

# Inventors

MARCH 2019 Volume 35 Issue 03

DIGEST

## Tears and TRIUMPH

LIZ CROUCH'S INVENTING AND LIFE CHALLENGES

**U.S. Leaps in Rankings for Patent Protection**  
RESULTS HIGHLIGHT IANCU'S SWIFT IMPACT

**Death By Inventing**  
A BIZARRE HISTORY OF TRAGIC ACCIDENTS

**Reinvent Your LinkedIn Profile**  
PERSONAL ACCOUNT CAN AID IN MARKETING

\$5.95

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## Life's Hurdles Add to Inventors' Challenges

Thomas Edison began and completed work on the most iconic invention in American history amid an ongoing personal challenge, the biggest of his life.

His young wife, Mary Stilwell Edison, was sick. A lot. She was only 23 when her husband began serious research on the incandescent light bulb in 1878; the following year, he filed a U.S. patent for his carbon-filament lamp that is known as the first commercially viable incandescent bulb. He reportedly conducted thousands of experiments in this pursuit.

Edison's preference to spend most of his time in the laboratory reportedly caused tension between him and his wife, especially because of her many illnesses. But he loved her very much. When she died in 1884 at age 29—various accounts have listed congestion of the brain, a brain tumor, typhoid fever or even morphine overdose as the cause—Edison was said by his daughter, Marion, to be "shaking with grief, weeping and sobbing."

One of the most fascinating and seldom-mentioned aspects of inventing is that often, important innovation occurs in the face of great personal stress. In short, life throws us random roadblocks—which, in tandem with invention-related hurdles, can provide a rugged test of strength.

Liz Crouch doesn't pretend to be in Edison's class of inventor, but she knows firsthand the trials of working through an invention while "life happens."

This month's cover subject recently endured a nerve-racking false alarm when she thought her cupcake rack had been knocked off. A year after she conceived her invention, plans to bring it to market were interrupted by a hospital vigil for an infant grandchild who had been beaten so badly that doctors said his prognosis was hopeless.

Now she faces a medical emergency involving another grandchild: Five-year-old Brooklyn (left, with mother Chelsea McShane) has nodular fasciitis, a rare benign aggressive fibrous tumor.

On the last day before this issue's press deadline, an anxious grandmother was in an Oregon

hospital awaiting the result of a planned conservative surgical removal from inside Brooklyn's mouth that will leave a considerable hole in her jaw.

"They will use donor bone to graft the area," Crouch reports. "Since the surgeon is being conservative, there will still be risk of recurrence, so we will have to watch her for the next few years."

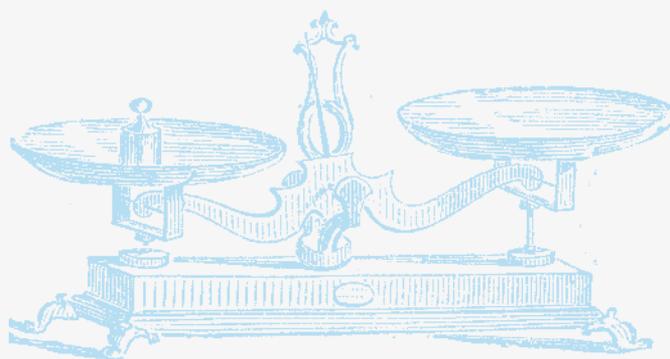
The accomplishments of inventors are admirable for the products and services that enrich our lives. But their dedication and focus amid serious life challenges is an important part of the equation, albeit one that is typically overlooked.

—Reid

(reid.creager@inventorsdigest.com)



# American innovation needs to hit the gym



Weakened patent protections have reduced the value of American inventions. To strengthen American innovation, support the STRONGER Patents Act—legislation designed to restore strong Constitutional patent rights, limit unfair patent challenges, and end the diversion of USPTO fees.

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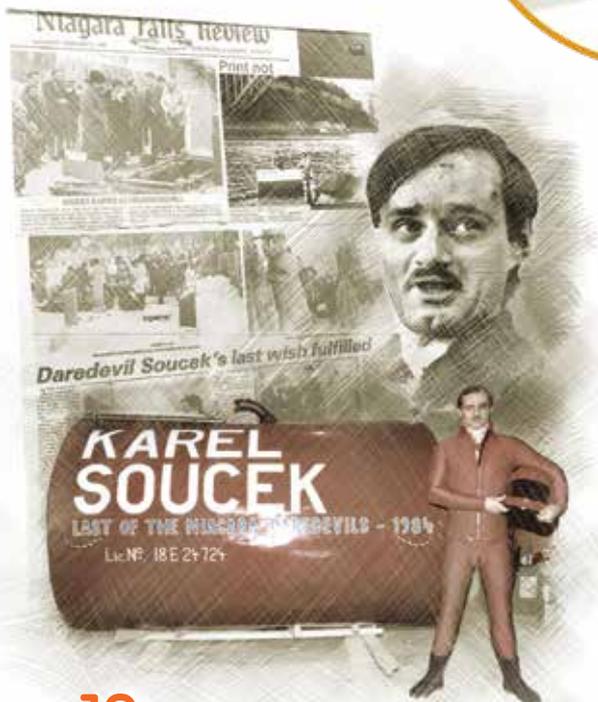
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Liz Crouch, inventor  
of The Cupcake Rack;  
photo courtesy of  
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## CORRESPONDENCE

Letters and emails in reaction to new and older **Inventors Digest** stories you read in print or online (responses may be edited for clarity and brevity):

*"A List of U.S. Start-up Competitions" (February 2018, part of an issue with a start-ups theme):*



I liked this article about the startup competitions. I believe it is a great opportunity for startups to participate in and get a positive outcome from it. There is another article that was published recently, "The Startup Competitions That You Can't Afford to Miss in 2019," where you

can read about the same competitions but also many different ones.

—LILI (LILI@VALUER.AI)

*"2019 Trade Shows Calendar" (January 2019):*

Indie Beauty Expo, May 15-16, Dallas, TX  
Handcrafted Soap & Cosmetic Guild Annual Conference May 16-19, Dallas, TX —KARIN EMPSON

*Editor's note: Every year we run this list, we get suggestions about shows that we may have overlooked. Although some of those suggestions aren't related to inventing, the health/beauty industry does have an inventing component. And it's always growing and innovating.*

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## IS THIS CONTROVERSY JUST THE TIP OF THE ICEBERG?

When *National Geographic* senior photo editor Vaughn Wallace tweeted out a new dramatic cover image for the iconic magazine last May, the response was immediate and strong—though not in all of the ways he had intended.

The image featured a partially submerged iceberg, or at least at first glance. A closer look showed it to be a discarded plastic grocery bag. The text said: "PLANET OR PLASTIC? 18 billion pounds of plastic ends up in the ocean each year. And that's just the tip of the iceberg."

The image (photo by Jorge Gamboa) went viral soon after the May 16 tweet. It was "liked" more than 100,000 times, retweeted nearly 60,000 times, and drew widespread praise from the public as well as other major media outlets.

Artist Matus Bence wasn't among them. He tweeted to Wallace a photo of another plastic bag in the ocean, which he apparently created in 2015 to help advertise Tesco reusable bags.

"thats [sic] sad that you chose a stolen idea and 'artwork' to be on your cover

page. NatGeo should know better," Bence wrote.

Was the *National Geographic* photo a copyright violation?

On the one hand, ideas are not covered by copyright law—but the way those ideas are expressed is.

Pixsy.com, which declares "We fight for the rights of artists," asked Pixsy legal partner David Leictman about the case. He said:

"The questions a court will consider in a case like this is whether there are multiple ways to express the same idea and then whether the second image is not just similar, but strikingly similar.

"Here, the details of the images are quite close—while the bag is shaped a bit differently and the original has the sky in the background, the manner that the bag is placed in the water and the similarity of the colors put this case very close to the line. In addition to a copyright claim, there is also potentially a claim for lack of attribution that can be brought."



The Foley Hoag LLP trademark and copyright blog noted that "Copyright infringement also requires actual copying, which may be proven by showing that the works are substantially similar and that the accused infringer had access to the copyrighted work (because, for example, it was publicly available on a website).

"In determining whether works are substantially similar, courts consider whether there are limited ways to express the same idea, whether the similar elements are commonly used in works of that type, and other factors."

As of this writing, there had been no signs of any legal action. But it certainly is an interesting case study.

# BRIGHT IDEAS

## Sub

### WATERPROOF TITANIUM FLASHLIGHT

[kickstarter.com](http://kickstarter.com)

Less than 1 inch long and with a diameter that is half that, Sub is billed as the tiniest and toughest aerospace-grade aluminum flashlight—“the world’s smallest torch.” It is fireproof, waterproof and can withstand being run over by a car.

Sub can be used for unlocking car doors in the dark, car breakdowns, reading in bed and much more. Its small size makes it possible to be attached to almost anything.

The torch is powered by three AG1 button cells that will usually last for about 12 months. Worldwide shipping begins in May. The retail price is unavailable, but the product was available to crowdfunding backers for \$19.



## Nebulite Collection

### NEXT-GENERATION FESTIVAL GEAR

[nebulitecollection.com](http://nebulitecollection.com)

Nebulite’s Illuminated drawstring and fanny pack help you stand out in a crowd, and to be easily found in one.

With a built-in smart controller, the pair have many features provided by an integrated motion sensor, audio detector, 85-decibel alarm when someone else tries to pick it up, and a Bluetooth 5.0 capable processor. The remote control app lets you customize every feature of your bag.

Nebulite will retail for 70 euros, or about \$79. It will be shipped to Rewards backers starting in May.



## OBSBOT Tail

### AUTO-DIRECTOR AI CAMERA

[remo-ai.com](http://remo-ai.com)

The lightweight OBSBOT Tail is an AI-enabled 4K camera that automatically follows its subject. A 12-megapixel camera with 3.5x optical zoom sits on a 3-axis gimbal, which swivels around smoothly.

The camera is meant to capture scenes where there is a lot of movement—great for those who film YouTube videos. An LED light at the base flashes green when the camera locks onto a subject and red when the storage is full.

OBSBOT, which recognizes various gesture controls, has six different shooting modes. The retail price will be approximately \$450, with shipping to begin in April.



**“I have not failed 10,000 times. I’ve successfully found 10,000 ways that will not work.”**—THOMAS EDISON



## Craftmark

### 2-IN-1 LEATHER BELT

[barnns.com](http://barnns.com)

Craftmark has many interchangeable high-quality leather belt bodies and durable, stainless steel buckles for great wardrobe versatility. Billed as the first reversible leather belt with micro-adjustable fit, it is designed to fit anyone without using the typical pre-set holes that can be limiting in a belt.

The belt’s easy-twist magnetic system allows users to swap between premium hand-stained, vegetable-tanned leather and Saffiano leather for any occasion, with a swivel of the buckle.

The suggested retail price is \$145 for the belt body and buckle. Shipping begins in May for Rewards backers.

Part 1 of 2

# Death by Inventing

INNOVATION HAS HAD ITS SHARE OF TRAGIC CONSEQUENCES

BY REID CREAGER



William Bullock tried to kick a driving belt onto a pulley on his printing press. His leg got caught and was crushed, leading to gangrene and requiring amputation. He died during the operation.

**W**ILLIAM BULLOCK arguably played a role in the magazine you're reading—all magazines, newspapers and books, in fact. What can't be disputed is that his passion for the printing process played a role in his bizarre and painful death.

Bullock had developed a cotton and hay press, seed planter, lathe cutting machine and grain drill before he got into the newspaper business and began working on printing presses in the early 1850s. He eventually perfected the rotary web press, a marked improvement on the rotary press invention by Richard March Hoe in 1843.

Bullock's self-adjusting press—which could print up to 12,000 sheets an hour and later 30,000—was the embodiment of new and improved. No more laborious hand feeding; his press allowed for continuous large rolls of paper to be automatically fed through the rollers. No more printing on just one side of the paper; this one printed on both. No more hand folding of paper; this machine did that. No more hand cutting of paper; a sharp, serrated knife that rarely needed sharpening cut sheets with, well, machine-like precision.

These machines were as powerful as they were efficient, so they could be dangerous when not operated with care. On April 3, 1867, Bullock was adjusting one of his new presses that was being installed for the *Philadelphia*

*Public Ledger* newspaper. He tried to kick a driving belt onto a pulley.

His leg got caught in the machine and was crushed. After a few days, he developed gangrene. On April 12, 1867, Bullock died during an operation to amputate.

When he was buried in Lot 29, Range 13, Section G of Division 2 of Union Dale cemetery in Pittsburgh, Bullock had fathered 13 children—seven with his deceased first wife, and six more with her sister who was his second wife.

Bullock's ironically sad tale is one of many involving inventors and innovators whose creations played a major role in their deaths. We'll examine some of those this month and next. April's Time Tested feature will involve some of the inventors who died while trying to perfect the elusive art of flight.

