

Inventors

DIGEST

MAKING STARS ALIGN

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From Frames to Claims

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CIPU'S BRUCE BERMAN

Wonder Workshop

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TOGETHER *in* INNOVATION

Mentoring the innovators of tomorrow

Do you want to learn how successful inventors and entrepreneurs find guides on their journeys to success? If so, join us for “Mentoring the innovators of tomorrow,” the latest free, online installment of the U.S. Patent and Trademark Office’s “Together in Innovation” series. David Price, inventor of the Safety Pouch, and Kate Yoo McCrery, David’s mentor and founder of Rhinebeck Ventures, will discuss how mentors can help you build a successful creative career.

Virtual event: Wednesday, September 28 • 3 - 4 p.m. ET.

Register at www.uspto.gov/innovatetogether.

See more of our innovator events at
www.uspto.gov/innovationforall.



UNITED STATES
PATENT AND TRADEMARK OFFICE



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ON THE COVER
Sarah Figueroa,
co-founder and CEO
of Geojam; photo by
Cambron Lyles



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Give no quarter to Patent Pirates.

Or they'll take every
last penny.

Our ideas and innovations are precious. Yet Big Tech and other large corporations keep infringing on our patents, acting as Patent Pirates. As inventors, we need to protect each other. It's why we support the STRONGER Patents Act. Tell Congress and lawmakers to protect American inventors.



SaveTheInventor.com

A Palpable Energy

Invention-Con 2022 pulsed with inspiration and information

INVENTION-CON 2022 enlivened the “dog days” of August with a climate of energy, optimism and inclusion.

The theme of this year’s three-day USPTO virtual event, held August 10-12, was “Inspiring and redefining the innovative mindset.” From the opening remarks of *Inventors Digest* publisher and Enventys CEO Louis Foreman to the late-afternoon panel on small business success stories on Day 3, the presentations teemed with inspiration and information.

Foreman, recently inducted into the Intellectual Property Hall of Fame, also participated in a panel discussion entitled “Your IP, a potential gold mine” with serial entrepreneur Tiffany Norwood and Eric Ingram, CEO and co-founder, SCOUT Inc., a 2021 startup of the year.

Main presentations included: “IP Journeys: Go From Eureka to Enterprise,” featuring entrepreneurs who got patents associated with their successful businesses; “IPitching: Innovation and Investment”; “Funds to Fuel Your Future”; “IP in the Fitness Industry”; “Tech in Arts.”

The Invention-Con format also featured “breakout sessions” that allowed viewers to choose between simultaneous events with a vast array of topics. Among them were “Tips for Acquiring Federal Funding”; “Trademark Basics”; “IP in the Digital Era”; “Independent Inventors at the Patent Trial and Appeal Board”; and “Data Resources for Inventors.”

During “IP in the Fitness Industry,” panelist Santia Deck, Women’s Football League Association star and owner/CEO of sneaker company TRONUS, advised inventors and entrepreneurs to protect themselves with intellectual property. She also gave marketing advice. “Build your brand first. Build your name. Build your story up. Get on as many channels

or as many speaking engagements as you can. ... People love knowing who they’re buying from.”

Fellow panelist Shawn Moye, inventor of the E-Sports Trainer, said it is important for innovators to set the tone for their product or service. “Let your passion cause a reaction,” he said, adding that he learned firsthand: “Enjoy the process, because it is part of the promise.”

That could even include an attempt to get a “yes” from the Patent Trial and Appeal Board.

During the “Independent Inventors at the Patent Trial and Appeal Board” program, panelists Steve Leslie and Dr. Yvonne Young of Australia admitted to having some trepidation as they appealed—pro se (representing themselves)—their rejected attempts over many years to secure a patent to provide aquaculture assemblies for culturing oysters in deep waters.

They discussed their rejection with a patent examiner and said they found it helpful, because it reinforced they were not on the same page with regard to prior art issues. In a subsequent written ruling, some of the rejections were reaffirmed—but the PTAB reversed the rejections on the prior art issue. The inventors also learned of a simple phrasing miscommunication in their claim, and remedied that.

The patent issued in March 2021, almost 10 years after their initial filing.

