyer. Great doesn't always mean the most expensive. ☺

Details: rockease.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.



2 Critical Steps to getting your NEW PRODUCT "out there"

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2 GET A WEBSITE!

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The Truth About Licensing

UNDERSTAND THESE ESSENTIAL TERMS AND CONCEPTS
—AND AVOID BAD ASSUMPTIONS **BY JIM DEBETTA**

LICENSING is the most popular method for commercializing and profiting from patents, yet few inventors are aware of the realities involved. In fact, there are many misconceptions.

Because I talk to inventors and companies about licensing patents and products every day, I can provide some clarity.

You can find generic license agreements in books and on the internet. Although these agreements cover the basic legalities of a license agreement, in my opinion they don't cover all of the terms needed to maximize the relationship between the licensor (you) and the licensee (the company licensing your product). I often use the term patent and product interchangeably, so you can take them as the same thing.

Terms that drive value

Licensing is and always will be an effective method for profiting from patents. Understanding the realities and value drivers of a license will help you be successful in your licensing efforts.

When exploring a license with a company, I recommend using a simple term sheet to nail down the basic terms of the license. Do this in English. Then let the attorneys put it in a legal format.

Agreements capture what the parties agree to on a certain date in time. But we live in a constantly changing world, so agreements often need to be updated. Make sure you leave the door open to future evaluations.

Although the following isn't a comprehensive list of the terms required in a license agreement, they are the terms that drive the value of a license. Disclaimer: I am not an attorney. I am, however, a successful licensing executive who has negotiated hundreds of licenses.

Licensing: It's all about exclusion. A license grant determines which rights you grant to the licensee. You should only grant a licensee the rights on which he or she can execute. There are several types of licenses, but

I will focus on three: exclusive licenses, non-exclusive licenses and limited exclusive licenses.

Most inventors understand what an exclusive license is. You are licensing all patent rights to one company.

An exclusive license even prevents the inventor from using the rights. Most companies will want, and try, to get an exclusive license on your patent. They want to lock it up. Although this may make sense in some cases, be certain the licensee can execute on all of the rights you are granting.

A non-exclusive license gives a licensee the rights to your patent but allows you to license the patent to other companies on a non-exclusive basis. It also allows you to use the patent rights.

A limited exclusive license grants exclusive rights to a company with certain restrictions or limitations. An exclusive license can be limited in various ways. Some common limitations are field of use, territory, time and patent components. This is the type of license I most commonly recommend.

The field of use describes the market segment in which a patent can be used. For example, let's say you have a patent on a laser technology. Lasers are used in consumer, medical and commercial products, to name a few. So you can license your patent exclusively to one company in each field of use. That is three license agreements.

Territory describes the geographic territory in which a license is granted. Let's say you have obtained a patent in the United States, Europe, Japan and China on a laser technology. You can now license your product exclusively to a different company in each field of use within each territory. Now you have 12 license agreements (assuming a licensee doesn't obtain a license in multiple territories).

You can also limit a license using time. This is often called the term of a license. You might grant a company an exclusive license for five years because the product requires a large upfront expense to get to market. After five years, the exclusive expires and you can license the patent to other companies while

allowing the original licensee also to maintain a non-exclusive license.

A patent grants the holder the right to exclude others from making, using, offering for sale, selling and importing the invention. Some licenses (usually only exclusive licenses) may also include the right to sublicense the right granted. You can limit a license using the components as well.

For example, if a technology requires a significant amount of research and development and investment in production facilities to commercialize, no company is going to invest the time and money to commercialize the technology unless it feels it can make its money back, plus a profit.

So you might grant the exclusive right to make the product to one company that agrees to commercialize the technology. Then you might grant several companies the right to import and sell the product in various territories. This scenario works well, because the manufacturer has the incentive to invest in bringing the technology to market and also has established companies ready to sell the product.

Royalty: Sometimes, lower is higher. One of the most important aspects of a license is the royalty rate. This is the percentage that the licensee agrees to pay you for the rights to the patent and product. Inventors naturally want to negotiate the highest possible royalty—but a high royalty isn't always to the inventor's benefit.

When negotiating a royalty rate, consider several factors. The first is the manufacturer's suggested retail price. This is what the finished product will sell for to the end user. Ask the licensee which target prices it seeks at the retail level. The licensee should be open with this information.

From the MSRP, you can determine the approximate wholesale price by knowing in which channels the product will be distributed. For example, a product sold through mass retail channels will typically have a wholesale price of 35 percent to 65 percent of the retail price. That is the retailer's discounted price.

Again, ask the licensee which channels he or she plans to distribute through, and what the typical discounts are in those channels. Some manufacturers use distributors that require a piece of the pie.

Let's look at an example I recently encountered. A product—let's call it "Hitchy"—was going to be

sold in the automotive aftermarket channel. In this case, the manufacturer sold through a distributor to automotive retail chains, so the channel included a 35/35 mark-up structure. The target retail price was \$19.99. So the retailer would buy the product from the distributor at \$13, and the manufacturer would sell to the distributor at \$8.45.

Let's look at two scenarios which illustrate why the royalty rate is important but should be examined in terms of volume.

A limited exclusive license, the type I most commonly recommend, grants exclusive rights to a company with certain restrictions or limitations.





Inventors naturally want to negotiate the highest possible royalty—but a high royalty isn't always to the inventor's benefit.

Assume the manufacturer's cost of goods is \$5. That means the manufacturer's gross profit is \$3.45, before the royalty. Let's say in the example above, you drive a hard bargain with the manufacturer and demand a 10 percent royalty. That means the royalty is 10 percent x \$8.45, or \$0.845 per unit. And let's assume the manufacturer's minimum required net margin is 35 percent.

This deal won't work! The manufacturer's net margin is only \$2.60 ($\$8.45 - \$0.845 - \5.00) or 30 percent ($\$2.80/\8.45).

Even if the manufacturer decides to go forward with the product, it will have to raise the price to meet its minimum net margin—which will put the product over the magic price of \$19.99. The manufacturer will sell fewer units per year. Why? If you raise the price of any product, fewer consumers will buy the product. This effect, often referred to by economists as price elasticity, has been proven again and again.

So perhaps the manufacturer only sells 100,000 units per year at the higher price. So your total payoff is 100,000 units x \$0.845 per unit—or \$84,500 per year.

But what if you had been more flexible with the royalty rate?

Let's say you were willing to lower your royalty rate to 6 percent to allow the manufacturer to meet its minimum allowable margin while keeping the retail price at \$19.99. Your royalty is now \$0.507 per unit, the manufacturer's net margin 35 percent.

Let's now assume that the lower price results in an increase in unit sales, to 175,000 units per year. Now your total payoff is 175,000 units x \$0.507 per unit—or \$88,725 per year. Your royalty rate went down 40 percent, but your total payoff went up 5 percent!

Performance: Ensure they practice what they preach.

Performance requirements need to be in every license agreement. These include but aren't limited to an introduction date, minimum royalty payments and an anti-shelving clause.

The introduction date is the date by which the licensee will have your product manufactured and ready for sell. The introduction date will vary, depending on the complexity of the product.

Remember, nothing ever goes as planned. Make sure you have a reasonable cure period for the introduction date—usually 30-90 days, depending on the product's complexity.

Minimum royalties also need to be included in a license. The exception is a non-exclusive license. If a company can't meet minimum annual sales targets, you might want to terminate the license or convert it to a non-exclusive license.

Also, make sure your licensee is continuously marketing and selling your product. Unless the product is seasonal, the licensee should be able to meet some portion of the minimum annual royalties in each quarter.

Let's say a licensee has an exclusive license with a minimum annual royalty target of \$100,000 and only sells enough units to pay \$90,000. You would expect the licensee to pay an extra \$10,000 to maintain the exclusive (the licensee might want to credit this against future royalties).

If the licensee refuses to pay the extra \$10,000, you could terminate the license or make it non-exclusive. However, be careful before terminating a license. It means you have to start all over again with another licensee (assuming the license is exclusive)—if you can find one. Certainly, if the licensee only sold enough units to pay \$40,000 in royalties, you would want to at least make the license non-exclusive and perhaps pull it entirely.

Minimum royalties are the toughest terms to negotiate. You want to be fair and reasonable. A tactic I often use is to ask the licensee how many units would have to sell each year to keep the product in the product line. Companies drop products all the time because they don't meet internal minimums. Your product should be no different.

Myths, misconceptions

Giving away the house: Some inventors feel that if they license their product, they are giving it away. But when you license a patent, you still own it.

If you own a house and rent it, you still own the house. If the tenants don't pay rent on time or if they wreck the place, you can kick them out and rent it to someone else.

This works the same for a license. If the licensee doesn't pay royalties or doesn't do what he or she agrees to do in the license agreement, you can terminate the license and license to another company. And if you are careful about licensing the proper rights, you can usually seek multiple licenses.

I can make more money on my own: This is another common reaction I get from inventors once a company comes to the table to license their patent. This is especially true when an inventor looks at the royalty versus the wholesale price and retail price.