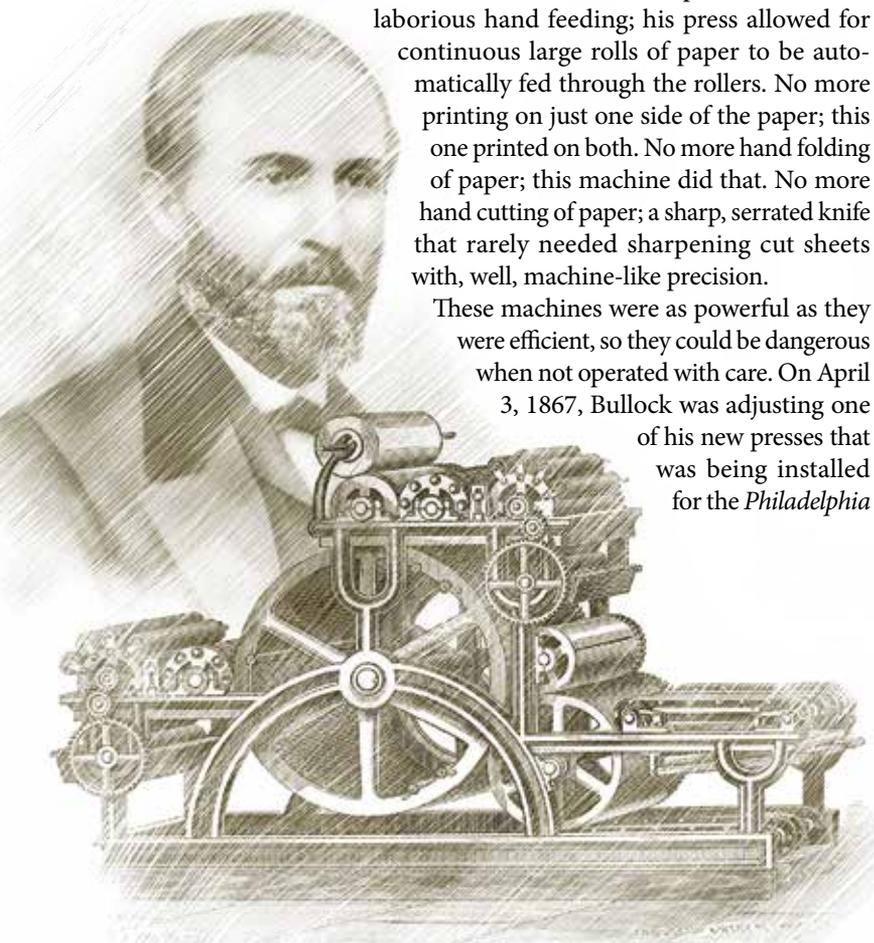
## Marie Curie, 1934

The French-Polish physicist and chemist of considerable renown—the first woman to win a Nobel Prize and the first person to win two—is credited with establishing the theory of radioactivity. She also discovered radium and polonium and will forever be revered as a pioneer in the fight against cancer.

She and her husband, Pierre Curie, became research workers at the School of Chemistry and Physics in Paris where they began their pioneering work into invisible rays given off by uranium. This had recently been discovered by professor Henri Becquerel.

As the years went on, the couple's tireless work with radioactive materials came at great self-sacrifice. They were often sick and physically exhausted; both often had raw and inflamed hands because they were continually handling highly radioactive material. According to biography.com, Marie Curie was known to carry around test tubes of radium in the pocket of her lab coat.

She died of aplastic anemia caused by radiation exposure at 66. Her eldest daughter, Irene, also won a Nobel Prize in chemistry.





## Those who have died included a pioneer in printing, motorcycles, and a two-time Nobel Prize winner.

### **Valerian Abakovsky, 1921**

A Latvian inventor who previously worked as a chauffeur, Abakovsky seemed on the road to fame after creating a railcar powered by a high-speed airplane propeller strapped to its front in 1917. The Aerowagon was designed to transport high-level officials at faster rates of speed than other trains.

After a test model was built, Abakovsky invited a group of Soviet officials for a trip from Moscow to Tula and back. The front end of the trip went without incident, but on the return trip the Aerowagon flew off the track at a high speed, killing the 25-year-old Abakovsky and other riders.

Two main facts—how many people died and how fast the Aerowagon was traveling—are murky. Some reports say that six were killed, but an early Associated Press story said seven died. In a correspondence from Tom Mann in Moscow to his wife

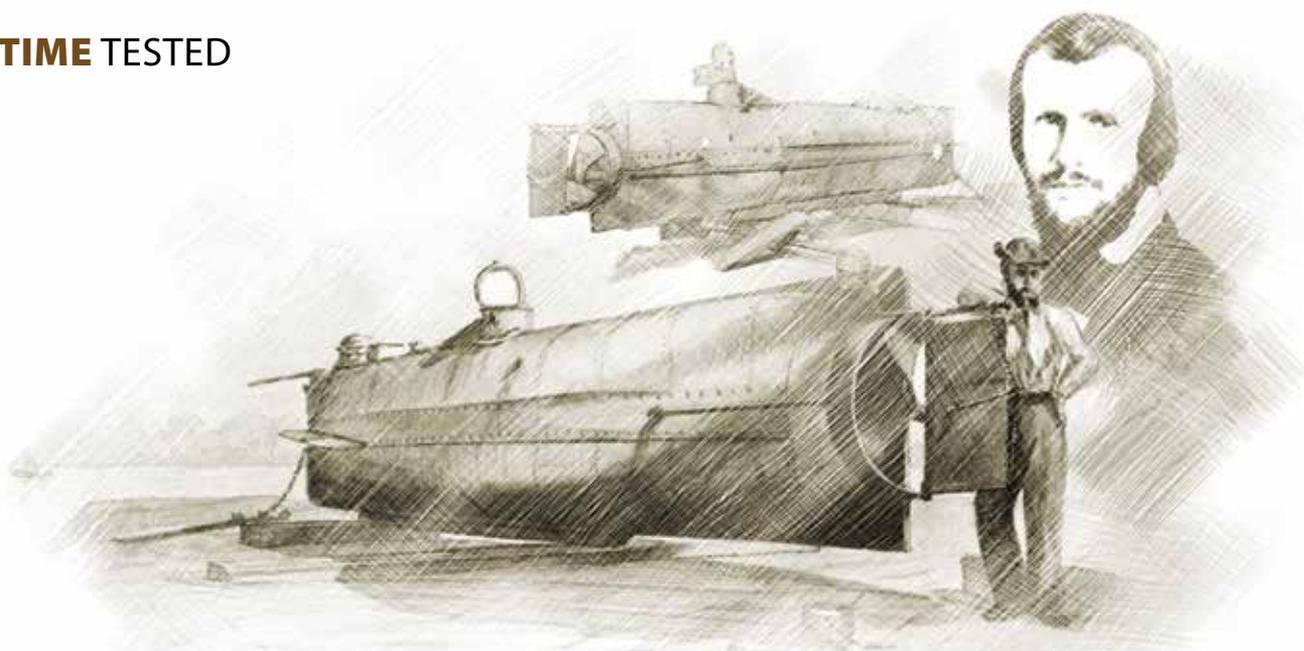
Elsie Mann dated July 26, 1921—two days after the crash—he wrote that seven were killed. (The Atlantic wrote in 2010 that everyone on board was killed, even though Mann’s account from Moscow and many others indicated there were at least 15 survivors.)

Virtually every reference to the Aerowagon’s speed when it crashed is not specific, saying the train was traveling at a high speed. In Mann’s account to his wife, he wrote that “as far as the survivors can tell, the car was travelling at about 70 miles an hour at the time of the accident.” He also wrote that “the car, it has said, has travelled 150 miles an hour.” Yet another source, the oft-cited but oft-inaccurate Wikipedia, said the railcar was only capable of speeds up to 87 mph.

One thing is certain: The Aerowagon was scrapped immediately.

**Above left:** Marie Curie and her husband, Pierre Curie, were in constant contact with radioactive material during their pioneering efforts to fight cancer. She died of anemia caused by radiation exposure.

**Above right:** Valerian Abakovsky’s invention of a railcar powered by a high-speed airplane propeller led to an accident that killed him and others.



Above: Horace Lawson Hunley built hand-powered submarines during the Civil War, leading to deadly results.

**Horace Lawson Hunley, 1863**

The CSS H.L. Hunley made military history when it became the first submerged vessel to sink an enemy ship. Unfortunately, Horace Lawson Hunley was dead by then.

Below right: Sylvester Roper, inventor of one of the first motorcycles, died while riding one.

The third time wasn't a charm for the attorney and member of the Louisiana state legislature, who enjoyed building hand-powered submarines. Then again, neither was the first time or second time.

Hunley helped design and build three different models for the Confederacy during the Civil War. His first submarine, built in New Orleans, was intentionally sunk when the city fell to the Union in April 1862. His second submarine sunk in Mobile Bay in Alabama during a test run before it could be sealed, killing five occupants who could not escape as Hunley reportedly watched from ashore.

Hunley funded his third submarine himself and led the crew on Oct. 15, 1863. He and seven crewmembers died when the sub sank in waters off Charleston, South Carolina.

The Confederacy recovered the sunken sub, and the following year a new crew became the first to sink a ship when it torpedoed the USS Housatonic. But even that triumph became bittersweet when all members of the Hunley died in the blast; it was long presumed that the explosion ruptured the vessel and its occupants all drowned.

Hunley history may have been rewritten in 2017. Duke University researchers who conducted three years of experiments on a mini-test sub concluded that the torpedo blast would have created a shockwave great enough to instantly rupture the blood vessels in the lungs and brains of the crew. When the Hunley was raised in 2000, there was no evidence that any of the crew members had attempted to flee their posts.

According to the London *Telegraph*, the crew "accidentally killed themselves."

**Sylvester Roper, 1896**

If you ride a motorcycle and a loved one is worried for your safety, it would probably be a good idea not to tell him or her that one of the cycle's pioneers died while crashing one.

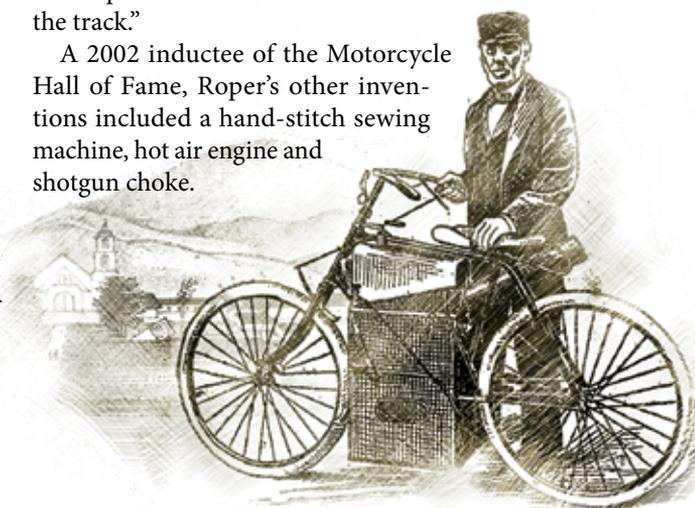
Some say Roper invented the motorcycle. At the least, he invented the Roper steam velocipede in the late 1860s, one of the first motorcycles.

Historians debate whether Roper died because he was thrown from his bike during a June 1, 1896, exhibition or whether he had a heart attack that led him to lose control of the vehicle. According to a story in the *Boston Globe* a day after Roper's death, "he was stricken with heart disease and actually died while riding. ..."

"The machine was cutting out a lively pace on the back stretch when the men seated near the training quarters noticed that the bicycle was unsteady. The forward wheel wobbled badly, and then suddenly the cycle was deflected from its course and plunged off the course into the sand, throwing the rider and overturning. All rushed to the assistance of the inventor, who lay motionless beneath his wheel, but as soon as they touched him they perceived that life was extinct."

A doctor who was called "gave the opinion that Mr. Roper died before the machine left the track."

A 2002 inductee of the Motorcycle Hall of Fame, Roper's other inventions included a hand-stitch sewing machine, hot air engine and shotgun choke.