“We always had a courteous, very good working relationship (with the PTAB),” Leslie told moderator Cynthia Hardman, an administrative patent judge with the PTAB. Dr. Young added: “We found from the moment we contacted your staff, they were absolutely excellent and we were able to get the process that was involved step by step by step.”

Foreman said the many narratives lived up to the program’s 2022 theme. “Invention-Con is a great example of how they are able to bring top-notch content and conversation on the topics that are essential for every innovator,” he said.

Recordings from the event will be posted on the USPTO website in coming weeks.



NEWS FLASH



BRENT NAMED USPTO DEPUTY DIRECTOR

Longtime IP professional Derrick Brent is the new deputy under secretary of commerce for intellectual property and deputy director of the USPTO, effective August 1.

The announcement was made by U.S. Secretary of Commerce Gina M. Raimondo and Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office Kathi Vidal.

"I am thrilled to welcome Derrick to America's Innovation Agency," Director Vidal said. "Derrick's wide and deep experience in intellectual property, policy, government, and industry will serve the agency well. His work in the private and public sectors, working with a wide range of IP constituencies in different industries across the country, from Georgia to Ohio to California, and fighting for civil rights and the rights of the under-resourced and underrepresented, will undoubtedly lift this agency to new heights."

Brent will serve as the principal advisor to Director Vidal, managing a wide portfolio of programs and operations for one of the largest intellectual property offices in the world, with more than 13,000 employees and an annual budget of more than \$4 billion.

USPTO GOES GREENER: The USPTO has become a technology partner to the global green-technology platform of the World Intellectual Property Organization (WIPO), WIPO GREEN.

WIPO GREEN is a public-private partnership established by WIPO in 2013. Its 145 international partners include major technology companies, intellectual property offices, business groups, research institutes, and nongovernmental organizations. The partnership provides an online platform for technology exchange, connecting providers and seekers of environmentally friendly technologies, and organizes acceleration projects, conferences, and international events that highlight the availability of green technologies.

The announcement came at a July meeting USPTO Director Kathi Vidal held with WIPO Director General Daren Tang during the organization's annual Meetings of the Assemblies in Geneva.

PHOTO BY JAY PREMACK/USPTO

WHAT'S NEXT

AI/ET PARTNERSHIP SERIES #2: AI & Biotech: The Artificial Intelligence (AI) and Emerging Technologies (ET) Partnership Series will hold its next meeting virtually and in person at the USPTO's Silicon Valley Regional Office on September 22. Panelists from industry and the USPTO will explore various patent policy issues connected to the biotech industry, including:

- Avoiding labels—application drafting strategies
- Landscape of AI in biotech
- Convergence of technologies

This event is free and open to the public, so register early to attend in person or virtually. California MCLE credit will be offered.

A full agenda with speakers will be posted on this page prior to the event. Stay current at uspto.gov/about-us/events/aiet-partnership-series-2-ai-biotech.



HISPANIC INNOVATION AND ENTREPRENEURSHIP

PROGRAM: The annual event, tentatively set this year for October 12, provides opportunities for independent inventors, entrepreneurs, small business owners, and intellectual property professionals to learn about resources available to the Hispanic innovation community. You can learn from accomplished innovators, inventors, entrepreneurs, and business owners about best practices; discover helpful resources; and get practical tips about obtaining and protecting your IP.

More specifics about this year's event will be available as the event date approaches. Stay current at uspto.gov/HispanicInnovation.



Visit uspto.gov/events for many other opportunities to attend free virtual events and/or training.

About PTAB Decisions

Understanding precedential and informative decisions can help you in trial proceedings

EVERY YEAR, the Patent Trial and Appeal Board (PTAB) issues thousands of decisions from *ex parte* (for one party) appeals, reexamination appeals, and America Invents Act trial proceedings. Although all decisions handed down by the board are considered “routine,” certain decisions receive the special designation “precedential” or “informative.”

Precedential decisions establish *binding* authority for all subsequent parties appearing before the board. These decisions involve major policy or procedural issues and other issues of exceptional importance relating to constitutional questions, statutes, rules, regulations, case law, and issues of broad applicability to the board.