But in the Hitchy example above, without knowing the markup in the channel the licensee was selling to, some inventors might wrongly think the licensee was selling the product for say, \$13 to the retailer. Then they would ask, "Why should I get \$.50 when the licensee is getting almost \$8 per unit?"

That is why it is important to know how each channel of distribution works. In fact, the licensee was netting \$2.60, and while this is more than what the inventor was making (\$0.507), you have to consider the risk the licensee took to tool, manufacture and package the product. In risk-adjusted terms, the royalty is fair. This leads to my next misconception.

All I need is a manufacturer: Manufacturing a product in any reasonable volume is risky. It means investing money in setup, tooling and inventory—often before you have sold a single unit. Depending on the product, this figure could range from \$5,000 for a short-run, single-cavity mold to \$100,000 for a multi-cavity mold. Next, the manufacturer will quote you a unit cost for the product at various quantities.

So before you have sold a single unit, you are looking at a significant investment. On top of the tooling and manufacturing cost, you must also look at packaging, marketing, sales, freight and storage costs. And don't forget about product liability insurance.

All I need is my patent: You need much more. To license a product or patent, you need to know how to qualify companies AND know how to give the decision-makers at these companies all the information they need to make a well-informed decision. At a minimum, this will include a proof-of-concept prototype, renderings of a finished product and a positioning of the product with the prospective company you are targeting.

You have to show a company how your product fits its product lines, distribution channels or customer base. And you have to show them how your product will be profitable.

The more innovative the product or concept, the more difficult it is to convince a company to go for it. When dealing with far-reaching innovations, try to also focus on the steps in between and show the company how it can ease its customers into the long-term objective. ☛

Jim DeBetta is founder and president of DeBetta Enterprises, which specializes in consulting for inventors and consumer products start-up companies. The firm also assists clients with product development and engineering of consumer products, as well as sales and marketing representation to major retailers.





Strategic Agreements Can Be a Key Funding Tool

ALTERNATE OPTIONS HELP INVENTORS CONTROL THEIR PRODUCT

BY DON DEBELAK

INVENTORS often don't have the resources to bring their products to market. Many times they try licensing to avoid spending too much money, but in that arrangement they lose control of their product.

There are other approaches inventors can take to maintain control and still get investments to launch their product in a big way. Those options include strategic agreements or partnerships with other companies. Here are some that you might propose to interested companies.

- An exclusive agreement with a manufacturer in which you agree to only use that manufacturer to produce your product for a period of time, in return for the manufacturer offering no cost or discounted fees for product design help, prototype production, mold creations and initial production set-up cost.
- An exclusive agreement that commits you to sell only to one marketer in return for an investment from the marketer, or in return for a down payment on future orders. Inventors might first strike a deal with a marketer, which creates the likelihood of future sales that will encourage manufacturers to give you a deal with them. You don't need exclusive agreements with both manufacturers and marketers, but often doing both creates a synergy to both parties that helps land both deals.
- A private label agreement, in which you package the product with the private label marketing company's name on it rather than your own—with the private label marketer guaranteeing to take a certain volume over a 1- to 2-year period. Inventors often need to sell the product at a discount of 50 percent to 60 percent or more from the suggested retail price, but in return they get guaranteed sales and low marketing costs.
- Joint ventures, in which one or more of the partners own part of the company in return for their investment. You are best off doing this with only one partner; it will help you maintain some control. Among all of the approaches discussed in this article, inventors have the most trouble maintaining control in a joint venture. A joint venture is also the most difficult agreement to negotiate, so use this approach as last resort.
- Taking a marketing commission of maybe 15 percent or 25 percent, in return for the manufacturer picking up all marketing and production costs. Inventors can consider this approach when they don't have any money to offer toward product introduction but have made industry contacts to help market and sell the product. This is often the best approach for inventors who know their industry and how to sell. Manufacturers—especially contract manufacturers that are companies only making products for others—don't have any sales expertise and are desperate for new product opportunities.



Exclusive agreements with manufacturers and/or marketers can benefit all parties.

Tips for success

Try to find inside support in target companies. When you are targeting a company or distributor, you need someone within the company to help promote your idea. You can meet contacts at your target company at trade shows, or by just contacting the company and finding the salesperson who covers your area. Salespeople, regional sales managers and marketing personnel all can be the right one to push your product and deal concept with company management.

Approach a target company after doing market research. Tell the company you have an idea that has received very positive consumer reviews in your market research. Explain that you can't afford to introduce the product on your own, but you feel the product could be a success if you and the company collaborate. Mention you have two or more innovative approaches you'd like to discuss with the company to see if there is any interest.

A patent is helpful. Inventors don't really need a patent to strike a joint-venture or alliance agreement, but it does improve their negotiating position. It also helps ensure that the product's intellectual property rights belong to the inventor. In some cases, the inventor might apply for a provisional or design patent so he or she can say that this has been done. You are better off applying for a utility patent and being able to show that when a potential partner asks to see your patent application. ☑

Don Debelak is the founder of One Stop Invention Shop, which offers marketing and patenting assistance to inventors. He is also the author of several marketing books, including Entrepreneur magazine's Bringing Your Product to Market. Debelak can be reached at (612) 414-4118 or dondebelak34@msn.com.



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1 YEAR AFTER WINNING \$12 MILLION IN A PATENT INFRINGEMENT CASE, BUNCH O BALLOONS INVENTOR JOSH MALONE FIGHTS FOR OTHERS

JOSH MALONE quit his corporate tech job in 2006 to pursue a life of inventing. After eight years of struggling amid growing bills as the father of eight children in Plano, Texas, he realized the American Dream when his Bunch O Balloons—which facilitates filling more than 100 self-tying water balloons in 60 seconds—became a multimillion-dollar sensation.

That should have been the end of a happy story, until corporate infringers took advantage of a severely compromised patent system to knock off his invention. Malone's legal fees, which have now exceeded \$20 million, produced results in late November 2017 when a jury in the Eastern District

of Texas awarded Tinnus Enterprises and ZURU Ltd. \$12.3 million in a patent infringement ruling against telemarketing company Telebrands and its subsidiary, Bulbhead.com. Despite the jury verdict, the fight continues in post-trial proceedings and appeals that are likely to last several more years.

The onslaught of litigation with daily motions, orders, depositions and appeals demonstrated the harsh reality that the legal system is stacked against inventors. As Malone discovered shocking inequities of the system and searched for solutions, he learned that hundreds of other inventors had been defeated simply due to a lack of resources to endure the legal war for their patent rights.

PHOTO BY ELIZABETH MALONE



Caption to go here.



Tuttle: You've become, really, a shining light in the inventor community ... on infringement issues. Tell us about your mission in the community.

I was really shocked that our patent system doesn't work as promised. I knew I had a lot of challenges and risks to overcome to commercialize my product, to market it, to finance it. Good inventors have done their homework, and they're prepared for that.

We recognized that some products are patentable and others are not, and we accept that risk. But when you have a product that you think is patentable, you hire a competent attorney, you follow the procedures, you apply, you go through extensive negotiations and significant expense with the patent office, and at the end of it they agree and they issue you a patent, and on the cover of the patent is a promise that the holder of this patent has the right to exclude all others from practicing the invention. You think you've got something that is going to protect you.

What I found is, it's horrifying. That patent is paper thin; it's no protection at all when a big company with lots of lawyers wants to take your invention—and they do now. And it's gotten so bad that they just sit and watch.

“Hey, you've got a successful product, let me see, how successful is it? Yeah, that's a multimillion-dollar product. I'm gonna take it.” And they take it and they say, “What are you going to do? Are you going to sue me?” And you can sue them, and they will throw their lawyers at you; they will bury you as an inventor.

It's not just that there's bad actors out there. It's that the courts have created these procedures and rules that say even when you win, you don't get to stop the bad guys. They've created all these challenges to whether you really are entitled to this patent or not. And then the America Invents Act in 2011, which most of us inventors were either just kinda not involved or we were concerned about some aspects of it, but it was a bipartisan, widely supported bill that we all thought was going to help us. Well, there was a trojan horse in that bill, and it's called the PTAB—the Patent Trial and Appeal Board.

They created this administrative tribunal, and it works in the patent office, and their job is to cancel patents. Now you have two divisions in the patent office. You have one that their job is to review and consider and evaluate the application and then certify it, and grant the patent.

You have another division that's made up of a bunch of lawyers, and their job is to review these patents and cancel them. Eighty-five percent of these patents, they're canceling when they're reviewed.

“The courts have created these procedures and rules that say even when you win, you don't get to stop the bad guys. They've created all these challenges to whether you really are entitled to this patent or not.” — JOSH MALONE

So after enduring a system that often unfairly favors deep-pocketed corporate infringers, he has become a prominent advocate.