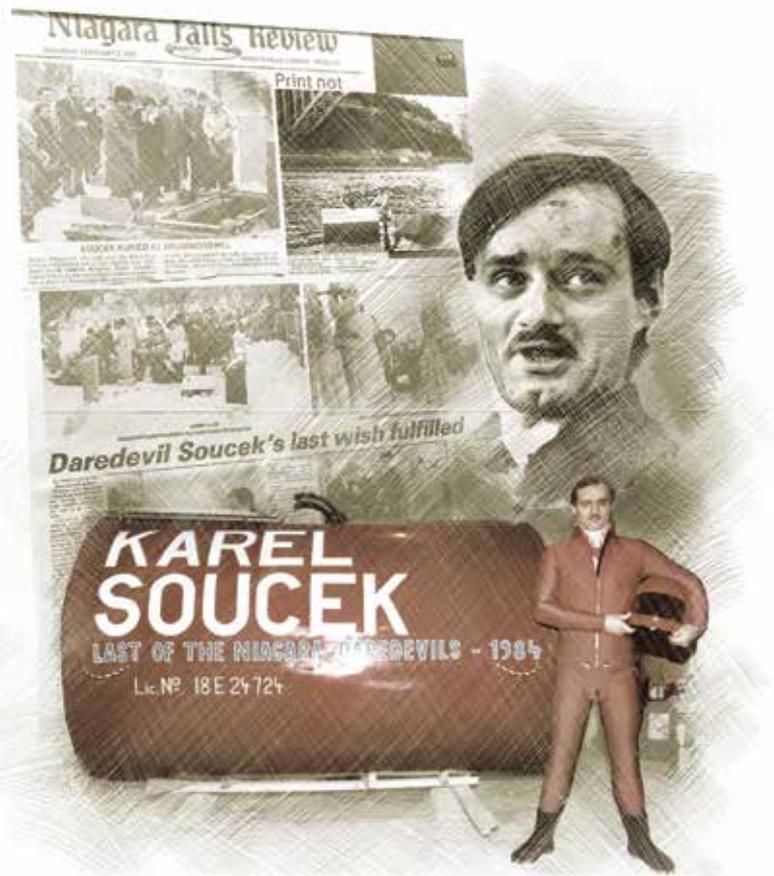
### Karel Soucek, 1985

The outlandish stunt planned by this Czechoslovakia-born Canadian inventor was so dangerous that Evel Knievel warned against it. Soucek didn't listen.

Maybe he was emboldened by the fact that a year earlier, he survived a 175-foot, three-second drop over Niagara Falls in a barrel (although he emerged bleeding). Maybe he was confident because of the informal scientific research he had conducted with his specially constructed barrel—from sending it unmanned over the falls to gauge currents, to tests for shock absorbency.

Now, at the roof inside the Houston Astrodome, Soucek climbed into a specially balanced barrel he designed that was poised 180 feet above a 12-foot-wide, 9-foot-deep tub of water. Some 35,000 people held their breaths for a stunt that Knievel called “the most dangerous I’ve ever seen.”

All of Soucek's calculations and hubris were moot before his plunge began. According to the *Los Angeles Times*, workers had trouble stabilizing the barrel after he was nailed into it. “It started spinning real bad,” said a worker who requested anonymity. “After a while, the people started getting so impatient that we went ahead and dropped him.”



The barrel drifted off-course during the fall and thudded against the tub's rim.

The crowd applauded at first, thinking the drop was a success. That turned into hushed shock when they saw the 37-year-old Soucek cut from the barrel, barely alive with a shattered chest, abdomen and skull. He was rushed away by paramedics and died soon after. ☠

Inventor Karel Soucek died while attempting a stunt that alarmed Evel Knievel.

## INVENTOR ARCHIVES: MARCH

**March 29, 2000:** The Patent and Trademark Office became the **United States Patent and Trademark Office**, a performance-based organization (PBO). The change was an impact from the American Inventors Protection Act of 1999.

Per the USPTO: “A PBO is a results-driven organization that delivers the best possible services to its customers. A PBO also commits to accountability for results by having clear objectives, specific measurable goals, customer service standards and targets for improved performance. In exchange for this commitment to accountability, a PBO is granted managerial flexibilities to achieve these goals and operate more like a business with greater autonomy over its budget, hiring, and procurement.”

Then-Vice President Al Gore created the PBO concept in March 1996. The USPTO became the second federal agency in history to be a PBO, after the Education Department's Office of Student Financial Assistance.

The change was connected to revised procedures for handling a growing number of applications for internet-related patents, according to the *New York Times*.



# Reinvent Your LinkedIn Profile

DON'T OVERLOOK YOUR PERSONAL ACCOUNT AS A WAY TO MARKET YOUR INVENTION **BY ELIZABETH BREEDLOVE**

**W**HEN PEOPLE consider using social media for their business, they're most likely thinking of Facebook pages, Instagram business accounts or LinkedIn business profiles. However, this neglects the importance of using your personal accounts to promote your business—something that is especially helpful for entrepreneurs, small business owners and inventors.

In fact, LinkedIn in particular provides a grand opportunity for inventors who are well connected in their industry to promote their inventions and grow their business. Here are five steps in that process.

**1. Update and optimize your LinkedIn profile.** Before you begin, it's important that your profile is up-to-date and optimized to provide the most information in an easily digestible way to those viewing it.

Start at the top with an updated headshot; you may also want to include a branded image related to your business in your profile header. Then, go through your profile section-by-section and make sure that everything is updated. Check for typos in existing content and look for ways to add more about your invention or any new, relevant content.

**2. Share updates regularly on LinkedIn.** Once your profile is updated, start to post regular updates using your account in order to connect with those who could be interested in what you (or your invention) have to offer.

For example, post status updates that link to high-quality content, begin a conversation or include relevant images, but always stay on-topic and relevant to your brand and industry. Keep in mind that LinkedIn is also great for sharing industry news and articles from thought leaders—especially yourself!

If you have trouble posting consistently or creating content to post, consider establishing a topical calendar for each day of the week that makes it easy to consistently provide valuable and engaging content. For example, on Mondays you can share something about your invention, on Tuesdays you can share an article relevant to your industry, on Wednesdays you can share something that inspires you, etc.

**3. Publish articles on LinkedIn.** LinkedIn makes it easy to publish long-form articles on the platform, which is a great way to establish yourself as a thought leader! These types of posts can show off your expertise and supplement your professional LinkedIn profile, showcase your expertise to prospects and potentially reach a huge group of professionals who aren't in your network (yet).

If you're already writing content for your own blog or a different publication, you can also reuse this content here. However, it's smart to wait at least two weeks after a blog post is published before republishing it to LinkedIn. This gives it enough time for search engines to index and see which post is original, and then rank it above the LinkedIn content. You may also want to republish it under a new headline to differentiate it from the original content.

Then, when you post it, let readers know where the post came from by including a sentence in the beginning directing readers to the original source. Be sure to make it a hyperlink. This is especially important if the content is from your own site, because it will help you send traffic there!

Other long-form content can be republished on LinkedIn, too, such as ebooks or presentations. LinkedIn's document-sharing feature makes this easy.

**4. Once you have a robust, active LinkedIn profile, you can start to focus on building your network.** Don't send out requests to connect willy-nilly; you want to be strategic rather than connecting with every stranger you can find.

Your best bet is to connect with those you work with often, former co-workers and colleagues—and, moving forward, those you meet at trade shows, conferences and networking events. It's always a good idea to send a personal message when you request to connect with someone. Remind that person how you met and express your happiness to connect.

**5. Use LinkedIn groups.** If you want to go the extra mile with your LinkedIn usage, consider spending a few minutes each week interacting in LinkedIn groups. Groups on LinkedIn provide the opportunity



Post regular updates using your account in order to connect with those who could be interested in what you (or your invention) have to offer.

© BOBMAN/SHUTTERSTOCK

to join conversations, answer challenging questions and provide detailed insight that other users may not be able to offer. While you're interacting, look for B2B partners, customers and industry experts to connect with in these groups.

However, before you begin to participate in groups, it's important to get to know each group's culture. Spend time monitoring the groups you are interested in to see how members post and interact with one another, then try to mirror their activity. Stay active and post regularly by answering questions, participating in discussions, posting links to articles, and sparking conversations by asking questions.

Use these groups as opportunities to make more connections. Just be careful not to over-promote your invention or business in LinkedIn groups, as this is frowned upon. Instead, focus on building relationships.

If you want to take it a step further and you have the time to dedicate to it, consider creating your own group that pertains to your industry. Benefits of creating your own LinkedIn group include establishing yourself as a thought leader, building a community, growing your personal network, promoting your invention or business, and more.

Before creating a group, get active in other groups to learn more about what works and what doesn't. Once you feel comfortable participating in groups, you can create your own.

When creating the group, make sure you are transparent and that you make the group's topic easily apparent. Include a brief description of what the group is about and for whom it's intended. Your description should tell people why they should join your group and what they will get out of it. In other words, highlight your value proposition.

Include keywords as well, as these keep your description optimized and make it easier for people to find. Additionally, you'll want to create a few rules. For example, you will likely want to ban promotional posts or advertising, which prevents spammy activity from members. Feel free to delete posts, but it's a good idea to message the author letting him or her know why you did it.

Once the group is set up, log in every few days to moderate comments, answer questions, start new discussions, and provide value and insight to the group. Providing value and insight is key; if you're too promotional, people will start to leave your group.

To grow the group's membership, start by inviting your own connections. Be selective, and avoid inviting people who aren't likely to be interested. You can also consider reaching out to other websites and publications and asking them to mention the group to their users or readers, and offer an incentive in return.

Some final advice: LinkedIn is designed for professional connections, so you'll want to keep your posts a bit more formal—even on your personal profile.

Keep updates brief, and post no more than once or twice a day. Above all, make sure your posts and updates provide value to the reader. This will set you up for success as you use your personal LinkedIn account to drive your invention to success. 📌

**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.





# Wanna Get Lucky?

HOW TO MAKE YOUR OWN BREAKS AS AN INVENTOR

BY HOWIE BUSCH

**H**EAR from inventors every day, seeking my advice and guidance. I want to thank one particular inventor who recently reached out with this note, giving me the idea to write this article.

“Howie—you don’t know how blessed you’ve been. Most inventors like myself bust their a-- for years and never get one, not one lucky break. Frankly, that’s what’s needed in the invention business.

“You seem to have caught quite a few pieces of good fortune. Good for you. I did the “Shark Tank” casting call and have a super invention, but the best products aren’t the ones that are chosen.”

Four or five messages later, he was still telling me how lucky I am...how unlucky he is...and how great his product is. Finally, I’d had enough. My response to him:

“I find myself somewhat offended by your messages. In almost every one, you talk about my luck. Which implies that is where my success stems from.

“My ‘luck’ and ‘lucky breaks’ have happened purely because of my hard work and putting myself in a position to get lucky. As Branch Rickey famously said, ‘Luck is the residue of design.’ And as Thomas Jefferson said, ‘I’m a big believer in luck. I find the harder I work, the luckier I get.’

“I’m sure you get the point.

“In the meantime, I offered you the opportunity to chat on the phone. You declined because you couldn’t see how I could help you. I would argue that that is not a recipe to bring yourself luck because you never know where that call would have gone.

“Much of my ‘luck’ comes from my attitude and my willingness to look at every encounter as an opportunity.

“I’m not telling you what to do ... I’m just sharing the recipe for me seeming to be so lucky.”

## Not a one-way street

Like so many other inventors, he views connections purely as a straight-line, one-way transaction: “What can you do for me to help me advance my product or business?” They look at the relationship through a narrow lens, unable to see past what they assume from what they see on the surface. It’s a very limiting way to think and act.

I’m not picking on him because in all honesty, this is not an uncommon mind-set of the independent inventor.

But don’t worry. I’m here to share some surefire ways to start improving your luck as an inventor, product developer or entrepreneur—because the more of these you do, you’ll find the “luckier” you get.

**Have a positive attitude.** Too many inventors have negative attitudes and outlooks. The guy above who looked at me as lucky and himself as unlucky ... much of that, I believe, comes from his negative outlook.

If someone doesn't get back to me, I don't like it, but I'm not mad. I don't let it drain my energy. Instead, I try to think of other ways to get to that person or that company—and even if I can't, I'll go to other people and other companies.

One of the biggest mistakes you can make as an inventor is to have expectations of someone you don't know. That's not only unfair to them, it's unfair to you.

I've had inventors reach out to me and when I didn't get back to them within two days, they sent a nasty note. Don't. I would never do business with that person.

Remember, people are busy, especially the people you want to get to most. And just because it's urgent for you does not mean it's urgent for them.

Please stop looking at life through your own eyes only. That will only hurt you in the long run. Remember that this person has his or her own life, with unique responsibilities and issues. And then imagine that person getting emails and messages from 100 people just like you.

Move on. Stay positive.

**Surround yourself with others with positive attitudes.** Join a Mastermind or local inventor organization. Get an accountability partner. Whatever you do, surround yourself with other positive people.

If you find yourself surrounded with negativity and haters, you'll find yourself getting sucked into their way of thinking.

Watch for the signs: Anyone who resents others' success. Anyone who only sees the negative in every situation. Anyone who doesn't take personal responsibility but sees everyone else as screwing them over by not returning emails, calls or LinkedIn messages.

## One of the biggest mistakes you can make as an inventor is to have expectations of someone you don't know. That's not only unfair to them, it's unfair to you.

Those people are toxic and should be avoided at all costs. That doesn't mean they're bad people. It just means, they will not be good for helping you achieve your goals of getting your product to market.

That said, you don't want people who only tell you how great you are. You want people who can offer constructive criticism without judging you or your idea negatively. This includes family and friends. If they're negative, stop sharing your ideas with them.

**Be a giver, not a taker.** Stop thinking of your interactions as being one-way transactions where you are trying to get someone to do something for you. Start thinking about this, first and foremost: What can I do to help them?

I can hear you already: What can I do to help them? I'm just an inventor with no money and no connections. How can I help this successful business person or person at a big company?