Informative decisions are *not binding* for all subsequent parties. However, they provide useful guidance on various recurring issues as well as issues of first impression; guidance on board rules and practices; and guidance on issues that may develop through analysis of recurring issues in many cases.

In making arguments to the board, it often is helpful to cite a previous PTAB decision for support. If your facts are similar to the previous decision, the board’s ruling in that previous case may help the current panel decide your case.

This can be especially helpful if the previous case was precedential—though it may benefit you regardless.

Here’s how a case receives a special designation: The PTAB’s Standard Operating Procedure 2 (Revision 10) describes three paths to designation.

First, the USPTO director may designate any decision as precedential or informative.

Second, any decision issued by the Precedential Opinion Panel is automatically designated as precedential unless the director determines that the decision does not merit such designation.

Third, members of the public may request to (1) have a routine decision designated informative or precedential, or (2) have an informative decision designated precedential.

Such nominations may be completed using the “PTAB Decision Nomination” form found on the USPTO website. Each nomination must be accompanied by a brief description explaining the reason for the nomination, as well as information (e.g., name and paper number) identifying the case.

Nominations are reviewed by a screening committee and an executive judges committee. The latter may solicit feedback from members of the board before submitting its recommendation to the director, who has the final say.

Using the same “PTAB Decision Nomination” form, members of the public may also request to “de-designate” informative and precedential decisions when, for example, the decision has been rendered obsolete by subsequent binding authority; is inconsistent with current policy; or is no longer relevant to board jurisprudence. As with designation, the director ultimately determines whether to de-designate a case.

A list of all precedential and informative decisions is on the USPTO’s webpage at [uspto.gov/patents/ptab/precedential-informative-decisions](https://www.uspto.gov/patents/ptab/precedential-informative-decisions). Designated decisions are categorized by subject matter as well as alphabetical order on this page.



TRADING CARD

NO. 16

Thomas David Petite

HE INVENTED the technology associated with the development of the Smart Grid, which enables all mobile phones to work. He holds more than 50 U.S. patents, with many more pending. But Thomas David Petite says he is merely following the rich inventing heritage of his Native American ancestors.

The 66-year-old registered member of the Fond Du Lac Tribe and son of a Chippewa chief from Wisconsin, Petite notes that potatoes, maple syrup, beans, corn, peanuts, popcorn, pumpkins, tomatoes, squash, and nuts were first grown by Native Americans hundreds and thousands of years ago. They shared their farming methods with European settlers in the New World.

Native Americans created diapers made of grass and rabbit skin; canoes made from hard wood trees; bulbed syringes built from small animal bladders and thin, hollow bird bones; toboggans made of bark, and much more.

In a 2011 interview with the *Covington (Georgia) News*, Petite said with a smile: “You are all immigrants. We didn’t invite any of you here.”

He grew up in Atlanta, where he and his father, David—a sonar engineer—took apart radios and put them back together. (Petite likes to be known by his father’s first name.) His first invention as a boy was a leaf blower he made from a hair dryer and sold to Walmart.

He is well acquainted with struggle and sacrifice. A series by CNN, “In America,” reported that Petite lived in his car for a while after his first R&D company ran out of money.

In 1993, he founded StatSignal Systems, the first company to patent and introduce wireless mesh technology (SMART CLOUD) to the utility industry and health care industry. The technology allows for the operation of remotely monitored

and controlled systems within a home or business, also enabling consumers to see how much energy they are consuming.

Petite’s technology is used in soil management, home appliances, industrial plant monitoring, building automation, and medical asset management. It is used and licensed by many companies, including General Electric.

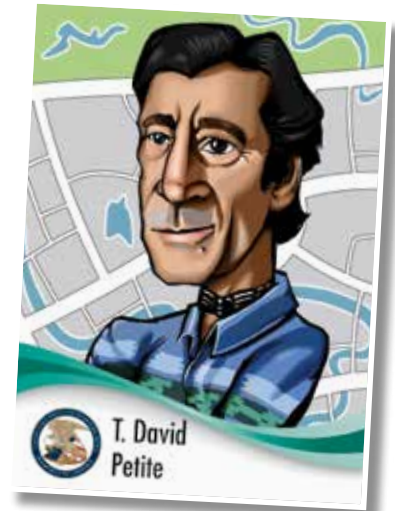
He is committed to helping fellow Native American inventors.