In August 2017, he had led a protest in front of the United States Patent and Trademark Office with the nonprofit group US Inventor. Last November, less than a week after his court victory, he spoke before the U.S. Supreme Court during oral arguments in the landmark *Oil States Energy Services v. Greene's Energy Group* case (which eventually yielded the disappointing verdict that patents are not property rights). Earlier this year, his story was featured in a documentary entitled “Invalidated: The Shredding of the U.S. Patent System.” And he is currently advocating for legislation introduced in the House of Representatives in July, the Inventor Protection Act.

Continuing his fight, Malone appeared on a September podcast on “Inventors Launchpad” with co-hosts Warren Tuttle and Carmine Denisco to discuss his story and mission. The following excerpt focuses on his infringement battle and ongoing quest for stable patent rights. Questions and responses were edited for clarity and brevity.

And so if you're a big company and you want to use a patent, you just have to go to court and you can bury the inventor in court. He's never going to get to a jury, right? That takes three years and 4 or 5 million dollars, so most of them aren't going to get to the jury. But if they did, that infringer's going to have to pay dearly because we don't let you get away with that in America.

Well, with the PTAB, they don't have to ever see a jury. They go back to the patent office and they say, "Oh, you guys messed up." And this PTAB agrees with them, 85 percent of the time or more. And they take this patent that they just promised you and you risked everything on, your investors risked everything on, and they just pull the rug completely out from under you and the infringer can take your invention. They don't have to pay.

Tuttle: Is that where the term invalidated came from—the title of the movie?

Yes. They're invalidating patents. It's a carnage, I will tell you.

Tuttle: You've gone from tech person/engineer to inventor to hit product to now. I've seen you in your jacket and tie, roaming the hall of Congress, and I know you have a bill that you helped sponsor. What has that experience been like?

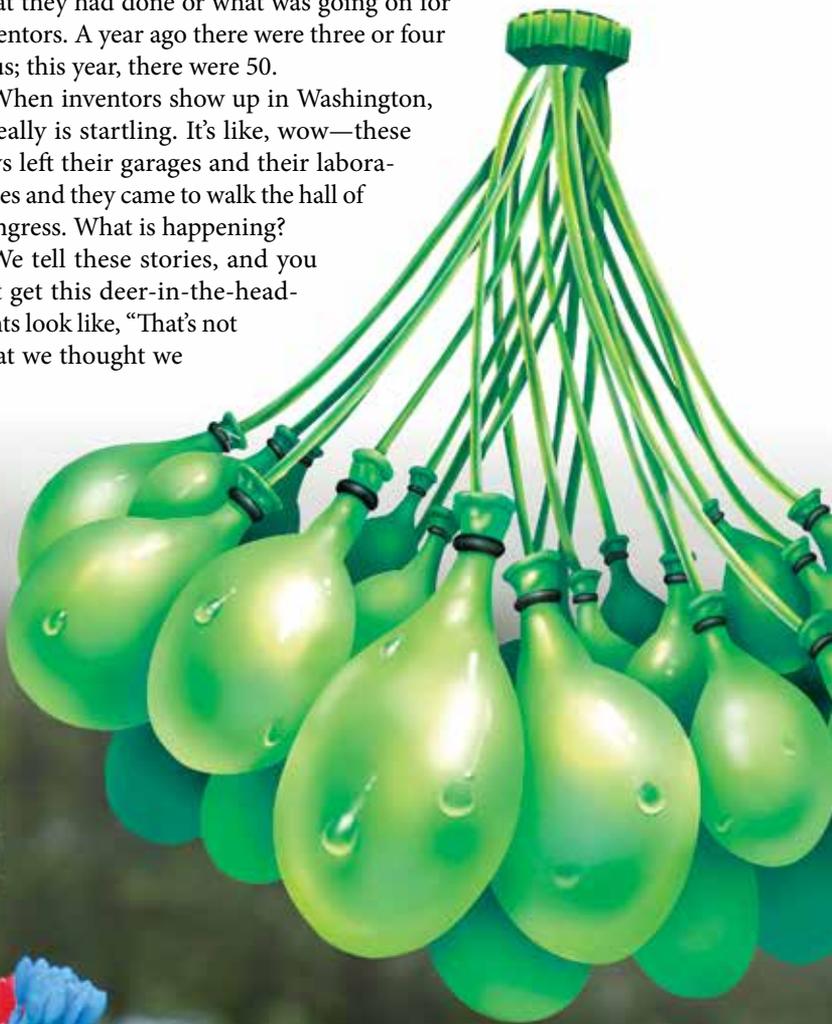
Well, it's the last thing I would have ever chosen to do, right? I spent the last three years either litigating my own case or working with the US Inventor team in Washington.

Just basically, they're in a bubble. They had no idea what they had done or what was going on for inventors. A year ago there were three or four of us; this year, there were 50.

When inventors show up in Washington, it really is startling. It's like, wow—these guys left their garages and their laboratories and they came to walk the hall of Congress. What is happening?

We tell these stories, and you just get this deer-in-the-headlights look like, "That's not what we thought we

Two of Josh Malone's eight children, Emerald and Victoria Malone, show off their Bunch O Balloons in 2016.



were doing here in Washington. We thought we were fixing a problem.” The problem is, they were fixing a problem that was presented to them by Fortune 500 corporations completely out of touch with what’s going on in the inventor community.

And so, we were able to go and tell these stories and say, “Hey, guys, maybe there were some problems that you were trying to address, and maybe some of them were legitimate, but you’ve got to see the collateral damage that’s occurred here. We’ve got nothing to stand on here.”

They said well, OK, this is a horrible story. What can we do? At first we didn’t have an answer. We don’t know how to lobby; we don’t know how to write a bill.

We thought patents were property rights. And they are. They always have been. Like the title to your house, the title to your invention. Only difference is, one is temporary; a patent only lasts for 20 years. That’s what we had.

Fifteen or 20 years ago, the big corporations say hey, maybe we can turn this into a political tool. And the courts started being convinced, Congress got convinced—and then last April the Supreme Court, in a 7-2 decision, said that patents are not property rights. They are public franchises, like a toll bridge.

So it’s a privilege from the government that if you’re rich and connected, you can have one. And this was endorsed by the highest court in the land. The administrative branch, they argued for this. Both administrations, the Obama, the Trump

Administration, the USPTO, the Department of Justice all said yep, it’s a public franchise, it’s a privilege, like food stamps or a toll bridge. The Congress, of course, in recent years created this.

So everyone’s against us! We’ve got a right that is a vapor. If you’ve got millions of dollars and friends in Congress, then you can have a patent.

Tuttle: There’s no question that the modern-day tech behemoths have been on the other side, pushing a lot of this stuff with tremendous lobbying. That’s kind of like what we’re fighting on the other side, right?

You mentioned earlier this new bill (The Inventor Protection Act) that’s been introduced in Congress. This bill is different because it says “Look, if you’re an inventor and you have a patent, you don’t have to go through these procedures that were created for multinational corporations that want a public franchise system. If you’re an inventor, which is the only entity named in the Constitution, or in the Patent Act passed by Congress, then you don’t have to go through all that nonsense. You actually get to go to court and get a jury trial; you get it in 12 months; and you have a simplified approach to determining how much they owe you if you win.”

In my case, we had to hire an economist to prove how much damage they caused, and his bill was \$750,000. It created these nightmare procedures that only the super-wealthy and big guys can get through.

Josh Malone (wearing glasses) is joined by US Inventor founder Paul Morinville and US Inventor President Randy Landreneau in burning their patents during an August 2017 protest outside U.S. patent office headquarters in Alexandria, Va.



PHOTOS BY JULIE ANN PIXLER

GIVE MY
DAD HIS
PATENTS
BACK



Madeline, Gideon, Elizabeth and Lydia Malone also took part in the protest with their father.

(The Inventor Protection Act) simply says that hey, if you're an inventor, you get the basic rights to your patent.

Tuttle: Is this a House bill? If people can reach out to their congressman to be in support of it, your website is USInventor.org?

That's correct.

Tuttle: We have a new director of the USPTO, Andrei Iancu. He seems like a breath of fresh air who gets a lot of things and is not necessarily driven by the big tech firms. What's your impressions so far?

He has to be doing the right thing, because inventors have put pressure on the Administration to fix this. When I went to the patent office and explained to the former patent office director from Google's chief of staff what they were doing to me, and I took the microphone and explained how ridiculous it was and threw my patents on the floor, the next day Michelle Lee resigned.

The person who was put in her place (Joseph Matal), he was a deep-state insider; he was part of the swamp. We were burning our patents in front of the patent office, a bunch of inventors. He didn't get the job either because we're like, this is ridiculous. You guys are putting in people who are working for the lobbyists, and look at the damage they've done.

And so Director Iancu is in place because we exposed what was going on inside the swamp that was the United States Patent and Trademark Office. So he has to do better. There's pressure on him to do better.

No one wants to destroy our innovation system. And so when we exposed that what the big corporations were saying was good for our economy and our innovation system was really only good for the guys on top, now Director Iancu has a very clear charter to restore stability and predictability to patent rights. And he's doing it. He's doing a good job.