How about something as simple as interacting with their content (this is just one example of course, that literally anyone can do). There are people in the inventing community who interact with my content on both LinkedIn and Facebook—liking my posts, commenting, cheering me on and sharing it with their community.

I notice. Who do you think I'm more likely to help?

Next thing you know, that person reaches out to me, I put him or her in touch with someone, that person gets a licensing deal ... and suddenly that person is "luckier" than you, too.



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Try to make connections and appointments before you go to a trade show. Then you're different from most of the attendees because your contacts will be expecting to see you.

**Put it out there.** I am not telling you to run around and shout your idea from the rooftop. You have to be smart about sharing confidential information. And of course you should protect yourself as best you can with a provisional patent application, trademark, sell-sheet.

But until you start sharing your product with people, nothing can happen with it. If it lives only in your head, there is no energy behind it, and that's where it will remain: in your head.

The more people you share with, the more energy you are giving it...and the universe can act on it. That is how all of my ideas have gotten to market.

Rather than only speaking to people who you think can directly help you or get you to the person you're trying to get to, think about this.

You don't know who knows whom. Someone may have a cousin, brother-in-law or college roommate who can help you. But these people aren't able to help you because you're so busy keeping the idea to yourself that you never make that connection. You owe it to yourself and your invention to let the universe help you move it forward.

Don't believe me? That's how I licensed my first product. I shared my idea with a good friend. Let's call him Eric (because that's his name). I never never thought Eric could help me because he was a Wall Street guy, and that's where most of his connections lie. I was just sharing the idea.

He said, "You should speak to my college roommate, Billy. His brother-in-law is in the toy business and might be able to help." I spoke to Billy, another Wall Street guy, who put me in touch with his brother-in-law and a month later, I signed my first licensing deal.

**Go to trade shows.** Going to trade shows in an industry you invent for is incredibly valuable. But be smart about it and have a game plan.

Most trade shows have a website with a list of exhibitors; many even have a map showing you where their booth will be. Try to pick out which companies you'd like to meet beforehand. Also, be flexible and open to meeting people not on your list.

When you can, try to make connections and appointments before you go. Then you're different from most of the attendees because your contacts will be expecting to see you.

You can look at my results, like the gentleman who gave me the idea to write this article, and say I was lucky to get on "Shark Tank." And given the sheer number of people who apply, maybe I was. But it only happened because I put it out there on Kickstarter, promoted it, and made sure it was successful.

Do as many of the above things as you can, and I have a feeling you'll find yourself getting much "luckier." What do you have to lose?

Just let me know how it goes, and whether you agree with me about luck.

See what I did there? I'm giving you the opportunity to start creating your own luck by interacting with my content here. 📧

**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."





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# Teething Mitten Takes Hold

AGITATED 3-MONTH-OLD SPARKED MOTHER'S INVENTION

BY EDITH G. TOLCHIN



Melissa Seifert-Hyslop sought to invent a teething mitten that would protect a baby's hands while providing pain relief, interest and easy access.

**A**MONG MY WISHES is to one day become a grandma. I hope my two children are reading this!

Meanwhile, I continue to specialize in manufacturing baby products in China. My ears and eyes are tuned in to new inventions, and I'm always interested in the various ways inventors bring these items to market.

As I have often mentioned, I am especially interested in product safety. Based on Melissa Seifert-Hyslop's efforts with her company Malarkey Kids, I'm confident her Munch Mitt® and other products will be A-OK for your little ones—and, I hope, for my grand-little ones someday!

**Edith G. Tolchin (EGT):** How did your background lead to the Munch Mitt?

**Melissa Seifert-Hyslop (MSH):** After graduating from radio broadcasting, I worked in events and promotions at a radio station. Despite liking my job, I had a desire to be an entrepreneur in events and promotions.

As such, I co-founded the first speed dating service in Canada. After 10 years of financial success and meeting my husband, I wanted to try something new and closer to my heart—creating much-needed products for my babies.

**EGT:** How did the Munch Mitt come about?

**MSH:** I invented the original silicone teething mitten when my first-born son went from being a giggly, laid-back baby boy to a monster baby! Suddenly my 3-month-old was cranky, up all night and drooling like crazy. I noticed he had started to put his hands in his mouth all the time, too.

Turns out that the teething process had begun! Due to his age, my son was unable to hold a typical teether

to provide himself with relief. He then turned to his hands, or my hands (when available). Sometimes I would have to sit and hold teethers to his mouth for hours!

In addition to this, my son had sensitive skin. All that saliva on his hands caused them to get hard and dry. His skin would crack and sometimes even bleed (especially after his front teeth cut), and he would still chew his hands.

I needed something that would protect his hands, give him pain relief and keep him interested. He also needed to be able to access it himself to self-soothe.

**EGT:** What are the unique functions of Munch Mitt?

**MSH:** The Munch Mitt is a fun, functional and convenient teething solution that protects baby's hands from chewing, prevents the constant dropping of teething toys, and aids young infants in accessing pain relief easily. This sensory teething mitt consists of a food-grade silicone teether, a stimulating pattern, and makes crinkly sounds.

Turn it over, and the Munch Mitt can be worn on whichever hand is preferred by baby. Further, toss it in the washing machine for easy cleaning for Mom and Dad.

**EGT:** What was your patent experience?

**MSH:** Patenting is a much more tricky process than I had initially thought or had known going into this. The key is finding a good lawyer. I had to learn about the difference between a utility and a design patent—as well as the timelines and requirements in order to get them.

I would say I was advised poorly by my first lawyer and didn't discover this until later in the year after speaking with other entrepreneurs. I then had to hire a second lawyer to apply and control my patents. I would say that patenting is a very important part of launching any product to market, especially in this time where online shopping makes it much easier for counterfeits and knock-offs to enter the market.

**EGT:** Have you had obstacles in any phase of product development?

**MSH:** I would say the process of product development took much longer than I had thought. All in all, it was close to three years before I had a product ready to go to market. I would say the sourcing of materials, and various prototyping as well as manufacturer sourcing, was the hardest part.

**EGT:** Had you invented anything before this?

**MSH:** No; however, the Munch Mitt has numerous sister products. The Buddy Bib 3-in-1 Bib Teether & Toy! It provides a unique combination of a detachable and lovable plush sensory toy that holds the teether (which can be replaced with baby's favorite pacifier) and a soft, absorbent reversible bib. The plush sensory toy can be affixed anywhere, making baby's teether, or pacifier, accessible to baby while preventing it from being dropped or lost.

Much like the Munch Mitt, bold patterns, bright colors and crinkle sounds provide added sensory stimulation while the soft, absorbent bib keeps baby's skin and clothes dry. When the Buddy Bib

gets drool-filled or dirty, simply throw it in the washing machine for easy cleaning.

The Chew Cube Easy-Grip Teether Rattle is the new modern-day rattle. With its soft corners, geometrical design and beautiful colors, the rattle has gone from cheesy to classy.

Offering four-way sensory stimulation, the Chew Cube features flexible, textured edges that soothe tender gums; a black-and-white pattern and mirrors that provide visual stimulation; a rattle that offers sounds to stimulate baby's hearing, and a modern geometrical design that helps build baby's gripping strength. The Chew Cube can be affixed to baby or stroller using a paci/toy clip.

The Munch-it Blanket is a convenient teether and cozy blanket. It is designed in fun yet functional shapes to target baby's emerging front and eye teeth, as well as early molars. The teether is made of soft, flexible, BPA-free, food-grade silicone. The soft fabric blanket is for baby to snuggle and absorbs excess drool from chewing and/or teething. Like the Chew Cube, the Munch-it Blanket can be affixed to baby or stroller using a paci/toy clip.

**"I needed something that would protect (her son's) hands, give him pain relief and keep him interested. He also needed to be able to access it himself to self-soothe."**

— MELISSA SEIFERT-HYSLOP  
(PICTURED WITH TWO CHILD MODELS)



**EGT:** Where are the products manufactured?

**MSH:** All of Malarkey Kids products are responsibly made in China and exceed all federal safety requirements—including CPSC (Consumer Product Safety Commission) and ASTM (American Society for Testing and Materials) regulations and the most current CPSIA (Consumer Product Safety Improvement Act).

**EGT:** Tell us about your experience with safety standards and regulations.

**MSH:** First, all of our products are BPA and phthalate free, and made from 100 percent food-grade silicone. I knew from the beginning that safety was of high importance. Being a mom, I understood that other moms care about what their babies are using, playing with and putting in their mouths.

Upon determining what the product was being made out of and how it was being designed, I took into account the CPSA and ASTM, as well as other countries' regulations. Once we had high-quality prototyping done, we tested those to all government standards in the United States, Canada and the EU. We then tested our production-quality product and the first production batch with a well-known, accredited international laboratory. We continue to test early each batch of products to these same standards every year and follow the same process with all new products.

**EGT:** Where are you selling now?

**MSH:** Our products are sold in specialty and big-box retail stores in more than 50 countries, as well as on Amazon and malarkeykids.com.

**EGT:** Any guidance for inventors, specifically for inventors of baby products?

**MSH:** Yes. Research and research some more. Do a patent search and get to know the industry. Ensure you spend the money for the most knowledgeable lawyer or patent agent possible. It's expensive but well worth it.

Also, patent, trademark and copyright your products if possible. Counterfeiting is now the largest criminal enterprise in the world. The trade in counterfeit and pirated goods is currently a \$1.7 trillion per year industry—more than drugs and human trafficking—and is expected to grow to \$2.8 trillion and cost 5.4 million jobs by 2022. 📍

*Details: [munchmitt.com](http://munchmitt.com), [malarkeykids.com](http://malarkeykids.com)*

Books by **Edie Tolchin** ([egt@edietolchin.com](mailto:egt@edietolchin.com)) include "Fanny on Fire" ([fannyonfire.com](http://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.



The Chew Cube Easy-Grip Teether Rattle is one of Melissa Seifert-Hyslop's inventions for babies and toddlers.



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# Climate Control Gets Personal

TEAM'S WEARABLE DEVICE PROVIDES COMFORT, CAN SAVE NATURAL RESOURCES **BY JEREMY LOSAW**

**S**O MANY of us have been there, and at any time of year: You're sitting inside an office, restaurant or theater where the air conditioning is running with such fury that you wish you had brought a parka.

MIT engineering students Sam Shames, David Cohen-Tanugi and Matt Smith were uncomfortable victims of this cold truth while working in the lab one summer.

"We just thought it was so ridiculous because the lab was empty most of the day, yet they were cooling it like an icebox," Shames recalls. "If we could just heat and cool people directly, then we would be able to stay comfortable and maybe the building could even save energy."

The future cofounders of Embr Labs had realized the genesis of the Embr Wave, which makes climate control more personal.

## Prototypes and theory

The Embr Wave is a wristband that helps you control how hot or cold you feel via precise thermal sensations. A steel wristband with a magnet closure keeps it securely fastened.

The module provides heating or cooling to the sensitive area on the inside of the wrist, prompting your whole body to feel warmer or cooler. The device features an easy-to-use, single-button interface to control the temperature and can also be controlled via the Embr app. It lasts two to three days on a charge.

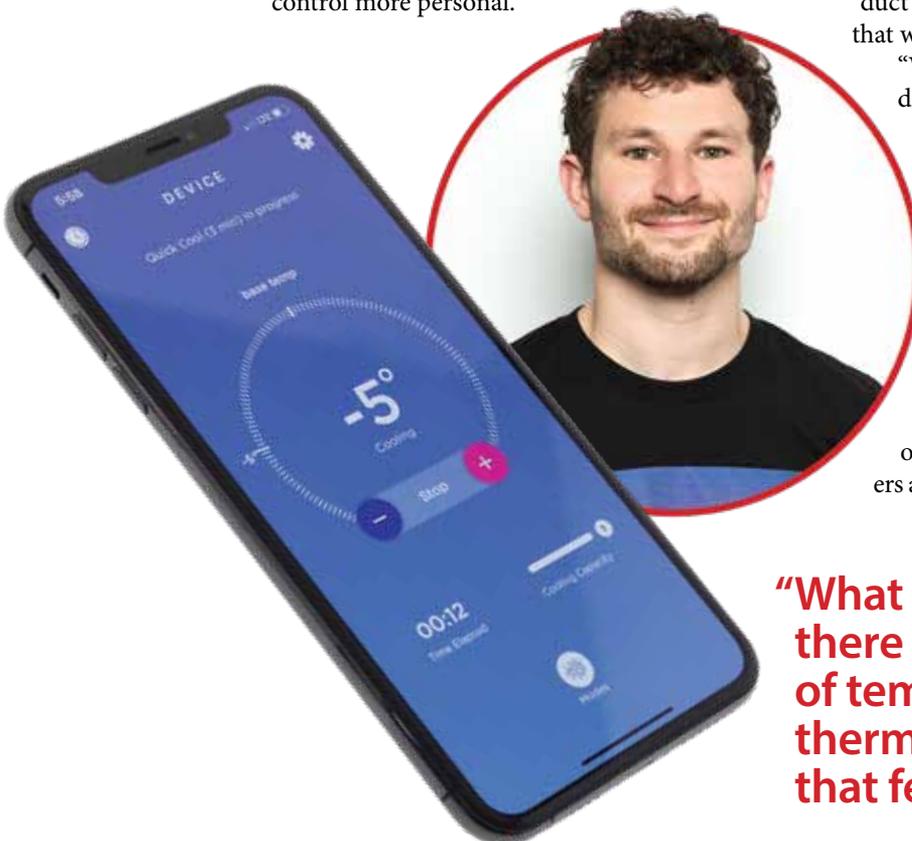
As the three set out to make prototypes, they were inspired by the old wives' tale that running your wrist under water for a few minutes will cool the entire body. They built what Shames called their "duct tape" prototypes, a mix of off-the-shelf parts that were assembled together.