Petite founded the Native American Inventors Association to get more Native Americans to use their creative talents. He also founded the Native American Intellectual Property Expertise Council, a nonprofit that helps get the ideas of Native American inventors through the patent process and into full commercialization. NAIPEC is a collaboration of some of the world’s brightest minds to provide leadership while providing education, advanced interdisciplinary research, and modern business development support.

“Look in the mirror and say, ‘I am going to make a difference for the people around me,’ and you will be rewarded,” he told CNN.

Petite and his wife, Candida, manage and operate their company, SIPCO (the Smart IP Company), founded in 2003 in Atlanta. Providing application-based wireless technology and design, SIPCO has licensed his wireless mesh technology to several hundred companies.

This year marks the 10th anniversary of the USPTO trading cards. Requests for the cards can be sent to education@uspto.gov. You can also visit them at uspto.gov/kids.



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At Least They Didn't Get Kaboomed



At what point does a trademark infringement lawsuit go from iffy to jumping off the believability cliff?

Maybe Evel Knievel's IP company wanted to keep the legendary daredevil in the news. Regardless, in late August the U.S. Court of Appeals for the Ninth Circuit upheld a Nevada court ruling that the character of Duke Caboom in Walt Disney Studios and Pixar's "Toy Story 4" was not a literal depiction of Knievel.

K&K Promotions might have had a better shot if it sued in an attempt to claim endless movie sequels constitute cruel and unusual punishment.

The Ninth Circuit logically ruled that 1) Unlike Knievel—who died in 2007 of complications from diabetes and respiratory issues—Caboom is a fictional character; 2) Caboom has a different name, appearance and backstory than Knievel; 3) Knievel is never directly mentioned in the movie; and 4) the Caboom character merely copies the general characteristics of stuntmen, not specifically Knievel.

Ergo (and this may have been at the root of filing the suit), the economic value of the Caboom action figures is not derived from Knievel in any way.

Bottom line: Duke Caboom represented a transformative use. For those of you amused by that name and legal term appearing in the same sentence, transformative use is fair use that builds on a copyrighted work in a different manner or for a different purpose from the original.

Given the notion that the lawsuit might have been a Grand Canyon leap, maybe the plaintiffs should look on the bright side. They could have suffered the fate of the Nelson-Ricks Cheese Co.

NRCC sued Lakeview Cheese Co. in 2018. But the court ruled Lakeview's unintentional use of NRCC's word mark—in a picture on a packing sheet, located on an unlinked and inaccessible webpage—did not constitute trademark infringement.

David C. Nye, a federal judge in Idaho, ruled NRCC "unreasonably pursued this case without foundation" and granted Lakeview's request for monetary sanctions. NRCC, ordered to pay Lakeview \$292,270.91 in attorney fees and court costs, filed for bankruptcy in 2020 (but still has a presence on LinkedIn).

Yes, we are a litigious society. But every now and then, we are reminded that a court is not a toy.

—Reid
(reid.creager@inventorsdigest.com)

Inventors

DIGEST

EDITOR-IN-CHIEF
REID CREAGER

ART DIRECTOR
CARRIE BOYD

CONTRIBUTORS
ELIZABETH BREEDLOVE
LOUIS CARBONNEAU
DAVID J. HAAS
JACK LANDER
JEREMY LOSAW
EILEEN MCDERMOTT
APRIL MITCHELL
DEVIN PARTIDA
EDIE TOLCHIN

GRAPHIC DESIGNER
JORGE ZEGARRA

INVENTORS DIGEST LLC

PUBLISHER
LOUIS FOREMAN

WEBSITE ADMINISTRATOR
ELIZABETH BREEDLOVE

FINANCIAL CONTROLLER
DEBBIE MUENCH

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Ad rates, subscriptions & editorial content:
520 Elliot Street
Charlotte, NC 28202
info@InventorsDigest.com
www.InventorsDigest.com
reid.creager@inventorsdigest.com

CORRESPONDENCE

Innovation Alliance applauds pro-patent bill

Editor's note: U.S. Sen. Thom Tillis (R-N.C.) introduced the following bill in the Senate on August 2.