Denisco: We're not only proud that you're an inventor and you've made it, but you're also protecting all of our rights. We really appreciate everything you're doing.

We need help. If we just take what I've learned, the message to inventors is, don't file for a patent in the

United States. I don't want to tell them that.

I have to tell them that you've got to keep inventing. You've got to have faith that we're going to fix this, but at the same time you've got to get involved and tell your representatives that we can't stand for this.

We've got to become activists. Every inventor needs to make a call, send a letter, visit your congressman. You've got to do both right now: You've got to be an inventor and you've got to take some time to fix the system so you can enjoy the fruits of your labor.

Tuttle: You recently got a favorable ruling on your infringement suit. Do you think things are looking up?

The patent system is a game of kings. I've been blessed that I've been able to play the game. Every year these guys come out with a new knock-off, and we've got to go beat 'em back again. Folks can't survive this. Inventors can't do this.

The system can work, but not without these reforms we're proposing—which is the way it worked for 200 years. 📦

MASSIVE WAR CHESTS

What kind of resources disadvantage is facing the small inventor who takes a major corporation to court? Here are the five largest amounts of initial damages awarded in U.S. patent litigation cases between 1991 and 2017, according to GreyB.com. All of them involve big companies (with the winner listed first).

1. *Idenix v. Gilead Sciences, Inc.* in 2016: \$2.54 billion
2. *Pfizer v. Teva Pharmaceuticals and Sun Pharma* in 2013: \$2.15 billion
3. *Centocor v. Abbott Laboratories* in 2009: \$1.672 billion
4. *Alcatel-Lucent v. Microsoft* in 2007: \$1.5 billion
5. *Litton v. Honeywell* in 1993: \$1.2 billion



Unblocking the Patent Path

USPTO PROGRAMS CAN HELP SHORTEN YOUR TIMELINE TO COMMERCIALIZATION **BY JOHN G. RAU**

A COMMON QUESTION from inventors is: “After you have an idea for an invention, how long does it take before you are able to successfully commercialize it?”

Good question, but not easily answered.

The answer depends on many factors. Some you can control; many you can't. Obviously, the answer depends on the approach taken to commercialize the invention, and in particular whether a patent is being sought for the invention. Because each patent is different, there is no “one-size-fits-all” or standard invention commercialization timeline.

If the inventor chooses to pursue a patent for the invention, the path faces many hurdles and potential delays. However, you can take steps to potentially shorten or even overcome these.

To patent, or not?

To put this in perspective, examine the steps involved.

An invention starts with an idea. But you cannot patent an idea, only the product or service derived from the idea. As has often been repeated in this magazine, always start with some basic research (i.e., market research) to see whether anyone has invented the same thing you see as an invention.

This could consist of a typical internet-type search or even visiting a Patent and Trademark Depository Library, where you can search early patents and get help from a librarian. Going to stores and “walking the aisles” is good, but that only gives you “local visibility” and not necessarily the “world picture”—which

is important because of the novelty requirement to qualify for patentability. This would normally be about a two-to-three-month process, depending on how extensive your research effort and whether you receive any professional help.

If your initial market research efforts indicate that your invention has been invented before and/or there is enough similarity relative to this “prior art” to suggest that your idea is not really new, you should probably not waste time and money trying to patent it. On the other hand, if you cannot find the exact same invention or your invention is significantly different than what is out there, consider moving to the next step.

At this point, you have some choices: 1) Immediately file for a non-provisional or regular patent application, or (2) Buy yourself some time by filing for a provisional patent application. This gives you an early filing date, the ability to claim “patent pending,” and 12 more months to investigate further what to do with your invention idea.

(The downside to the PPA approach is that now you have added potentially another 12 months to your commercialization timeline. This is not necessarily bad, as you would use the time to gather more information and be in a better position to decide how to move forward with your invention.)

On or before the end of the 12 months, you have to decide whether to file another PPA—incorporating the changes you may have implemented in your invention design—or just move forward and file for the non-provisional patent application.

Consider pro bono, DIY

If you decide to move forward and patent your invention, you have more options. You could hire a patent attorney or patent agent to file your patent application for you, or you could do it yourself to potentially save money and perhaps time. This is where the United States Patent and Trademark Office can be a big help.

The USPTO offers a pro bono program for independent inventors and small businesses that meet certain financial thresholds and other eligibility criteria for free legal assistance in preparing and filing a patent application. The Patent Pro Bono Program is a nationwide network of independently operated regional programs that match volunteer patent professionals with financially under-resourced inventors and small businesses in order to secure patent protection.

Also, the USPTO offers a do-it-yourself option called the Pro Se Assistance Program that will walk you through the necessary steps to complete your patent application. The suggested reference in this regard is uspto.gov/patent.

Once the non-provisional patent application is on file, the examination process begins. This process is commonly referred to as “the wild card” in the patent application process, as it can average at least one and typically two to four-plus years to complete. Know that once the application is submitted, it will sit in a queue for several months and perhaps a year before an examiner even looks at it.

The actual duration it will take for your patent application to be examined and potentially result in an issuance, if found allowable, will vary. A key reason is that the USPTO groups patent applications based on an invention’s technology and assigns patents to technology groups (known as art units) of examiners for examination. If one art unit has more patent applications in the queue than another art unit, those applications will wait longer for examination and possible issuance.

As a result, the first response (called the First Office Action) from the examiner assigned to your application might not occur until a year or so after you have filed. The USPTO provides a tool called the First Office Action Estimator so you can get an estimate of how long it will take for a first office action on a patent application by entering an art unit or the class and subclass associated with your application. See uspto.gov/learning-and-resources/statistics/first-office-action-estimator.

A bigger-picture overview of current time estimates for activities being performed by the USPTO is the Patents Dashboard presented at the Data Visualization Center. It shows current status regarding

Get familiar with the Patent Pro Bono and Pro Se assistance programs, as well as other USPTO tools to help cost-conscious inventors.

filings, pendency, staffing, productivity backlog information. See uspto.gov/boards/patents/main.dashxml. (Your computer must have Adobe Flash for you to view this information.)



Paying for the fast track

In order to shorten the time required to complete the examination process, the USPTO offers a prioritized examination option, known as Track One, for a limited number of patent applications per year wherein the office assigns a priority status to an application. It effectively moves the application from the bottom of the pile to the top.

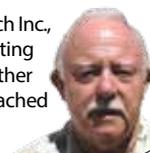
Per the USPTO, the cost for small entities to receive Track One prioritized examination is \$2,000. That fee is reduced to \$1,000 for micro entities. For non-small entities, the fee is \$4,000.

The program’s objective is to get a final disposition within about 12 months—clearly a time savings relative to having to wait 2-5 years. If the issuance of the patent is important to potential investments, sales, business strategies and otherwise time-critical activities, the prioritized examination option is a great tool. See uspto.gov/patent/initiatives/usptos-prioritized-patent-examination-program for further information.

In summary, applying for a patent is a business decision, but doing so may add an additional 1-3 years until you are able to introduce your invention into the marketplace. If it is important for you to establish ownership of your invention, pursue the patent route. If you plan to sell or license your invention, a patent adds substance and therefore value.

If commercialization timing is the most important objective, you must weigh the benefits and costs associated with the patent process. In any case, don’t overlook the fact that the examiners at the USPTO are required by law to help you. Use them to your advantage! 📌

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.





Mr. Iancu Goes to Washington

USPTO DIRECTOR IS QUESTIONING THE OLD GUARD WHILE MAKING OVERDUE CHANGES **BY LOUIS CARBONNEAU**

“Remarkably, in what I believe amounts to Orwellian ‘doublespeak,’ those who’ve been advancing the patent troll narrative argue that they do so because they are actually pro-innovation—that, by their highlighting, relentlessly, the dangers in the patent system, they actually encourage innovation. Right! ...

“Similarly, in our zeal to eliminate ‘trolls’ and ‘the bad patents’ they allegedly use to terrorize society, we have over-corrected and risk throwing out the baby with the bathwater. This must now end, and we must restore balance to our system.”

YOU’D THINK THIS QUOTE came straight from one of the many disgruntled inventors who has witnessed his or her invention blatantly copied with no resources to fight infringers—or from the exec of a non-practicing entity who just saw another patent invalidated by the Patent Trial and Appeal Board, like so many others.

Not quite so! These were the very words of United States Patent and Trademark Office Director Andrei Iancu, given in a recent speech that still resonates. He proceeded to squarely dismantle the “patent troll” myth and instead chose to eulogize inventors and innovators alike as the true engine of the nation’s progress.

Serendipitously, a revised report from the Hoover Institution Working Group on Intellectual Property, Innovation, and Prosperity at Stanford University came out 10 days later showing that Patent Assertion Entities (the ones many people call “trolls”) invest twice as much in research and development than 153 firms identified in PricewaterhouseCoopers’ 2017 Global Innovation 1000 study from 2011 to 2016. Seventeen of the 26 identified PAEs spent either the same share or more of their revenues on R&D as major tech firms Apple or Hewlett-Packard.