"What we discovered was that there are two dimensions of temperature"—what a thermostat is set to, and how that feels. "You can really have a disproportionate impact on how comfortable you can make someone, relative to the energy that you use," Shames says.

## Buzz builds quickly

The school publication, MIT News, got wind of the project and published a piece about it. The article went viral and was picked up by *Wired* magazine, among other outlets. The overwhelming response from readers and people inquiring about how to buy one was

**"What we discovered was that there are two dimensions of temperature"—what a thermostat is set to, and how that feels.** —SAM SHAMES, EMBR LABS CTO





the first proof of a consumer need. The team formed a company to continue development.

Buoyed by reaction to the *Wired* article, the team marched toward launching the product. The initial, conservative projection was that it would take about six months to come up with a consumer-ready product. It took three years.

The hardest development challenge was getting the cooling to work well. Their invention uses a Peltier device—an electronic instrument that creates a cool area on one side and a hot area on the other.

It was difficult to dissipate the heat in cooling mode in such a way that it would not inadvertently warm the skin. It was also tricky to get a good feel to the user interface button on the device, but the team worked with adhesive manufacturing company Covestro to source a material that provided good results.

“We had to spend as much time and energy on the design and aesthetics and the look and feel as we did on the science and engineering, and that was why it took four years to get to market,” Shames says.

### Kickstarter validation

Intellectual property was a cornerstone of the team’s corporate strategy. The patent on the device was granted last year; the claims cover how thermal wave forms are optimized for the perception of hot and cold. Data collected from the device is also a vital component to the valuation of Embr Labs.

The company chose to run a Kickstarter campaign to launch the product. It had already raised investment dollars from Bose Ventures and Intel Capital to fund the development, so the platform was used as a market test.

The campaign, launched in fall 2017, raised more than \$600,000 from 2,837 backers—blowing the team’s \$100,000 funding goal out of the water. It was further validation for a product that was already highly anticipated.

Since the product launch, the team has continued to generate buzz. *Time* magazine gave the product honorable mention for “Best Invention of the Year,” and the Embr Wave has garnered rave reviews from customers.

Yet development has been unending. A new “fall-asleep” mode for the device was pushed to existing devices as a firmware upgrade in January, and a second generation of the device is in development.

The team is exploring how to optimize Embr Wave for other applications, such as for sleep and stress management. It coined the term “thermal wellness” and hopes the device will be widely adopted to help people live a temperature-optimized life. 🧊

Details: [embrlabs.com](http://embrlabs.com)



The Embr Wave is a wearable wristband that helps you control how hot or cold you feel via precise thermal sensations. A steel wristband with a magnet closure keeps it securely fastened.

**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/](http://blog.edisonnation.com/category/prototyping/).





"Obstacles may look too difficult to overcome sometimes, but God can have a way of taking care of things in just the right way!" says first-time inventor Liz Crouch.



# Tears and Triumph

THE CUPCAKE RACK INVENTOR OVERCOMES THE HEARTBREAKS OF INVENTING—AND LIFE—WITH HELP FROM FRIENDS **BY REID CREAGER**

**LIZ CROUCH** didn't need this news 11 days before Christmas. Actually, she didn't need it, period.

The inventor of The Cupcake Rack was checking her emails and Facebook messages late last year when she spotted a video advertisement sent by one of her favorite customers. Because the ad was for a product that makes it easy to create cupcake bouquets, her friend wondered whether this was copyright infringement.

Crouch watched the video over and over. "It was my product, The Cupcake Rack, but it was advertised as The Tasty Bouquet!" she said. At first "I was actually a little bit giddy and flattered that Allstar, a top rated direct-response TV company, had copied my product. But having an issued patent, I thought that I could fare well with this replication. After all, isn't that one of the reasons inventors file for patent protection?"

But the more she thought about it, "the more it didn't seem right."

She was about to embark on a challenging journey that served as a reminder to all inventors: While you're fighting to overcome obstacles associated with your invention, the rest of your life will go on—and may pose other hurdles that will test your strength in ways you had not imagined.

## From bad to worse

Crouch immediately contacted family, inventor friends and patent attorneys she knew on LinkedIn. She resisted the urge to blast the supposed infringers on social media, wanting first to have all of the facts.

She even placed an order on Amazon for the new advertised product to see it in person, receiving a replication of The Cupcake Rack that was slightly lighter in weight and a little less shiny.

Worse news was coming. "After a few attorneys reviewed my patent, it was determined that my utility patent was weak and not necessarily enforceable in a court of law under these circumstances," she said. Crouch was further shocked to learn that anyone can copy any unpatented product, manufacture it, and sell it without any repercussions—and because her product was basically unpatented, Allstar did nothing wrong. It was not infringing.

"I didn't have a leg to stand on!" she recalled. "I was horrified, it was Christmastime, everyone was on vacation, and I was bawling my eyes out every single day."

She turned to inventor friends: Scott Dromms, Edison Nation's vice president of licensing and intellectual property; Edison Nation 3D modeling expert



**“I didn’t have a leg to stand on! I was horrified, it was Christmastime, everyone was on vacation, and I was bawling my eyes out every single day.” —LIZ CROUCH**

John Vilardi; inventor/author Greg Myracle; The Market Institute founder Charlie Sauer, Invention Stories Podcast host Robert Bear, and more. “Greg wrote an email to the company and asked if they knew that the product they were selling was invented by me,” she said. “I am so grateful for his initiative.”

Soon she was communicating with Allstar CEO Scott Boilen. “Even though it was the holidays, Scott responded to me immediately and asked if we could have a phone conversation as soon as he returned to work. We set a date to speak, a great relief.”

#### **Crucial reassurance**

Still unsure how to proceed, Crouch contacted Eventys Partners and Edison Nation CEO Louis Foreman—also the publisher of *Inventors Digest*. She had met him at a Las Vegas trade show in 2013; he helped her prepare for the eventuality that her utility patent would be rejected by advising her to call the patent examiner afterward to find out which details are needed to get the patent approved.

“His first reaction was one of disbelief, that this could have happened with Allstar,” she said. “Scott’s reputation is impeccable.

“Louis also said that with a weak patent, if Scott wanted to, he could just tell me to go get a lawyer.”

Foreman told Crouch that his partner, Todd Stancombe, is a friend of Boilen’s and that he would ask him to contact him. After the new year, she spoke with Boilen and Allstar Director of Merchandising Trish Dowling.

“Scott explained that he hadn’t known that I was the inventor of The Cupcake Rack and that somehow the history and background of my invention had slipped through the cracks while Allstar was producing ‘The Tasty Bouquet,’” she said.

“He was apologetic and kind. He then offered me a referral agreement, which I accepted, and he and his team have kept in contact with me to let me feel included with their marketing and advertising.”

Boilen said: “Once we spoke, it was easy to make a fair deal for both sides. A true win-win situation, as Liz is going to be a big help in giving the product its best chance to succeed.”

Crouch was convinced that “obstacles may look too difficult to overcome sometimes, but God can have a way of taking care of things in just the right way!” This was underscored later.



## LIZ CROUCH

**Home:** Sheridan, Oregon

**Husband:** Roy Crouch

**Family:** 5 sons and daughters, 8 grandchildren

**Favorite invention:** Automobile

**Favorite movies:** "Legally Blonde," "Schindler's List"

**Favorite saying:** "It is in giving that we receive"  
—St. Francis of Assisi



### Family inspiration

The Cupcake Rack was conceived in August 2012, when Crouch's daughter was pregnant. "Throwing her a baby shower, I wanted to impress her guests with a gorgeous cupcake bouquet instead of a traditional cake," she said.

In her mind, the design was simple. "I had seen some really beautiful cupcake bouquets and just figured that if I made one, I would want it to look like a bouquet of flowers sitting in a flower pot."

She hired a local engineer to perfect her creation, which she envisioned as hard plastic, dishwasher safe, durable and affordable.

"After several weeks of excuses, he finally came up with a design that looks like a spaceship and cannot be mass produced. In tears, I went to my husband, Roy. He came up with a prototype for me—one with iron rings welded together—and a mighty fine one, too!"

Unable to find a manufacturer in the United States, her preferred choice, she was referred by a contact to the website Alibaba.com. The site features ratings by customers, and she found a possible match in China.

"Putting down the initial payment for a container full of product to a Chinese manufacturer is quite a risk," she said. "I had heard horror stories of overseas manufacturers but decided to do it."

Now she considers her manufacturer "like my Chinese son"—a byproduct of one of the biggest scares of her life.

### From tragedy to miracle

In 2013, Crouch learned that her infant grandson, "Little Roy," had been hospitalized, unconscious and unresponsive. Her daughter's boyfriend, who had been baby-sitting, said the 6-month-old fell off the couch.

The child's injuries strongly suggested otherwise. A neurosurgeon told family members there was no hope; Little Roy's brain was swelling, his skull fractured, a leg broken.

Doctors drilled a hole in his skull to relieve pressure on the brain. Later, they removed the right side of his skull to allow room for swelling.

The brain kept growing. Little Roy kept breathing. "We were encouraged to be cautious with our hopes of the outcome because if he woke up, and that's a big if, he would surely be a vegetable," Crouch said.

"My world stopped. I could not do a single thing except kneel and pray, day in and day out. I couldn't leave the hospital. I had to be there for my daughter and for my grandson. ...

"I contacted my manufacturer and told him what was happening. He told me not to worry about a single thing with the order. He would take care of it, fill the container, ensure that it was shipped off, and he would keep me updated via email every single day—and there would be no need for me to respond, just stay at the hospital and pray."



Liz Crouch was alarmed to learn of Allstar's The Tasty Bouquet cupcake rack (top), which is very similar to The Cupcake Rack (opposite page). Allstar CEO Scott Boilen, unaware of any conflict, was immediately responsive and offered her a referral agreement.

Above: An early design for The Cupcake Rack, which Crouch said looked like a spaceship, was among her early invention hurdles. Crouch says customers love the elegant simplicity of the finished rack with iron loops, which holds 19 cupcakes.

In 2013, Crouch learned that her infant grandson, “Little Roy,” had been hospitalized, unconscious and unresponsive. Her daughter’s boyfriend, who had been baby-sitting, said the 6-month-old fell off the couch. After a miracle recovery, Little Roy now leads somewhat of a normal life.



## A neurosurgeon told family members there was no hope; her infant grandson’s brain was swelling, his skull fractured, a leg broken.

When the child woke up, he drank from his bottle and breathed on his own after doctors removed the tubes. The rest, Crouch said, is nothing short of a miracle.

“He can now see fairly well out of one eye, he can walk, he talks, he’s funny, he’s precious, and he now goes to kindergarten! God surely answered our prayers.”

### Priceless friendships

Crouch now exchanges gifts with her Chinese business contact and friend. Her relationships have been one of the most satisfying aspects of inventing.

She was researching inventing online when she found out about Edison Nation. “I soon became a member and loved all the like-minded friends I met there, along with all the great information through the forums from inventors. The support and love from the EN members was priceless, especially because on my journey a tragedy occurred in my family—a tragedy and a miracle.

“I had been writing about my journey in the forums in a post I titled ‘Waiting for my ship to come in.’ The name came about because when my manufacturer was finished with my container, I drove up to Astoria, Oregon, to literally watch my ship come in as it crossed over the Columbia Bar from the Pacific Ocean to the Columbia River on its way to Portland, Oregon, to the shipping yard—where it then was put on a truck to be brought to my residence, where we ship out our product.”

Crouch’s invention is so simple—just insert 19 homemade or store-bought cupcakes into the rings of the rack—that she seems both proud and surprised.



PHOTO BY RACHELLE DUREN

In fact, she was so convinced that someone would beat her to patenting her idea, she might have rushed the process.

“Be extremely careful with your wording, claims and functions of your invention when writing your patent application,” she said. “Be clear, specific, not too broad, and not too narrow with your claims.

She emphasized: “To be infringed upon, the infringer must infringe upon every single element in a claim.”

It’s also important to update your patent if necessary; the process allows two years from original date of approval. “I should have updated mine, eliminating some elements of a claim that were no longer relevant, and then maybe it would not have been so weak,” she said.