The Innovation Alliance thanks Sen. Tillis for introducing the Patent Eligibility and Restoration Act of 2022 to restore certainty about what inventions are eligible to get a U.S. patent.

For nearly 150 years, Section 101 {of the U.S. Patent Code} was interpreted to allow inventions to be patented across broad categories of discovery. This approach supercharged American innovation and led to countless technological and medical breakthroughs in areas that could not have been imagined when Section 101 was first enacted.

Starting in 2010, however, the Supreme Court issued a series of decisions that have upended longstanding settled law, narrowed the scope of patent-eligible subject matter, and created unworkable and unpredictable exceptions to an otherwise clear statute. These decisions have created chaos in the patent world and left inventors and lower court judges uncertain about what is patentable.

Meanwhile, our foreign competitors, including China, are granting patents on many inventions that are now unpatentable here. As a result, innovation and venture capital have been driven overseas.

The disparity in patent eligibility between the United States and our foreign competitors is particularly problematic in the critical areas of emerging technologies and biotech innovations, including 5G, advanced computing, artificial intelligence, and medical diagnostics. This not only undermines U.S. competitiveness and the ability of the United States to remain the global leader in innovation, but harms U.S. national security as other countries challenge U.S. leadership in developing these key technologies.

The Innovation Alliance looks forward to continuing to work with Senator Tillis to finalize this legislation and get it passed into law.



Brian Pomper,
executive director
of the Innovation
Alliance

CONTACT US

Letters:
Inventors Digest
520 Elliot Street
Charlotte, NC 28202

Online:
Via inventorsdigest.com, comment below the Leave a Reply notation at the bottom of stories. Or, send emails or other inquiries to info@inventorsdigest.com.



POST DEFENDS RIGHTS TO HIS SONG, POST-POST

Singer/rapper **Post Malone** says some postings by the plaintiff in a copyright lawsuit against him indicate the case has no merit.

Malone (real name Austin Post) is being sued by writer/producer Tyler Armes, who claims he deserves artistic credit as a co-writer for Malone's 2019 No. 1 hit "Circles."

Armes is the leader of Canadian rap-rock band Down With Webster. He sat in on a recording session for the song in August 2018 and claims to have had significant input into it.

In an August 17, 2022 court filing, Malone said Armes "cherry-picked" messages to hide texts that showed he was not invited to write with him and not legally a co-writer of the song. Armes "intentionally misled the Court for his own tactical advantage, making a mockery of the judicial process," the filing said.

Armes' attorney, Allison Hart of Lavelly & Singer, said the motion has "zero merit," calling it "nothing more than a desperate ploy by Post Malone to avoid having this case decided on the merits since he has no valid defenses."

In April, a U.S. district judge ruled Armes had no rights in the final version of "Circles" but allowed his lawsuit to go to trial to determine whether he has rights in an early version of the song. The case is scheduled to go to trial on October 11.

BRIGHT IDEAS

Ghydion

SMART GALLON WATER BOTTLE

ghydion.com

Billed by its makers as the world's first smart gallon water bottle, Ghydion tracks and trains you to hydrate consistently.

The bottle's Track Mode monitors your progress from full to empty and displays it in real time. Train Mode lets you set your daily hydration goal. Ghydion alerts you at the proper drinking intervals and lets you know if you fall behind.

The bottle is fully modular, which allows for the removal and upgrade of add-ons to fit your preference. Blend your favorite supplements with the shutter pond.

Ghydion has a removable base for easy cleaning. It will retail for \$165, with a scheduled May 2023 delivery to crowdfunding backers.



B1600

PROFESSIONAL ELECTRIC MICROSCOPE

microscopeworld.com

The B1600 features 1,600 times ultra-definition magnification and a 9-inch, foldable touchscreen. The connection between the self-contained computer software and the microscope can directly realize the observation on the computer.

When the B1600 is connected to a computer, real-time data can be easily transmitted; pictures and videos can be exported at any time. At the same time, you can see the remaining capacity in the microscope memory card.

The microscope has three different lenses that allow three different optical zoomings (100x, 800x and 1600x).