Not just a performance

As I read his speech, especially on the eve of very consequential U.S. mid-term elections, I am reminded of the epic 1939 movie “Mr. Smith Goes to Washington.” In it, Jimmy Stewart plays a wide-eyed,

young congressman parachuted by the powers that be to fill a sudden vacant spot, with the assumption that he will shut up and vote as he is told. But Mr. Smith stands up for days behind his pulpit, exposing the entrenched interests and shenanigans of the old guard who have controlled the system for too many years.

When Director Iancu was named at the helm of the USPTO less than a year ago, no one knew what to expect. He had lived in both camps of the patent ecosystem and had no real public policy experience that one could scrutinize in order to predict his future inclinations.

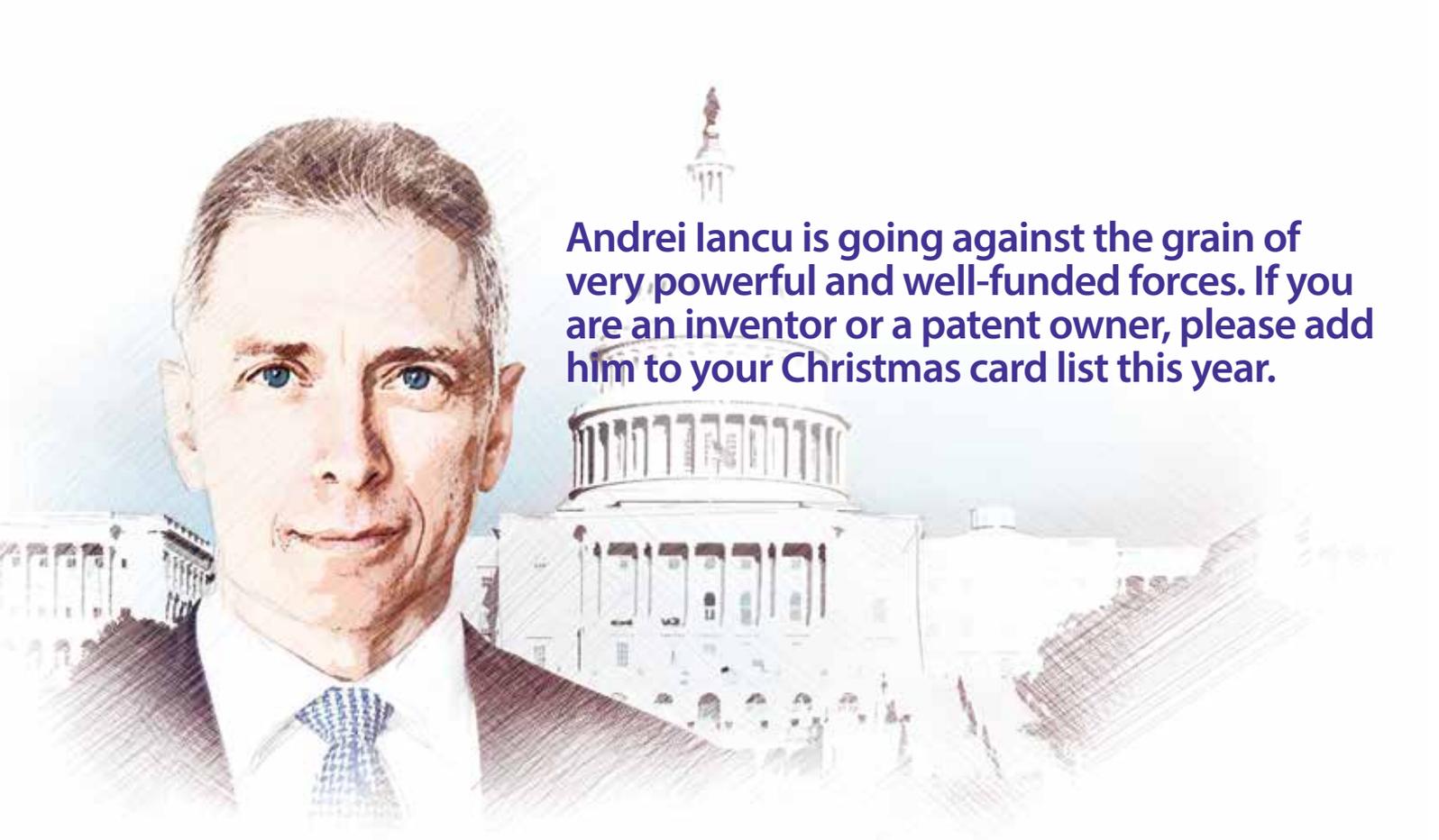
This is certainly no longer the case, and it is a strong reminder that any individual with a bully pulpit can change the established narrative.

In a very short time, this is the tour de force that Director Iancu has accomplished singlehandedly, going against the grain of very powerful and well-funded forces (that are none too happy, apparently). He should be commended for putting the inventor back in the center of the patent system, and the patent system in the center of the American economic success where it belongs. If you are an inventor or a patent owner, please add Director Iancu to your Christmas card list this year.

This is not all talk, though. One thing that has plagued inventors these past years (and led to the demise of a vast majority of issued patents) is the different standard of proof used by the PTAB. Whereas U.S. courts have been using the Philips standard to approach claim validity, the PTAB has been using the “Broadest interpretation Rule” or BRI. This double standard has led to the same patents being declared valid by the federal court and invalid by the PTAB, an objective nonsense.

Starting in mid-November, this double standard was to no longer apply and the PTAB rules were to direct its judges to adopt the same standard as the courts. As Director Iancu stated:

“For the sake of predictability and reliability, the boundaries of a patent should not depend on which forum happens to analyze it. People who want to



Andrei Iancu is going against the grain of very powerful and well-funded forces. If you are an inventor or a patent owner, please add him to your Christmas card list this year.

invest in a patented technology, or who want to invent or design around one, should be able to determine, within reason, what that patent means. Objectively speaking, that meaning cannot, and should not, depend on the happenstance on which forum might review the patent, years after issuance.”

And it goes even further. Rules are being introduced to curb other abuses from the PTAB, such as panel stacking; the PTAB chief judge (who has been closely associated with the PTAB’s checkered past) has recently left his position; and new guidelines have been disseminated to examiners regarding subject matter eligibility.

These new guidelines provide additional clarity and a more pro-inventor approach to issuing patents. This is clearly the other area that continues to plague inventors since the SCOTUS Alice case four years ago. That decision creates a cloud of uncertainty over the validity of patents—which, in turn, affects their transactability and valuation.

In other words, Mr. Iancu is already well into reforming the PTAB, cleaning up the USPTO’s act, and has taken direct action where the U.S. Supreme Court clearly failed to do so when it had the chance (e.g. *Cuozzo*, *Oil States*, etc.). One can only hope that the direction of the USPTO under this new leadership will convince the courts (or maybe Congress?) to finally come up with a test that is fair to inventors and does not require a PhD in semantics to understand.

Maybe this movie has a happy ending, too.

Tale of two cities

As the patent narrative continuously evolves, the main actors also invent new and interesting tactics. On the pro-inventor side, the “Save the Inventor” organization has produced 100 or so short videos illustrating the problems faced by inventors when confronted with “efficient infringers.”

On the other hand, Cisco and a few large tech companies have teamed with MIT to build and make public an archive of prior art to which anyone can contribute. Although this is laudable as a cheap way to conduct better patentability searches and can also serve as a great conduit to make “defensive publications” (to prevent others from patenting the same concept), the intent behind this effort is not too subtle.

The “About” text starts as follows: “Low-quality patents waste money. U.S. companies spend millions of dollars year after year in litigation expenses defending against patents that shouldn’t have been issued...”

Despite this obvious bias, I am squarely of the camp of those who believe there is no place for patents that read on prior art and I see this new portal an overall positive development. Many inventors are falsely lulled into thinking their patents are strong just because the examiner did not find any relevant prior art. If only they knew better.

Microsoft goes open source

In other big news, two back-to-back moves from Microsoft are going to have a potentially huge market



I'LL SEE YOU IN COURT

Some noteworthy new cases recently. In a sign that patent litigation is no longer the apanage of the U.S. courts, **Broadcom** filed a \$1 billion lawsuit against **Volkswagen** in Germany surrounding some automotive patents. ... **Finjan**, which has had quite a successful track record this past year, filed another suit—this time against **Fortinet** in California, for alleged patent infringement. ... In a separate suit, **Fiat Chrysler** and **Ford Motors** were also sued by a U.S.-based NPE over cruise control-related patents. ... **HTC** was taken to court over virtual reality-related technology by Texas-based **Motiva Patents**.

impact. First, Microsoft announced it was joining the LOT Network (which is essentially a patent “poisoned pill” for non-practicing entities, i.e., patent-holders with no intentions of developing their patents).