The hard lessons have been more than offset by favorable reviews, the friends she has made, and the thrill of winning a pitch competition on MSNBC’s “Your Business”; appearing on shows such as “The Monday Night Show With Adam Freeman” on HSN and “Steve Harvey”; and pitched to the judges on “Entrepreneur Elevator Pitch.”

She is even grateful for those hard lessons, each one strengthening her for the next. She is prepared to be unprepared for the adventures ahead.

“There is always going to be an obstacle while you are inventing, and life is full of them, too,” she said. “Seems every time you get over the obstacle, bam! There’s a wall in your face and you’re doing it again. But every time you have an obstacle, it’s a learning opportunity.”

*Details: TheCupcakeRack.com*

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# Prototypes: When Do We Need Them?

AN ISSUED PATENT WITH APPROVED CLAIMS IS OFTEN KEY TO SELLING YOUR INVENTION **BY JACK LANDER**

**L**AST MONTH, I advised starting with the market before spending money on patenting. The same holds true for prototyping. Make sure you have at least a niche position in the appropriate market channel before you spend a significant amount of money on creating a prototype.

As with most good rules, there can be exceptions. If you love to tinker and you can make your own, go ahead and have some fun. But hiring a professional prototyper to make your prototype can cost big bucks.

Here are some general guidelines to help you decide when and if you'll need a prototype.

- The main need for a prototype is to clinch a sale at the negotiating stage. Until you have an issued patent for which the claims that cover the essential benefit features of your invention have been allowed, you don't have a solid basis for negotiating.
- You and your patent agent or patent attorney may be very optimistic about having your claims approved. But the United States Patent and Trademark Office has the last word, and many claims are allowed only after "watering down" by the applicant and his or her attorney. Some are rejected altogether. So, the least risky monetary investment in a prototype is after you know the strength of your issued claims.
- That doesn't mean that waiting until your patent is in your hand is the best strategy. In product fields that are evolving rapidly, you may want to try to license on the basis of your application. See the next item.
- If you have filed for a patent and you hope to license before your patent issues, you may not interest any potential licensees. A patent application is a vision of patent claims that may or may not materialize.
- A patent-savvy prospect will know that your claims are only potential until they show up in the issued patent. Therefore, investing in a prototype is relatively high risk.
- A prototype is mainly valuable when you can demonstrate it. One of your main sources of potential licensees is trade shows. For most inventions, you'll want to attend appropriate trade shows as a walk-in, not as an exhibitor.
- Large or cumbersome prototypes will not be allowed into many, if not most, shows. However, no show will stop you from bringing in a video recording that demonstrates your prototype. The earlier points still apply.
- Mechanisms that look good on paper may not perform as hoped. In such cases, it may be wise to produce a prototype and tweak it for optimum performance to prove to yourself that your concept really works as you anticipated. Such prototypes are often useful for the making of videos that can be handed to or mailed to prospects.
- A looks-like but nonfunctional prototype can also be used for professional or homemade sell-sheets. A cell-phone photo may produce a convincing image of your invention, and can be produced inexpensively in quantities. If you don't have expert instructions on how to prepare your own sell-sheet, email me and I'll send you my paper.
- Prototypes don't always have to be three-dimensional. A sell-sheet can act as a prototype. What is lost by not presenting the physical prototype is gained by the emphasis on the eventual product's benefits to the end user. For unusual or complex inventions, the sell-sheet can explain the details, and show diagrams that cover circuits, dimensions, etc.
- The most effective use of the sell-sheet is achieved through personal presentation to your prospect, which should be a marketing executive. This is most easily accomplished by attending appropriate trade shows. The marketing directors of even large companies are often in their booths, and easily approached. However, if you don't have the money for travel and a hotel, second best is a mail campaign. A professional sell-sheet is necessary in any case.

A prototype is mainly valuable when you can demonstrate it. But a looks-like, nonfunctional prototype can also be used for sell-sheets.



- Having a convincing sell-sheet enables you to advance to the position where your prospect agrees to a meeting. At this point you have to decide whether to actually make a physical prototype or proceed without it, and hope you can get a commitment based on your sell-sheet alone. Again, if you aren't sure about how to prepare one, e-mail me, and I'll send you my seven-page instruction. No 'strings' attached.

### Keep good tabs on it

Finding a prototyper is sometimes difficult. One way is to search "prototyper New York." (Use your state's name, of course.) You'll find a few entries even if you live in Montana. But many such businesses won't disclose their location, and they may be several states away.

If you have CAD drawings, dealing at a distance is fairly trouble free. It's usually less expensive to find a small, local company if you can. But the advantage of the larger organization is that it often has a wide range of methods—including machining, stereolithography, selective laser sintering and molding, as well as 3D printing.

If you aren't sure which of the processes to use, key in "explain stereolithography," etc., on your favorite search engine, and you'll become an expert. Unfortunately, it is difficult to get advice on which process is the most economical, strongest, fastest, etc. Discuss these issues with the prototypers after they have seen your drawings.

One precaution: Based on many sad tales I've heard from clients, it's hazardous to hand over your prototype to a prospect, even when a deal seems

imminent. That's the big advantage of the sell-sheet.

To part with your one and only physical prototype is risking its timely return. I've even heard from inventors that the prospect lost their prototype. It's not just losing it or delaying its return to you that hurts, but until you get it back, you can't demonstrate it to other prospects.

Big companies are especially careless. A prototype may pass from department to department, or desk to desk, and no one knows exactly where it is. It's also exposed to persons within the company who have an incentive to criticize it. You don't want the jealous engineering department to tell the marketing director that your invention is inferior to what it has come up with after seeing your invention.

If you must leave your prototype with your prospect, draft a simple letter of agreement. State the date that you are handing it over, the latest date that you will have it back, and who will be responsible for it within the company. You might even state that if the return date is not met, you will charge a rental fee of X dollars per day. Also, get a signature from a marketing executive or the company president.

Whatever your approach to prototyping, remember to start with an evaluation of the market. A prototype is an expensive toy if you can't license your patent. 📦

**Jack Lander**, a near legend in the inventing community, has been writing for *Inventors Digest* for 23 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](mailto:jack@inventor-mentor.com).



# Good Wellness Comes in 3s

START-UPS AT CES OFFER BREAKTHROUGH POTENTIAL

BY JEREMY LOSAW

**E**ACH JANUARY the tech world descends upon the illuminated streets of Las Vegas for CES, the Consumer Electronics Show. The world's largest technology show, it boasts more than 4,500 exhibiting companies and more than 180,000 attendees from 150 countries. The whole world is watching and looking for the next big thing.

I was fortunate to be in attendance for the 2019 edition—the event is not open to the public—and was blown away by the innovative products headed our way. Of course, the 8K and bendable televisions were amazing. Yes, the new connected technologies in the auto industry are going to change our lives.

But the category where I saw some of the most interesting innovation was wellness. Brands such as Fitbit and Peloton are some of the big players in the space, but I

scoured Eureka Village (the area of the show specifically for start-ups and university innovation) and found some awesome start-ups that have taken their own spin on the category. Here are three companies looking to disrupt the wellness space and become the next breakout tech company.

## YogiFi

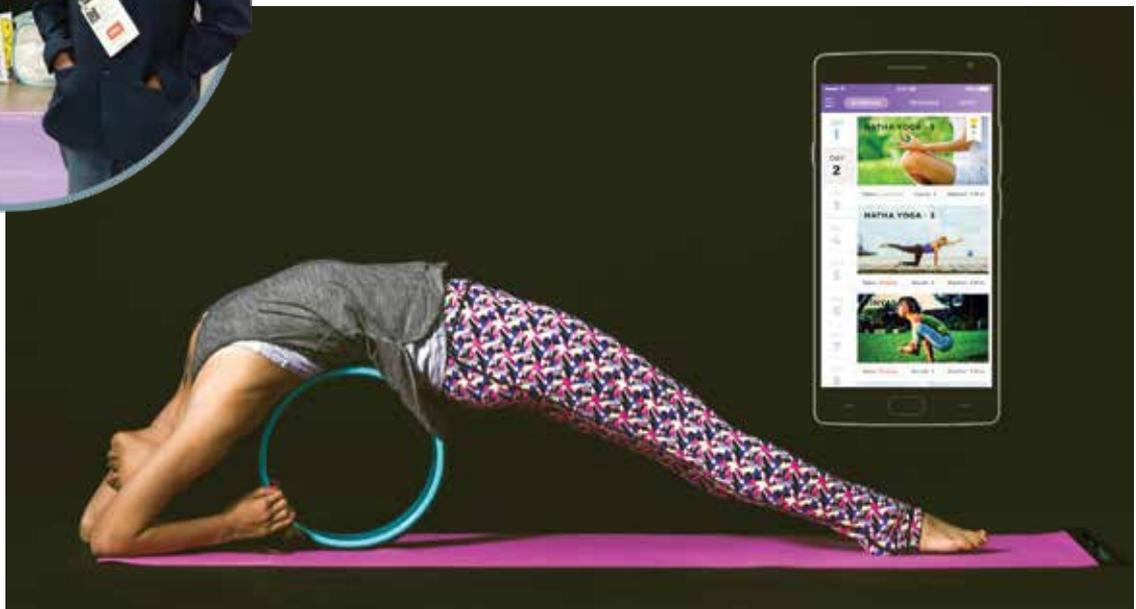
The yoga industry has seen massive growth in the past two decades. Studios are opening in every corner of the country; nearly every brewery in the Charlotte metro area where I live also offers classes.

Sankar Dasiga and the team at Wellnesys are looking to take advantage of the trend with their new connected yoga mat called the YogiFi, a smart yoga mat with sensors embedded inside to track the user's asanas (poses). It can be trained by a yoga instructor,

I scoured Eureka Village and found some awesome start-ups that have taken their own spin on the category.



Sankar Dasiga (left), Muralidhar Somisetty and the team at Wellnesys showed off the YogiFi, a smart yoga mat with sensors embedded inside to track the user's poses.



and students can then practice from their home at any time. It also integrates with third-party wearable devices such as the Apple Watch and Fitbit.

Dasiga is a yoga instructor who noticed some drawbacks to teaching the classes live.

“Several students would want to do the exercises at their own time and in their own home,” he says. “Some of them are too shy to do an exercise in a group. We wanted to integrate the ancient way of doing exercising and the modern technology.”

The YogiFi is available for pre-order from yogifi.io and will ship this summer.

### Somnox

New York may be the city that never sleeps, but the droopy eyes I saw at the close of CES 2019 prove that Vegas is also a town of insomnia. Fortunately, sleep tech was a big trend at CES.

My favorite sleep device was the Somnox sleep robot. The kidney bean-shaped device, created by a team from the Netherlands, features patented

technology that allows the pillow to create pulses to pace the user’s breathing. This facilitates relaxation and allows the user to fall asleep quickly.

Somnox also has a speaker to play ambient noise, or your favorite relaxing tune. The ergonomic shape of the device was designed to keep sleepers in natural sleeping positions during the night.

The device started as an academic project at the Delft University of Technology. Inventor Julian Martijn Jagtenberg’s mother was having sleep problems.

“She didn’t sleep well, so she wasn’t productive at work. She felt bad during the day,” Jagtenberg recalls. “When I saw her eating pills to solve the problem ... we wanted to create a robot to help her sleep better.”

He and his partners researched sleep patterns and techniques that help people sleep better. They found that breathing pace is crucial to good sleep and took to building a bot that could help.

It was difficult to create a device that was soft and quiet enough to sleep with and still provide effective

The Somnox connected pillow, displayed by Stijn Antonisse (left) and Julian Martijn Jagtenberg (right), creates pulses to pace the user’s breathing and promote sleep.



pulses to pace a user's breathing. But after three years of development, the Somnox will be available to consumers in March for \$550 from meetsomnox.com.

**The Little Cat**

Health and wellness products at CES were not limited to those for humans. The most unique of the bunch was The Little Cat exercise wheel.

The large wheel has a soft running ring with a circumference of LED lights in the middle of the walking track. The LEDs light up on the ring, and the cat chases the light to get the wheel moving.

The device is powered by an app with a Bluetooth connection. Users can set how high up the wall the LED chaser lights are shown (higher to get the cats

to move faster). The device is large and takes up a good amount of floor space, but it has been proven to shed up to 6 lbs. from overweight felines.

Inventor Daeyong Kim designed and developed the device in Korea. He had a cat that died from health issues related to feline obesity and did not want to go through that again.

Exhibiting at CES was a crucial part of the team's marketing strategy. "We got into CES with help from the incubator at Hanseo University. ... We got a lot of feedback from customers and saw the potential in the market," he says.

The device will be available in the United States toward the end of this year and will cost approximately \$1,800. 🐾

Right: Daeyong Kim (left) designed and developed The Little Cat exercise wheel.



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Best wishes, Jack Lander

# Find Contacts and Use Them Well

STEPS TO GET IN THE DOOR WITH YOUR TARGET COMPANIES **BY DON DEBELAK**



**I**NVENTORS will have a far easier time striking a deal with a larger marketer, manufacturer or distributor when they have a strong supporter inside the potential partner company.