The B1600 will retail for \$299. Shipping to crowdfunding backers is set for October.

Wicked Egg

AUTOMATIC, INTERACTIVE
PET TOY AND TREAT DISPENSER

wickedlab.me

Completely automatic, Wicked Egg allows you to set and forget this toy for pets when you are away. The toy has different levels of play at which pets can figure out how to get the treats out.

The toy responds in a unique way with every interaction. When placed on the floor, it lights up and creates pre-programmed but varied movements and sounds.

Its Intelligent Companion Mode provides rest with a Sleep Mode for 30 minutes after a 10-minute-playtime. The pet just touches the egg to reactivate it.

Wicked Egg is rechargeable and visible at night. It will have a manufacturer's suggested retail price of \$65, with a planned November shipping date for crowd-funding backers.



“Whoever had invented long division has a lot to answer for.” —JOAN LINGARD



Techoss S4200

HOME SOLAR GENERATOR

techosspower.com

Techoss S4200 is an emergency backup power source that generates and stores electricity in a safe, simple and reliable way.

This generator can power heavy-duty home appliances, crucial medical devices, RVs/EVs and more. You can be ready for off-gridding or outages caused by natural disasters as the most cost-effective option.

The S4200's makers say using it can save about \$1,500 a year on electricity bills while decreasing home energy waste. Unlike other generators powered by gas, it is eco-friendly without noise or fumes emissions, nor much maintenance required in the long term.

The unit will have a suggested retail price of \$2,699.

We'd Rather Not Raise a Stink

OUR HISTORY WITH DEODORANTS GOES BACK THOUSANDS OF YEARS, THOUGH FAIRLY RECENT IN U.S. **BY REID CREAGER**

SOME OF Marilyn Monroe's lovers and many of her maids claimed the glorious Hollywood icon had terrible personal hygiene, to the extent that it was noticeable if you stood next to her.

Julia Roberts said she doesn't use deodorant. Same for Cameron Diaz and Bradley Cooper.

Still, not using deodorant doesn't always generate olfactory offense. Non-wearer Matthew McConaughey "smells delicious ... like granola and good living," Yvette Nicole Brown told Sirius XM.

These celebs are exceptions in a world where many of us cannot imagine being in public without wearing deodorant (supported by the fact that it's an \$18 billion industry). Most people would rather walk like an Egyptian.

Mum's the word?

Humans' general predilection for smelling good dates to ancient Egyptians, who took perfumed baths and wore perfume under their arms.

Legend has it they also tried using carob, incense and porridge to mask underarm smells—and that some women would even place a dollop of scented wax on their heads that would slowly melt during the day to exude a pleasing scent.

(Ancient Romans and Greeks used some of the same methods; yet another published account says the earliest recorded recipe for deodorant comes from a Chinese medical text from the Hans Dynasty from

206 B.C. to 220 A.D. Bottom line: Humans have never liked stinking it up.)

Many credit American Edna Murphey as the inventor of deodorant, a little over a century ago. But that has a whiff of simplicity to us—and could be a little misleading.

First, let's differentiate between deodorants and antiperspirants.

One is designed to reduce or stop bad smells; the other is designed to stop sweating that can be bothersome and/or interfere with things like grip and vision. Deodorant has no aluminum content. Some antiperspirants do, prompting health concerns that have been refuted by the Cleveland Clinic.

The first in either category to be sold commercially was a deodorant powder called Mum; sales mostly stank. A site called Magnifymind.com claims Mum was invented by 1888 by Englishman William Henry Wills, but no other online source we found connects him to any kind of deodorant. In fact, many sources say the inventor of Mum is unknown.

The scattershot Wikipedia doesn't help. Citing a 2004 written work by Joey Green, it says: "The first commercial deodorant, Mum, was introduced and patented in the late nineteenth century by an inventor in Philadelphia, Pennsylvania, Edna Murphey." Yet Murphey is widely known for inventing a deodorant called Odorono, not Mum—and Inventors Digest could find no patents under her name, nor her married names of Pat Albert and Patricia Winter.

Edna Murphey was a teenager when her father, Dr. Abraham Murphey of Cincinnati, complained of sweaty palms when operating.