A few days later, it joined the Open Innovation Network, essentially licensing its 60,000 patents for free to the open source community. Many commentators have speculated as to the true reason behind this momentous decision.

Has Microsoft simply already extracted most of the value of its portfolio, generating billions via its Android patent licensing campaign? Can its Azure cloud solution only grow if it does not represent a threat to open source developers? Did Microsoft’s acquisition of open source development platform Github leave it no choice?

Probably all of the above. We are eons away from the “Linux is cancer” Steve Ballmer pronouncements and lately, the company has come back to its original roots: the developer community. Either way, this means the Microsoft patent portfolio, if it were on the books, would take a significant write-off today since it is now more heavily encumbered than ever. On the other hand, it also means that Linux- or Android-based players no longer need to preemptively acquire patents that may read on Microsoft, as the threat is gone. So these announcements would appear to decrease both supply and demand at the same time, which is rather unusual.

Buyers and sellers

In a move that has to be related to its ongoing litigation with Blackberry, **Facebook** is reported to have acquired about 100 patents from **Provenance**, the “rent-a-patent” outfit started by CEO Dan McCurdy a year ago. ...

In Asia, Japanese powerhouse **Fujifilm** sold more than 900 patents to Chinese-based **O-Film** for \$28 million. As large as this transaction might be, it was dwarfed by another large purchase by NPE **Dominion**

Harbor, which acquired roughly 3,500 patents from **Panasonic**. This deal shows again that the privateering model is still alive and well. ...

Still in Asia, we saw an acquisition by Chinese telecom carrier **Oppos**, which loaded up on standard essential patents from Scandinavian **Telia**. ... There was also a rumor that **Intellectual Ventures** had sold its Fund #4, which was later denied. Stay tuned on this one.

Winners and losers

The biggest recent winners were undeniably public IP company **Unwired Planet** and all other Simplified Employee Pension owners who scored a big victory in the UK courts when the appeals court upheld the lower court’s decision. This decision will breathe new life into the monetization of SEP portfolios and should also position the UK as the next battleground for such battles (instead of Germany), at least when it comes to Europe. ...

Qualcomm is still struggling to collect licensing revenues from **Apple** that it thought were agreed upon, now that Apple is challenging its payment obligations after its antitrust complaint against the former. Apple is now telling its channel to withhold such payments, which amount to more than \$3 billion. Qualcomm also received disappointing results at the ITC after it had actually won its case; however, the court refused to issue an exclusion order (roughly similar to an injunction), which is really the only thing of value one can extract from an International Trade Commission case as there are no damages available. ...

It was also a tough month for **Allergan**, which for all intents and purposes will not be able to bypass the PTAB as it intended when it sold its patents to the St. Regis Mohawk Tribe. ...

On the winners’ side, **Comcast** dodged a bullet when it succeeded at the PTAB in invalidating some Rovi patents that were asserted against it. ...

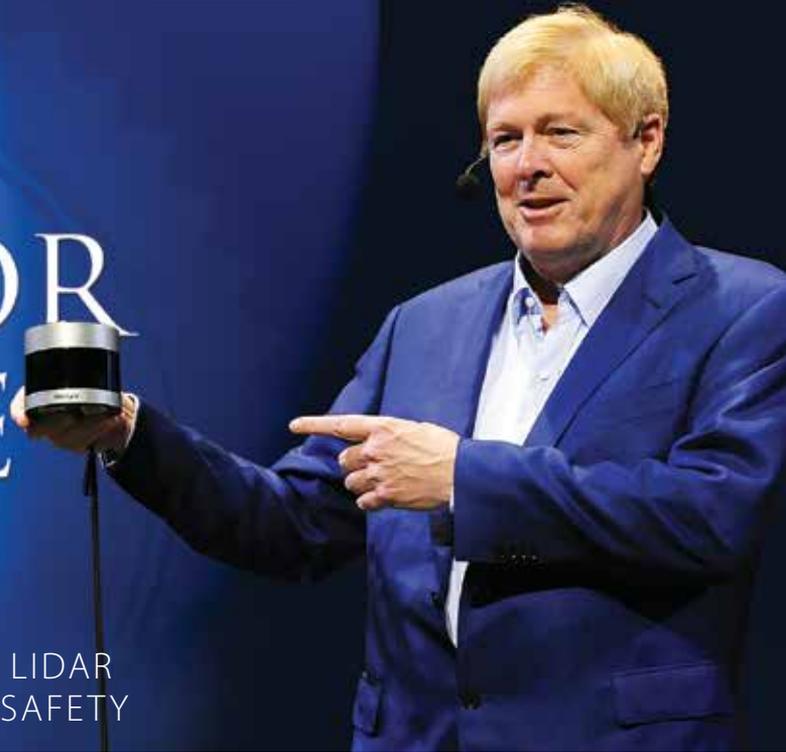
Finally, all of us will be losing the excellent reporting of Dan Lonkevich, who had been the hand behind the weekly **The Patent Investor**. He announced recently that he will discontinue the publication. ☹

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.



INVENTOR OF THE YEAR

IPOEF TO HONOR DAVID HALL FOR 3D LIDAR
THAT AIDS IN AUTONOMOUS VEHICLE SAFETY



It's been quite a year for LiDAR and ladar—and in particular, quite a year for David Hall.

The founder and chief executive officer of Velodyne LiDAR, Inc., Hall created the groundbreaking 3D LiDAR sensor technology that enables advanced vehicle safety and performance for autonomous vehicles. For that, he has been named the Intellectual Property Owners Education Foundation 2018 Inventor of the Year. He will be honored at the annual IPO Education Foundation Awards Dinner, celebrating leaders and innovators in intellectual property on December 11 in Washington, D.C.

In June, Joseph Marron of Manhattan Beach, California, was awarded the 10 millionth U.S. utility patent for “Coherent Ladar Using Intra-Pixel Quadrature Detection,” according to the United States Patent and Trademark Office. Ladar stands for laser detection and ranging.

LiDAR stands for light detection and ranging. LiDAR sensors provide the high-resolution information about the surrounding environment that is required for fully autonomous driving. Velodyne LiDAR is the industry leader, supplying virtually every automaker and autonomous vehicle company with its sensors. LiDAR sensors are also used for mapping, industrial and other uses.

“It is an honor to be recognized by the Intellectual Property Owners Education Foundation, and I

3D LiDAR gives autonomous vehicles real-time, 360-degree vision that set the stage for revolutionizing the automobile industry.

appreciate their efforts,” Hall said. “Intellectual property protection is imperative to fostering innovation and is a valuable asset to new technology.”

A serial inventor who owns more than 30 U.S. patents, Hall got the idea to leverage LiDAR technology for autonomous driving after being one of the original entrants in the DARPA Grand Challenge for autonomous vehicles. In 2005, he invented 3D LiDAR to give autonomous vehicles real-time, 360-degree vision that set the stage for revolutionizing the automobile industry.

Hall founded Velodyne Acoustics in 1983 as an audio company specializing in low-frequency sound and subwoofer technology. In 2011, he launched Velodyne Marine and debuted its first self-stabilizing craft, the Martini, at the 2013 Miami boat show. This prototype was the world's first sea-faring vessel with an active suspension.

Hall is the son of an engineer whose father was a physicist. “Creating things is in my DNA,” he said. 🚗

PART 2 OF 2

Boot Camp a Hit With Students in D.R.

THEY RESPOND EAGERLY, EFFICIENTLY TO DESIGN-BUILD-PITCH CHALLENGE **BY JEREMY LOSAW**

MANY NATIVE DOMINICANS say that resort area Punta Cana is not the real Dominican Republic, but it was a “must” stop when I was there for the Young Leaders of the Americas innovation boot camp I hosted with partners Emil Rodriguez and Eric Gorman.

It is difficult to have an authentic experience there, as it effectively functions as an adult day care for American and Russian tourists. The beach was warm and beautiful, and our Dominican hosts procured us tickets to a Gente de Zona concert at one of the resorts. Their hit song “La Gozadera” has more than 1 billion hits on YouTube, although few people north of Florida have ever heard of them.

The snorkeling was amazing and I had a great time at the concert, but I had my fill. By the time I watched a drunken American tourist trip and fall into the water on the beach and have to be pulled to her feet by three Dominican tour guides, it was time to get back to Santo Domingo and innovate.



Gabriella Molina (left) and Amalia Santana from the Piper team take their first prototype out into the streets for feedback.

Presenting the challenge

Our boot camp was based on design sprint methodology, which is when you put a focused amount of time (usually a week) building a just-good-enough prototype to get customer feedback before investing bigger time and cost budgets to fully develop a product or process.

We wanted to challenge the students to quickly get to the root of the design challenge and build a minimum viable product in a short time—and then pitch their concepts to potential investors. It was effectively a hybrid between Jake Knapp’s design sprint philosophy from his book “Sprint” and StartupBus.

The challenge we gave the students was: How can we get more people to grow plants effectively at home? The students were mostly engineers and designers, so we hoped they would dig into the challenge of building a physical product.