It's a great benefit to inventors when they find a supporter early, before making any formal sales calls. The contact can then help fine-tune the presentation(s) to the company's needs. Typically, it's best to find either a person in the sales group who will refer you to a regional manager, or a marketing manager as a key contact.

## Finding contacts

The simplest way to start is through product information requests. When you read trade magazines, you'll notice that they have extensive new product sections—or in the case of service businesses, new services that companies want to promote or sell. Request information for any product or service that is listed in the new product/service section. You'll want the name of the company contact, which will typically come on a letter that arrives with the literature.

You can then call that contact and say you have a product that may interest his or her company and send your information to the contact.

Another strategy is to join trade associations, which are groups that include retailers, distributors, marketers and purchasing agents. Trade associations work for the betterment of companies in the industry. They have volunteer committees of members who do most of the work of the association.

You can volunteer to be on committees. Marketing committees can be especially helpful for a new entrepreneur because they typically have volunteers who are in marketing for their own companies.

You can find trade associations in Gale Directory Library, which can be found at most large libraries.

## Connecting with contacts

You don't need to go with your hat in your hand when working on an inside contact; in fact, it is a win-win situation for that person because it can make him or her look like a go-getter trying the help the company

advance. These steps will usually get you an inside contact with a potential partner company:

- **Show that consumers want your product.** You should show positive first-market research and initial sales success with intriguing possibilities, then tell partners that your concept seems so strong that you feel it will do best if you partner with a marketer immediately.
- **Start with a salesperson.** You can meet salespeople by requesting literature and attending association meetings. You can also attend trade shows and meet salespeople by talking to them in their booth.
- **Have a sales piece ready.** It should show your initial sales success and some research you've done on the larger market. Don't try to sell the salesperson; just show him or her the sales piece with the observation that you're trying to decide what would be a good next step to expand sales.
- **Ask for the salesperson's input.** Be receptive. Then ask if this is a product that may be of interest to his or her company. The salesperson will comment on how the product could be introduced with his or her company, with suggestions on making the concept just right for the target company.
- **Arrange to meet regional or marketing managers.** If the salesperson is on board, make at least some of the changes he or she suggested and then ask the salesperson whether he or she could set up a meeting with the regional manager or marketing manager.
- **Use the contact to get a presentation.** Once you present your product to the company's regional or marketing manager, he or she will be able to set up a key meeting with the right people at the company. 📌

**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](mailto:dondebelak34@msn.com).





# State of the Union

SURVEY OF REAL PATENT TRANSACTION PRICING  
SHOWS AN OVERALL STRONG MARKET **BY LOUIS CARBONNEAU**

**T**O KEEP with the new tradition in the United States, this State of the Union column comes a little later than I expected—but Nancy Pelosi had nothing to do with it. (Smile.)

I was actually waiting for some really interesting data, which I recently received. For context, Tangible IP recently participated in the first and most comprehensive, cross-company survey of real patent transaction pricing. It was organized by Richardson Oliver Insights.

Twenty-two industry participants shared details of all their patent transactions for 2015-2018. The results, covering 360 deals worth \$522 million, were aggregated in order to extract the average market price for patents sold either directly or in the secondary market.

Although the final numbers are all confidential, the report indicates that prices for brokered patents are higher than for auctioned patents, there is a clear price premium for EOUs (evidence of use, meaning patents that appear to be infringed), and that overall, the market is robust.

## Breaking it down

The prices are generally in line with the previous Richard Oliver Insights report available a few months ago that did not have access to this complete set of data.

It is also noteworthy that the typical gap between the asking price and the actual sale is also in line with reported numbers of 30 percent to 35 percent. For such an illiquid market with so few reported transactions, this is actually quite small and reflects, in my view, that most actors involved in these transactions are fairly attuned to current market conditions. Unfortunately, most inventors are not, so it is important that we as an industry should track these numbers in order to avoid major disillusion down the road.

A few important caveats should be made. Most patents in circulation will never sell, so the prices

referred here only apply to this very rare breed (probably 1 percent or fewer) of patents that will ever be transacted in a discrete transaction. So inventors should not take away that their patents justify this kind of valuation, let alone a higher one.

Second, and although the reference point here is to U.S. patents, Tangible IP's daily interactions with buyers suggest there is a substantial premium paid these days on patent portfolios that contain a Chinese or German counterpart, ideally both (a UK patent for Standard Essential Patents is also quite coveted). We actually have several buyers who will not make an offer unless there is such a foreign asset in the portfolio. You should keep this in mind when defining your international patent filing strategy ... and budget.

Based on the report, patents with evidence of use command a very significant premium over assets that are not practiced by the industry, especially in the brokered market. This is what I often refer to as the "assertion value" of a patent, which is ultimately the only valid yardstick these days to predict that a certain asset might sell.

Typical sales took less time than what we normally see, but this presumably is because buyers report a shorter time for a deal being on the market and we don't know what the ratio to buying to selling was. We'd like to see more about how long deals really are on the market.

Also, this is probably on the low side as a large percentage of the transactions in this study were "direct" deals (meaning the seller directly contacted the buyer, or vice versa, which shortens the sale cycle significantly). Brokered deals generally take much longer to close.

Another interesting data point: Despite all the noise about the 2014 Supreme Court *Alice* ruling being detrimental to software patents, such patents are still the ones that warrant the highest market price compared to other technology areas.



## Data indicate that prices for brokered patents are higher than for auctioned patents, and there is a clear price premium for EOUs (evidence of use, meaning patents that appear to be infringed).

Although Tangible IP was the only exclusive brokerage firm selected in the study given the number of transactions we closed, I am not at liberty to share additional details out of respect because of the confidential material in this report. Let's just hope that more companies and intermediaries will see value in the future having access to a more objective set of data that reflect actual transactions.

### Conclusions

So, where does this leave us in terms of market trends?

If I based my answer on Tangible IP's specific experiences these days, the fact that we are getting increasingly more requests by operating companies to take on a voluntary license on a portfolio we are trying to sell tells me that although these companies do not really see much value in owning the patents (arguably because they have no intention to assert those against anyone else and they don't want to pay for maintenance fees), they do recognize that the winds are changing. The legal environment is no longer one-sided in their favor, as it has been for the past several years.

Thus, as the legal risk grows, so does the willingness for potential infringers to take an early (and generally cheaper) license before they find themselves on the receiving end of a lawsuit.

Remember, there are three main sources of motivations for people: greed, fear and love. We are just starting to see a little more fear making a comeback in the patent world.

### Buyers and sellers

Beleaguered **Intellectual Ventures** continued to offset more patents, this time to a few operating companies (such as **Facebook**, **Seagate**, and **TiVo (Rovi)**) as well as various non-practicing entities (a party holding a patent for a product or process but with no intention of developing it). ...

Chinese handset manufacturer **Oppo** continued its buying spree by acquiring a small portfolio from defunct South Korean mobile maker **Pantech**, which is trying to reduce its \$100 million of debt. ...

Defensive aggregator **Allied Security Trust (AST)** announced the results of its third Industry Patent Purchase Program (IP3) by indicating that a coalition of companies, including **Verizon**, **Google** and **Uber**, had collectively spent \$3 million to buy patents averaging \$99,000 per patent family—2.4 times lower than the average price reported in the study above. AST's big brother, **RPX**, announced that it had directly acquired the remaining patent portfolio of a **Creative** subsidiary for a reported \$17.5 million to end all current litigation involving its members. ...

Caught in a tight race with rival Uber to go public first, ridesharing company **Lyft** acquired a set of patents from U.S. carrier **AT&T**, which has been divesting its large portfolio at an accelerated rate lately. **Samsung** is another company that does not shy away from selling some of its IP assets. ...

**Wacom**, the Japanese maker of high-end tablets and styluses, has apparently acquired more patents amid new U.S. litigation and a push to reach more



## HANDSHAKES

Call this a preemptive handshake: Though automotive companies are beefing up their patent portfolios around self-driving and connected cars, they appear to have no intention of repeating the patent war they witnessed in the mobile phone arena. They seem content to play a defensive game rather than use their innovations to create some product differentiation. ...

**3M** settled a lawsuit against California-based touch-screen manufacturer **Elo** over what it alleged was the infringement of its patents by Elo's Pro-M products covering metal mesh conductors. ...

Finally, and just in time for golf season, golf manufacturers **TaylorMade** and **PGX** announced a settlement of their ongoing patent battle. What started the dispute was that PXG believed TM's SpeedFoam was a little too close to PXG's TPE (thermoplastic elastomer) filing. The parties can now go back to the tees and let their clubs do the talking.

consumers. Finally, a year after acquiring **Technicolor's** patent licensing business and portfolio, **Interdigital** followed suit and made a binding offer to buy its research & innovation unit.

### Winners and losers

**Intellectual Ventures** had a rare win recently when a court established that it is owed \$34 million by **T-Mobile** and another \$9 million by **Ericsson** after a jury returned its verdict. It will be interesting to see if and how much of this award survives appeal. ...

Patent owners in general and particularly those in the life science space may received a most welcome gift from the United States Court of Appeals for the Federal Circuit. It issued a precedential decision in **Supernus Pharmaceuticals v Iancu**, in which it adopted a more generous view about patent term extensions. When one knows that each day of patent term can be worth as much as \$50 million for a blockbuster drug, this decision will no doubt seem a shot in the arm for pharma.

### I'll see you in court

As usual, there was a flurry of new cases filed in court against alleged infringers. A few stand out: **MIT** professors accused **Ford Motors** of willful infringement regarding proprietary technologies it invented to propel its Eco-Boost fuel-efficient engines. ...

**Dish Network**, which has blacked out several **Univision**-run channels after failing to reach a new distribution deal with the programmer, sued it, claiming that the Spanish-language broadcaster is infringing a batch of patents tied to adaptive bit-rate streaming. ...

After six years of a protracted patent battle, Portland-based **Columbia** upped the ante, accusing **Seirus Innovative Accessories** and its executives of

racketeering in a lawsuit that seeks more than \$20 million in damages. ... The new perceived patent environment may also explain why **Excalibur IP**, which manages the former Yahoo patent portfolio, filed its very first lawsuit, against U.S.-based **Spotify**. Excalibur claimed that the streaming service's "digital fingerprint" software infringes patents owned by Yahoo. ...

Finally, inventor-controlled **Portus Singapore Pte Ltd.** initiated its first litigation campaign as patent owner and exclusive licensee, respectively, suing AT&T, AXP Group and Zmodo Technology. A family of two patents generally related to monitoring and/or controlling devices at a remote location is asserted against each defendant.

### From the bench

On January 22, the U.S. Supreme Court handed down its decision in **Helsinn Healthcare S.A. v. Teva Pharmaceuticals Inc.** by stating that a sale of an invention to a third party in which the third party is required to keep the invention confidential still places the invention "on sale" under the America Invents Act—thus potentially barring the ability to patent the invention.

This decision is going to help generic drug manufacturers, because many pharmaceutical companies have relied on such "secret sales" in the past when debuting the commercialization of a new drug.

Also, all inventors and patent owners should be careful to complete their patent filings prior to any commercial sales, even if secret. This is a scenario in which first filing a provisional makes sense if time is limited.

### Go, Canada

As a native Canadian, it is great to see a number of Canadian institutions finally placing a higher value on intellectual property after historically treating IP as a mere afterthought.

**Tangible IP** was recently retained by the prestigious **National Research Council of Canada** to advise it on its overall intellectual property practices and strategy. Tangible IP was similarly retained by the **Aluminium Association of Canada** and **AluQuebec** as they embark on devising the future of clean and sustainable aluminum production. ☺

**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.





## The USPTO and ... Speed Dating?

“Speed Dating for Start-ups” was the title of a recent special event at the Silicon Valley office of the United States Patent and Trademark Office.

More than 100 attendees heard opening remarks by John Cabeca, director of the Silicon Valley USPTO. Others who presented were Sody Tronson, founder of the Sody Tronson Law Group, and this writer (pictured above), the executive director of the California Invention Center.

The event was divided into four rooms, with themes called IP Strategy; Legal Issues for Start-ups; Pitch Perfect and Finding Money, and Trademarks and Brands. The sessions were covered by Cabeca; professor Laura Norris of Santa Clara University; Mark Jansen of Fenwick & West LLP, and Sara Rauchwerger, founder of the TECHLab Innovation Center.

The attendees I spoke to ranged from having an idea to having an issued patent and making a new exercise product. All were eager to hear from the speakers and left with greater knowledge—and hands full of literature.

The event kicked off the third year of “From Idea to Product to Market” in the series “Navigating Through the Invention Process,” which I created in 2016 for the USPTO.

—Lawrence J. Udell

### NEW MEXICO WORKSHOP IS APRIL 12-13

Learn how transform your ideas from concept to market at the fourth annual Inventors and Entrepreneurs Workshop, a business start-up conference April 12-13 at New Mexico Tech’s Fidel Center Ballroom in Socorro, New Mexico.

The interactive event will feature panel discussions, with speakers from Wall Street and Silicon Valley. The first three annual workshops sold out.