Edna and The Who

Murphey was a teenager when her father, Dr. Abraham Murphey of Cincinnati, complained of sweaty palms when operating. After he developed a liquid antiperspirant for sweaty-handed doctors and had it trademark registered in 1909, his daughter discovered the product also worked well under the arms.

Then, per writer Jessica Helfand:

“She borrowed \$150 from her grandfather, setting up shop [in] her family’s basement where she procured bottles and labels, wrote letters and designed circulars, and went door to door canvassing her new product, which she called ‘Odo-ro-no’ (a play on the words ‘Odor, oh no!’).”

According to Helfand, Edna Murphey took a booth at an Atlantic City exposition in 1912 and had success selling Odorono—leading to her receiving U.S. Patent No. 96,159 for “toilet water preventing excessive perspiration” in spring 1914. (However, an *Inventors Digest* search showed that Patent No. 96,159 was instead for a gopher trap, granted in 1869.)

Murphey’s product had aluminum content, as did her father’s. Some users claimed the aluminum caused stinging under the arm because it closed pores but preferred that to smelling bad.

As a marketer, Murphey was ahead of her time. She went to the famed J. Walter Thompson agency and produced a series of blunt ads, including one in 1939 that ridiculed women who did not use deodorant: “Beautiful but dumb. She has never learned the first rule of long lasting charm.”

Helfand also noted that The Who’s Pete Townshend wrote a song, “Odorono,” which was released on his band’s 1967 album, “The Who Sell Out.” He appears on the album cover with a huge, fake can of Orodono under his armpit.

The song is about a starlet whose dreams of love are snuffed out when her intended gets a sniff. “Her deodorant had let her down: She should have used Odorono.”



Dollars and scents

Despite the occasional shunning of deodorant by the trendy and indifferent, the product seems sure to be a consumer staple so long as there are people with noses. Dozens of brands exist.

Mordor Intelligence reports that “Currently, the deodorant market is experiencing a steady growth in the United States. ...

“Young consumers are attracted toward natural products, which provide an excellent opportunity for companies to innovate products using natural ingredients, mainly to increase their market share.”

So be they stick, roll-on, spray or cream deodorants, we still rank them far ahead of smelling rank. 🍷

Deodorant ads from early in the last century preyed on the insecurities of women as part of their marketing strategy.

INVENTOR ARCHIVES: SEPTEMBER

September 19, 1902: James Van Alen, who invented tennis’ current scoring system and was a major force in creating the National Lawn Tennis Hall of Fame, was born. The Van Alen Streamlined Scoring System introduced tiebreakers to limit marathon sets and matches.

He died July 3, 1991. Two days later, in a Wimbledon semifinal, Stefan Edberg lost to Michael Stich, 4-6, 7-6, 7-6, 7-6. Upon hearing of Van Alen’s death, Edberg said, “If he hadn’t lived, Michael and I might still be out there playing.”



Inventing in Uncertain Times

ARE WE HEADED FOR ANOTHER RECESSION? IF SO, FOCUS ON THESE THREE INVENTING COMPONENTS **BY JACK LANDER**

ECONOMISTS are split on the possibility of the United States suffering a recession in the near future. If we find ourselves in that situation, how will it affect our inventing?

First, we must assess the stability of our income and savings. Because the patenting phase of our venture involves significant expense, those with uncertain income should consider postponing the application and work on other phases of the inventing process, such as:

- Market research;
- Sell sheet preparation;
- Patentability prospects.

Breaking it down

Market research may seem to be something only Big Business is equipped to handle. Not true. For inventors, it breaks down into simple parts:

Does a market channel exist that will market your eventual product?

Is the market already served with one or more products that solve whatever your invention solves?

Does competition overwhelm your eventual product?

The first market channel to investigate is Amazon.com. If Amazon doesn't sell it or sell products that serve the same purpose as yours, you will have to "piggyback" it with a complementary product.

But chances are, you'll find a similar product. I have searched for some very unusual items on Amazon and found them in three different brands immediately.

Amazon may not be the major market for your product, but it is valuable for getting a sense of your competition—and where to go from there.