However, as the students filed in to our classroom at INTEC University on the first morning, I started to feel nervous about how this would go. Were they going to speak English well enough to understand our content? Would they be interested in our design challenge?

At lunch time, the room was covered with sticky notes from the four teams ideating. I knew it was going to be an awesome week.

Building begins

Eric Gorman kicked off things the right way by sparking some critical thinking. He encouraged students to ask key questions to get to the heart of the challenge: “To meet our goal (more people growing plants at home), what has to be true?” and “Imagine we’re in the future and our project failed. What might have caused that?” This got them thinking through the depth of the challenge and got the creative juices flowing.

The next morning, we had the students build some prototypes to test their concepts. They needed to get early feedback before spending hours engineering it. Eric showed them how even a simple prototype can be leveraged to gain key insights from potential customers.

To demonstrate, he wrote “Dominican Cola” on a sticky note, slapped it onto a bottle of water, and started mock interviews with the students about what “Dominican Cola” might be. It was a great exercise to show the students how simple a prototype can be in the early stages before getting bogged down in technical details.

Now it was the students’ turn to prototype. Keeping with the sprint theme, they used simple materials and found goods to build their prototypes. Cardboard, pieces of plastic and fake plants borrowed from the dining hall were all used to good effect.

In a few hours, all four teams had rough but communicative prototypes. At lunch time we sent them out to the streets and to local businesses to conduct interviews and get crucial feedback.

Meanwhile, Emil Rodriguez, Eric and I grabbed some lunch and then took a quick tour of the botanical gardens that were adjacent to the university. After seeing the splendid Japanese garden and a bunch of orchids, we got some ice cream and headed back to class. As a result of the initial consumer feedback, two of the teams decided to change their concept completely. Those teams scrambled to build new prototypes, while the other two teams started engineering and design work for their final prototypes.

Scenes of motivation

Later that night, we got a small taste of the small but vibrant Santo Domingo start-up scene. Emil took us to a Startup Grind event on the rooftop of a hip local coworking space.

The scene would not have looked out of place in any American city center. Local entrepreneurs and students came out to listen to Ligia Bonetti talk about her experience building a company in the Dominican Republic. I understood very little of it, despite my best attempt to concentrate and furiously type words into Google Translate on my phone.

What I did find out through a re-hash of this talk in English, as well as conversations with other local entrepreneurs, is that there are many challenges for innovators in the D.R. They have a little-used or appreciated patent system, a largely agricultural and service-based economy, and are literally on an island. But there is a core of motivated citizens working hard to build great businesses and strengthen the Dominican economy.

Back at the boot camp, it was time to start engineering and make looks-like, works-like prototypes. I helped team members strategize as to how to design their parts so that they could be easily made;

While half the students prototyped, the other half prepared their pitches. Teams finalized their decks.

Both boot camp students and facilitators, shown here, benefited from the program.





Above: A beautifully executed prototype of the “M Garden” featured lights and a prototype touchscreen.

Above right: From left, Jose Enrique Correa Asencio, Diana María Pastrano Nuñez and Belmarie Morel from the M Garden team work on their prototype.



The final day was a whirlwind. All four teams worked right up to the final minute (and beyond).

Emil and his team from Xolutronic (the engineering company he cofounded) helped students with electronics design and coding. Soon, the room was bursting with activity.

Mechanical engineers were making CAD files, electrical engineers were coding their microcontrollers, and the designers were working on collateral materials for their pitches. However, there were challenges ahead.

Emil and I realized that due to the size of the products being designed, the 3D printers we had were going to take too long to build the students’ devices. This complication was a very real-world challenge. I inquired about trying to find a laser cutter, which would be much faster. After a few phone calls, Emil’s team found one in town that we could use.

This made prototyping easier for us, but we had little time to get together CAD files. I helped the teams tune their files, and we submitted them just in time to get our parts made before the last day of the program.

Whirlwind climax

The final day of the bootcamp was a whirlwind. The official summer term at INTEC had started, and we were kicked out of our original classroom to make room for scheduled classes. We were fortunate to find a new, albeit smaller room, and the teams forged on dutifully with their prototypes.

The 3D printers whirred away on smaller parts, and the students frantically glued parts together and painted them. While half the students prototyped, the other half prepared their pitches. Teams finalized their decks, and Emil and I had each team do

two practice pitches before our official event that evening.

All four teams worked right up to the final minute (and beyond). Meanwhile, representatives from the U.S. Embassy, a local angel investor, a couple of professors and the owners of Dominican-based hydroponic farming company Futura Farms filed in to watch.

The teams placed their prototypes on the tables in the lecture hall and gave their 3-minute pitches. I did not understand every word because they did their presentations in Spanish, but I was proud to see how confidently they were delivered and how polished their decks were. They took and answered difficult questions from the audience with great poise. The prototypes looked great; one of them even had a working app that would turn on and off the lights above the plants.

The teams finished to a warm round of applause. The industrial design professor joked that the students now had no excuse not to create great work in their forthcoming classes, based on what they had built in a few days.

As we cleaned up the classrooms and headed out of the university, I had mixed emotions. I was proud of what the students had achieved and thankful for the YLAI program to have had the opportunity to work with the talented youths of the D.R. and share my experience. But I was also sad to leave Emil and his team after having such a great time working with them. I hope to have the opportunity to go back and do it again. 🍷

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





Yaseen Noorani (left) and Nicolas Orellana (right) would like to see their turbine installed to large structures.

INTERNATIONAL JAMES DYSON AWARD

STUDENTS' O-WIND TURBINE HARNESSES MULTIDIRECTIONAL WIND FOR RENEWABLE ENERGY

Compelled to solve the problem of producing renewable energy in unlikely environments, Nicolas Orellana and Yaseen Noorani found the answer was blowing in the wind.

The International Innovation Masters program students at England's Lancaster University have harnessed urban wind with an inventive type of turbine they call the O-Wind, which won them the 2018 International James Dyson Award.

As cities are increasingly built taller, they become windier. This becomes a problem in terms of finding renewable sources of power generation, because traditional turbines only capture wind that travels in one direction.

This is particularly challenging in the many cities where wind is unpredictable and comes from all directions. Wind often becomes trapped between buildings, is pulled down into the street and pushed into the sky. Such wind chaos makes conventional turbines unusable.

The O-Wind Turbine, using a simple geometric shape, generates energy regardless of the way the wind blows. Here's how it works:

O-Wind is a 25cm sphere with geometric vents that sits on a fixed axis and spins when wind hits it from any direction. When wind energy turns the device, gears drive a generator that converts the power of the wind into electricity. This can either be used as a direct source of power or can be fed into the electricity grid.

Orellana, from Chile, became interested in the challenge of multidirectional wind after studying NASA's Mars Tumbleweed Rover project, which failed because it was powered the same way as traditional wind turbines. He and the Kenya-based Noorani want their turbine to be installed to large structures, such as the side of a building or on a balcony, where wind speeds are at their highest.

Sir James Dyson called the O-Wind "an ingenious concept." Said Orellana: "Our belief is that if we make it easier to generate green energy, people will be encouraged to play a bigger role in conserving our planet. Winning the international James Dyson Award has validated our concept." 🏆



Sounds Good to the Music Industry

NEW COPYRIGHT LAW HELPS ENSURE SONGWRITERS, ARTISTS GET PAYMENT FOR LICENSING OF THEIR WORK **BY AMY GOLDSMITH**

WHAT DO California, Florida and New York have in common besides coastlines? They all were sites of recent disputes between Flo & Eddie, the owner of pre-1972 musical recordings, and Sirius XM, which publicly performed those recordings.

The issue was whether common law or statutory copyrights existed in those states and if so, what level of compensation was due for the public performance. When Congress permitted sound recordings to be copyrighted more than four decades ago, it didn't extend that coverage to pre-1972 recordings.

This issue, and the piecemeal nature of licensing for digital music on a per-work, per song basis, were part of the impetus for the stakeholders in the music industry to work together to create the Music Modernization Act, signed into law by President Trump on October 11. The MMA extends the royalty treatment to songs recorded before 1972.

According to numerous media reports, witnesses to the signing included music industry executives and artists such as Kid Rock, the Beach Boys' Mike Love, and Sam Moore of the 1960s-70s soul duo Sam & Dave.

"The Music Modernization Act closes loopholes in our digital royalties laws to ensure that songwriters, artists and producers receive fair payment for licensing of music," the president said before signing the law. "I've been reading about this for many years and never thought I'd be involved in it, but I got involved in it. They were treated very unfairly. They're not going to be treated unfairly anymore."

Recent background

In November 2016, Flo & Eddie got a multimillion-dollar settlement in their California federal lawsuit. (Flo & Eddie were originally known as Mark Volman and Howard Kaylan, of the 1960s pop-rock group the Turtles.)

That same year, music streaming platform Spotify agreed to pay the National Music Publishers Association \$30 million. In 2015, Sirius XM settled with some of the major music labels for \$210 million.