#### Among the planned segments:

“Structure for Success: Forming, Financing and Protecting”; Licensing Myths & Mastery”; and “Participant Exercise: Solutions to a Problem.”

**Early registration:** \$75 to March 29. Otherwise, registration is \$95, or \$125 at the door. Register online at [management.nmt.edu/invent](http://management.nmt.edu/invent). Registration includes two box lunches, cocktail reception, barbecue dinner, continental breakfast and break refreshments.

**Other fees:** Students with IDs, all schools, \$25; seniors (65 and older), military veterans and special needs (\$45).

**Information:** Lawrence J. Udell, program co-chair, [larry@les-svc.org](mailto:larry@les-svc.org). Phone 575-835-5440 or 510-914-8449.



# U.S. Leaps in Patent Rights

MANY EXPERTS CREDIT USPTO DIRECTOR IANCU  
FOR SECOND-PLACE POSITION IN WORLD RANKINGS

**T**HE UNITED STATES' improved outlook for patent rights has been quantified with news that America soared to second in the world in that category in the U.S. Chamber of Commerce's 2019 Global Innovation Policy Center International IP Index.

Released February 7, the index assesses the intellectual property environments in 50 world economies. The United States again achieved the top overall ranking as the strongest intellectual property regime in the world. But it was the country's improved ranking in patent rights—moving from 12th place in 2018 to a tie for second this year—that is particularly notable.

However, the list of countries is very tightly bunched in patent rights rankings. After a 0.25-point gain, the United States is tied with 10 other countries with 7.5 points and is just as close to being tied with 13th-place Italy as it is to being tied with first-place Singapore (0.25 points ahead).

## More predictable system

The index's executive summary noted that the United States' improved ranking in patent rights was a result of reforms introduced by the U.S. Patent and Trademark Office that are expected to reduce unpredictability in the nation's patent opposition system. These include the change in the claim construction standard used in *inter partes* review proceedings, the *Phillips* standard used in federal courts, the new Trial Practice Guide clarifying the grounds on which an IPR may be instituted, and changes to standard operating procedures related to judge assignments and issuing precedential opinions.

Patrick Kilbride, senior vice president of the Global Innovation Policy Center, credited USPTO Director Andrei Iancu's efforts to address those issues.

"We were very concerned when we saw the deteriorating predictability of the U.S. patent system over the past decade," Kilbride said. However, he added

that the GIPC was encouraged by the measures taken by the USPTO in the past year to restore predictability to patent rights.

He added that although the IP Index covers a large number of factors, it was impossible to measure every factor affecting the country's patent ranking. He also recognized that U.S. patent owners might point to continuing issues in obtaining injunctions against infringers or patent eligibility problems, which continue to affect the nation's patent system.

In a statement, Innovation Alliance Executive Director Brian Pomper also gave much of the credit to Iancu:

"Since he assumed office last year, Director Iancu has been focused on using his administrative powers to improve the predictability and reliability of the U.S. patent system.

"For example, to help address the confusion over Section 101 and what can and cannot be patented, the USPTO has issued new guidance to clarify the law for inventors. And to help restore balance to the agency's Patent Trial and Appeal Board (PTAB) process, the USPTO has finalized a rule requiring the PTAB to use the same standard for considering patent claims as is used in federal courts, to prevent inconsistent results when the same patent is reviewed in different forums.

"Most importantly, {sic} Director Iancu has used his position to champion the brilliance of American inventors and the critical role our patent system plays in promoting their innovation."

## IP's growing role

As noted in the index's executive summary, intellectual property has become a much more important topic in international affairs during the past year. IP issues have been at the center of the ongoing trade dispute between the United States and China, and played a major role in negotiations leading to the



## The United States again achieved the top overall ranking as the strongest intellectual property regime in the world.

United States-Mexico-Canada Agreement that was signed by those three countries last November.

The United States' top overall ranking in the International IP Index was supported by key areas of strength, including the new standard for international IP protections created by the U.S.-Mexico Free Trade Agreement and its position as a global leader and standard setter for IP rights enforcement and protection. Key areas of weakness for the United States include continued uncertainty over patentability in high-tech sectors and a lack of a targeted legal basis for addressing online piracy in line with other global leaders.

A new key area of weakness identified in this year's index involves a 2018 Congressional proposal for compulsory licensing as a pharmaceutical cost containment policy. Such a proposal was included in the Medicare Negotiation and Competitive Licensing Act of 2018, introduced by Rep. Lloyd Doggett (D-Texas) last July.

Such compulsory licensing measures would arguably undermine America's position as the global leader in biopharmaceutical innovation, due to the crucial factor played by IP rights in supporting the billions of dollars' worth of investment needed to develop new drugs and treatments. The passage of

such legislation would have completely wiped out the United States' score on one of the IP Index's indicator measures and would have dropped it to second place overall and 16th in patent rankings.

Although the United States retained the top overall score in the International IP Index and increased its lead over the second-place United Kingdom, the index noted that America's overall score actually declined slightly from 94.95 percent to 94.80 percent.

David Torstensson, partner at the Pugatch Consilium and co-author of the index, chalked this up mainly to the introduction of new indicators to the Index, increasing the number of indicators measured from 40 to 45. Torstensson added that the United States didn't earn a perfect score in some of these new indicators, such as tax incentives for the creation of IP assets.

Despite the good news for the United States, Pomper warned against complacency.

"Recent court decisions and legislation have weakened patent rights and undermined our nation's innovation ecosystem," he said. "As a result, U.S. start-up activity has slumped and venture capital investment has increasingly moved overseas." 🐕

—IP Watchdog

# Marley Judgment Upheld

ESTATE OF LATE REGGAE STAR TO BE PAID  
\$2.8 MILLION IN INFRINGEMENT SUIT **BY STEVE BRACHMANN**

**T**HE FAMILY of late reggae icon Bob Marley won in court again recently in a trademark infringement case.

The U.S. Court of Appeals for the Ninth Circuit issued a memorandum on January 9, affirming a U.S. District judge's 2017 grant of partial summary judgment in *Hope Road Merchandising v. Jammin Java Corp.* The Ninth Circuit's decision upheld a nearly

\$2.5 million damages award for trademark infringement in favor of Hope Road, the licensing and merchandising arm for Marley's family, against the coffee distributor.

Hope Road and Fifty Six Hope Road Music Limited, the Bahamas-based entity owning Marley's intellectual property rights, first filed a complaint alleging breach of contract and trademark infringement against Jammin Java in the Superior Court of Los Angeles County in August 2016.

Hope Road alleged that Jammin Java, which had licensed Marley's name for the sale of Marley Coffee products, had made material breaches of its contractual obligations through failure to make royalty payments and fraudulently licensing the Marley trademark to unknowing third parties.

Jammin Java filed a notice of removal to transfer the case to the Central District of California, where Hope Road won a motion for partial summary judgment on its trademark infringement and breach of contract claims in February 2017. A final judgment in the case, issued in June 2017, awarded \$2.83 million in damages to Hope Road, including \$2.46 million for trademark infringement damages and \$371,159 in unpaid royalties.

## Contract breached

On appeal to the Ninth Circuit, Jammin Java argued that the district court erred by concluding that provisions of a license agreement with Hope Road precluded its defense that both parties waived and orally modified the royalty fee payment schedule in the agreement. Although California contract law does allow for the assertion of those defenses despite their prohibition

under contractual provisions, the appellate court found that Jammin Java breached the license agreement both through its failure to provide quarterly and annual statements, as required by the agreement, and as a result of adverse action taken by the U.S. Securities and Exchange Commission against Jammin Java. These breaches went uncured despite written notice from Hope Road, thus terminating the agreement.

This led the Ninth Circuit to find that the district court properly granted summary judgment to Hope Road on the breach of contract claim.

Jammin Java also contended that the district court erred by enforcing the license agreement's requirement of written notice of breach, arguing that the provision was a disfavored forfeiture clause under California contract law.

The provisions of the agreement clearly laid out how it could have been terminated by Jammin Java through written notice, and the clear intent was to give the opposite party an opportunity to cure the breach—leading the Ninth Circuit to affirm the district court's enforcement of this provision against Jammin Java.

## Defendants' last appeal

The last argument on appeal for Jammin Java was that the district court erred in awarding profits during the infringing period to Hope Road without finding willful trademark infringement. Citing its 1995 decision in *Adray v. Adry-Mart Inc.*, the Ninth Circuit panel held that a finding of willfulness isn't required where the plaintiff seeks the defendant's profits as a measure of its own damages. Jammin Java's unauthorized use of the Marley Coffee trademarks precluded Hope Road's use of those marks, the appellate court found.

Jammin Java also failed to submit evidence of costs or deductions associated with the trademarks, which was required to seek an offset against the amount of profits awarded.

A member of the Rock & Roll Hall of Fame, Marley died of cancer in 1981. He was 36. 📍



**Steve Brachmann** is a freelance writer located in Buffalo, N.Y., and is a consistent contributor to the intellectual property law blog IPWatchdog. He has also covered local government in the Western New York region for The Buffalo News and The Hamburg Sun.



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847-292-4200; [housewares.org](http://housewares.org)

March 4-8

### International Wireless Communications Expo (IWCE)

Las Vegas Convention Center  
800-927-5007; [iwceexpo.com](http://iwceexpo.com)

March 8-17

### South By Southwest Conference & Festival (SXSW)

*Technology, start-up ideas, pitch competitions*  
Austin, Texas; 512-467-7979; [sxsw.com/attend](http://sxsw.com/attend)

March 18-22

### Game Developers Conference (GDC)

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866-535-8997; [gdconf.com](http://gdconf.com)

March 20-22

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## IoT Corner

As IoT products flood the marketplace, the security of connected devices remains a major concern. In January, several Nest cams were breached and hackers sent verbal messages through the device to the owners, including one that claimed missiles from North Korea had been launched.

In advance of next year's Summer Olympic Games, the Japanese government is looking to minimize the risk of hackers intervening with its showcase event. A new amendment passed in January will allow the government to access millions of connected devices and "test hack" them to verify the strength of their passwords. It will then compile a list of vulnerable devices and share the information with internet providers so the latter can alert consumers and make the devices secure.

The action could involve more than 200 million IoT devices. —Jeremy Losaw



## Wunderkinds

When 10-year-old **Bishop Curry** learned that a 6-month-old girl died of heat exposure in a car near his home in McKinney, Texas, he felt he had to do something.

Bishop drew a mock-up of a device called Oasis, which attaches to a headrest or car seat. The invention has sensors that detect the vehicle's temperature and whether a child is present, then alerts parents' phones and the police—while blowing cold air until help arrives. Bishop reports that he received a patent for the device last year and is raising funds to cover the costs of design, testing and assembly. He has also met with the girl's parents, who have his support.



## What IS that?

Men's and women's **bottle opener sandals**, made by Reef, mean you'll need one less item cluttering your beach bag. "Have you dreamed about being stylish & the life of the party? Look no further," the Reef website says. And you thought it was hard to be accepted by peers.

**36%** The percentage **decline in the number of babies named Alexa** from 2015—when the AI personal assistant became popular—to 2017, per Social Security statistics. Expect that number to plunge further as parents seek to avoid confusion around the house.



## WHAT DO YOU KNOW?

**1** If your original work is being misused on the internet, these are possible remedies:

- A) File a Digital Millennium Copyright Act notice with the host
- B) Send the accused offender a registered claim letter
- C) File a notice with search engines to have the content removed from their indexes
- D) A and C
- E) All of the above

**2** In which decade was the electric ceiling fan invented: 1880s, 1920s or 1940s?

**3** **True or false:** George Washington Carver and Henry Ford were friends.

**4** What was Thomas Edison's first patented invention?

- A) Electrographic vote recorder
- B) Carbon microphone
- C) Kinetoscope
- D) None of the above

**5** **True or false:** You can protect a work by mailing it to yourself and using the postmark as proof of copyright.

**ANSWERS:** 1.D. And you don't need an attorney to do either. 2. In 1882, Philip Diehl adapted the electric motor he had engineered in the first electrically powered Singer sewing machines for use in the ceiling fan. 3. True. They met in 1937. Ford paid for an elevator to be constructed in Carver's dormitory as the latter's health deteriorated late in life. 4.A. The vote recorder, which allowed officials voting on a bill to cast their decision to a central recorder that calculated the tally automatically, was a failure. 5. False. There is no legal provision for the so-called "Poor Man's Copyright."

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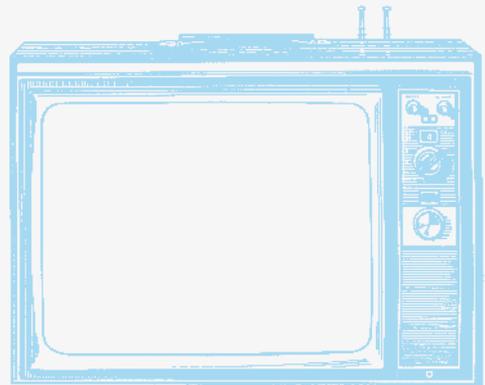
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