This May, a settlement in a Spotify class action resulted in \$43 million for past mechanical royalties for songwriters and publishers, and perhaps \$63 million for future payments. Spotify was pursued for its alleged decision to systemically avoid paying mechanical royalties to songwriters and publishers.

Flo & Eddie lost in Florida and New York because no common-law copyright rights existed. But they won in California when the court held that California civil code protects pre-1972 sound recordings.

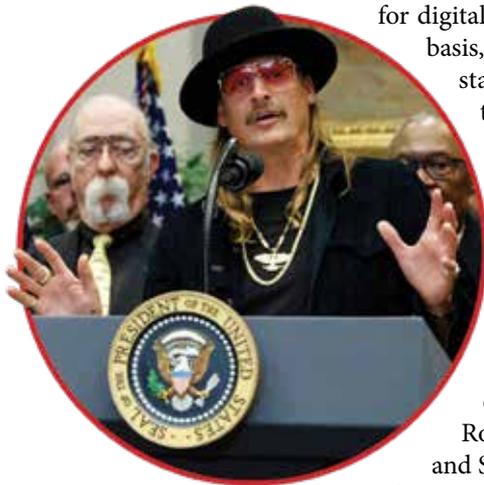
The district court granted Flo & Eddie's motion for summary judgment, and Sirius XM was held liable for unauthorized public performance for broadcasting and streaming pre-1972 sound recordings as well as for conversion and misappropriation. Factual disputes prevented summary judgment against Sirius XM for reproducing the sound recordings in operating its satellite and internet businesses.

Unresolved questions, cases

The Flo & Eddie saga isn't quite over. The following question was certified to the California Supreme Court in *Flo & Eddie v. Pandora* (SiriusXM bought Pandora Media, a streaming radio service, in September for \$3.5 billion): (1) Under section 980(a)(2) of the California Civil Code, do copyright owners of pre-1972 sound recordings that were sold to the public before 1982 possess an exclusive right of public performance? (2) If not, does California's common law of property or tort otherwise grant copyright owners of pre-1972 sound recordings an exclusive right of public performance?

It's no secret that the MMA, even in draft form, was and is a compromise bill. It eliminates certain remedies, such as statutory damages and attorneys' fees, against streaming services such as Spotify unless a lawsuit was filed before Jan. 1, 2018.

On December 29 of last year, Wixen—a copyright management and royalty compliance company that



Kid Rock speaks during a signing ceremony for the Music Modernization Act at the White House.

Ex-Turtles Flo & Eddie had filed well-publicized copyright lawsuits in California, Florida and New York.

represents artists that include Tom Petty, the Doors, and Janis Joplin—sued Spotify for streaming thousands of songs without paying mechanical royalties to songwriters and publishers. Wixen wants Spotify to pay \$1.6 billion. The litigation is ongoing.

Important changes

Besides adding pre-1972 sound recordings, including a public performance right, to the Copyright Act, the MMA made several significant changes to how the people who create music—songwriters, vocalists, and instrumentalists—are compensated. And for the first time in U.S. copyright law, the work of producers and engineers is specifically recognized.

SoundExchange, which manages the payment of digital streaming royalties for post-1972 works, is tasked with payments to all stakeholders for the now-covered pre-1972 works. This is a much-needed revenue stream for producers and engineers whose older sound recordings were used for many years on a royalty-free basis.

In a stark change from prior practice, royalty rates will be negotiated using the fair market value concept of the “willing buyer, willing seller.” The goal is to increase compensation to the music creators when digital platforms (which had made millions from streaming) use their music.

This fair-market value approach will also be utilized in setting royalty rates for works in the databases of performance rights organizations ASCAP and BMI. And instead of one Southern District of New York judge assigned to all of these cases, the assignment will be random.

Public database of music

Significantly, the MMA creates a new Mechanical Licensing Collective, funded by the digital services, to issue blanket mechanical rights licenses to the digital services and collect and distribute royalties to songwriters and publishers. This comprehensive public database should be a boon to the music industry.

The collective is tasked with identifying rights holders and creating a public database of musical works and sound recordings so that attribution

information—matching songwriters and publishers to songs—can be corrected and timely payments made. The prior cumbersome notification process, in which the user had to send notification requests to the last known address of the musical copyright owners, will be replaced entirely after a transition period.

The next step is for the U.S. Copyright Office to issue the underlying regulations for the 17-member MLC board, which will include music publishers (10 voting members), songwriters with publishing rights (four voting members), and one non-voting member from each of these groups: a nonprofit advocating for songwriters, a nonprofit trade association of music publishers, and a digital licensee coordinator (three members).

Open issues

Not all issues in the music industry were solved by the MMA.

Licensing of physical sound recordings (vinyl and CDs) will still occur on a per-work, per song basis. Terrestrial radio pays songwriters and publishers royalties for playing music, but it doesn't pay performance or sound-recording royalties. And though the goal of one public database is laudable, the responsibility still lies with songwriters and publishers to submit copyright applications and to submit all of their musical works and sound recordings to the MLC.

Though copyright owners may (at their own expense) use an auditor to review the royalty payments once a year, if there is an underpayment, the MLC will pay that amount but not the cost of the audit. Additionally, the 10 music publishers on the MLC board outvoted the independent songwriters. 🗳️



Mark Volman (left) and Howard Kaylan of the Turtles perform in Coconut Creek, Fla., in 2013.

Amy B. Goldsmith is co-chair of the intellectual property group at Tarter Krinsky & Drogin. She partners with clients to provide practical legal advice and connections to grow their businesses.





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Best wishes, Jack Lander

IoT Corner

The Kyle Academy in Ayr, Scotland, installed the world's first **Li-Fi light-based networking system**. It uses a series of LED bulbs installed in classrooms and USB dongles that are inserted into the students' laptops to receive the data.

By pulsing waves of the light at speeds imperceptible to humans, the system can transmit data to devices at a rate as high as 224 gigabits per second. The system was developed by tech company pureLiFi, founded by professors at the University of Edinburgh.

Li-Fi's broad bandwidth capability helps take the strain off congested Wi-Fi networks and transmits data securely. The LiFi network at the Kyle Academy is being trialed at the offices of British telecom provider O2. —*Jeremy Losaw*



Wunderkinds

Already tired of bone-chilling winter cold? **Kathryn Gregory's** got your wrist.

In 1994, she was 10 when she invented Wristies—a fingerless glove that could be worn under mittens to keep wrists warm.

With her family's help, she started manufacturing her product and in 1997 began selling it on QVC while becoming the youngest person to sell merchandise on that network. The U.S. patent office highlighted Wristies in an article on winter patents, noting the formal title of U.S. Patent No. 5,864,886: "Article of Thermal Clothing for Covering the Underlying Area at the Gap Between a Coat Sleeve and a Glove."



What IS that?

They're **snandals**—a combination of shoes and sandals. This photo, posted in 2014 on imgur.com, claims they are "my grandma's invention." UrbanDictionary.com calls snandals "hideous, unexplicably (sic) popular sneaker/sandal hybrid shoes such as those made by Keen," but we could find no such product offered by the company.

14.7%

The growth in **music-based piracy** in 2017, according to the annual Global Piracy Report from data tracker MUSO. There were 73.9 billion visits to music piracy sites worldwide.



WHAT DO YOU KNOW?

1 The registered trademark "Sharing is Caring" is the property of which organization?

- A) Red Cross
- B) Salvation Army
- C) United Way
- D) UNICEF

2 **True or false:** A patent does not protect an invention everywhere in the world.

3 In which century was the tradition of Christmas trees invented as we now know it: 16th, 17th or 18th?

4 **True or false:** A man best known for inventing the first steerable runner sled is in the National Inventors Hall of Fame.

5 Rapper Vanilla Ice paid royalties to which artist(s) for the opening bars of his hit "Ice Ice Baby" to avoid a threatened copyright case?

- A) Marty Ray Project
- B) Wild Cherry and Rick James
- C) Crazy Frog
- D) Queen and David Bowie

ANSWERS: 1. B. Filed in December 2000. 2. True. Patents are national in scope. 3. Germany is generally credited with starting the Christmas tree tradition in the 16th century, when devout Christians brought decorated trees into their homes. 4. True. Samuel Leeds Allen invented the Flexible Flyer, the most famous American sled, in the 1880s. It remains in production. 5. D.

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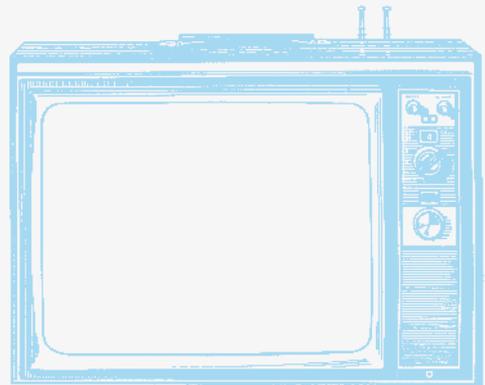
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