Sell sheet preparation (see my March 2022 *Inventors Digest* cover story) should begin as soon as you conceive of your invention. Especially important is defining your product's user benefits.

Use the sell sheet to get opinions from relatives and trusted friends. And use its editions as a history of your invention as it developed into a product.

The patentability opinion should be prepared by the same patent attorney or patent agent who will eventually write your patent application, if the opinion is favorable. Avoid services with names such as "patent services," which may not prepare competent opinions.

Your patent attorney is ethically bound to examine prior art against your invention's features and prepare an objective opinion on the chances of your patent being issued with at least one claim that covers the novel feature forming the essence of your invention.

Such opinion should be in writing, and an ethical patent professional should be willing to provide it in writing to avoid any misunderstandings. If your attorney refuses to prepare a written opinion, you should interview other attorneys or agents. Your sense of their willingness to work with you should guide you.

A patentability opinion prepared by a patent attorney or patent agent may cost \$1,000 or more, depending on the complexity of your invention.

I'm sure you know that the two main kinds of patents are "design" and "utility." Design patents cover only appearance, not function, and you will almost certainly want a utility patent.

Depending on the complexity of your invention and the preparer's hourly fee, your patent



Amazon may not be the major market for your product, but it is valuable for getting a sense of your competition.

will likely cost more than \$10,000. Be sure to discuss this with your attorney or agent.

Now, based on your financial resources and the patentability opinion, you can decide if and when you will file your patent application.

Remember, the first person to file is considered the legal inventor. So, it is possible that another inventor will claim your invention if you decide not to act immediately.

But if your budget won't allow you to start the application process, placing your venture on a back burner for a year or so may be the best decision. There is risk either way.

If you decide you must postpone filing your application, use your time for market research. Perhaps "market learning" is the better term.

Finding that licensee

For some of us who read *Inventors Digest*, inventing is easy. It often happens in our sleep. But marketing is not easy.

There may exist two or more ways to market effectively. Our dream is to license our patent and let the licensee worry about how to market the product. But we often find that we must launch our product on a small scale and establish a trend line in sales to prove that we not only have a profit producer, but it has great sales potential.

Thus, we perform the most effective research by trial and error. You recall if you watched early

"Shark Tank" episodes that the first question the Sharks asked was: "How many have you sold?"

When your patent application is safely accepted by the United States Patent and Trademark Office, you can begin the task of finding a licensee.

I have written several times that the best way for most of us to find our licensee is to attend appropriate trade shows and walk the aisles. You'll find directors of marketing willing to speak with you briefly; these are people you might never get to meet any other way.

It is reasonably safe to tell them about your new product, and you may just land a "live one." However, since you don't yet have your patent in hand and you have no guarantee it will issue, you will have to contract based on your application. A prospective licensee may reject that idea and tell you to come back when you have your patent in hand.

We don't know what tomorrow will bring. But inventing never stops. And neither do inventors. We persist and make the best use of the times we face. 📦

Jack Lander, a near legend in the inventing community, has been writing for *Inventors Digest* for nearly a quarter-century. His latest book is "Hire Yourself: The Startup Alternative." You can reach him at jack@inventor-mentor.com.



7 Goals of Social Media Marketing

WHEN CONSIDERING THESE OUTCOMES, USE METRICS TO ENSURE YOU'RE ON THE RIGHT TRACK **BY ELIZABETH BREEDLOVE**

PERHAPS the most important part of any successful social media strategy is setting a goal. Before you can begin to decide how you'll use social media to market your invention, you must decide which outcome you hope to achieve by using it.

Consider these seven goals as you think about why you're choosing to use social media to market your invention.

1 Building brand awareness. With the average social media user spending 147 minutes per day on its platforms (per Statista in 2022), it's easy to see why social media is a great place to raise awareness for your invention, brand or company. So, what metrics can you consider to determine whether you're meeting your goal of building brand awareness?

- How many followers do you have? Is your number of followers increasing?
- How many people are your posts reaching?
- Are people mentioning you in their posts or sharing your posts?

2 Increasing brand engagement. The natural next step after a person becomes aware of your brand is engagement with your brand. This means that brand engagement is often an important part of a brand's sales and overall marketing strategy.

If you decide to use social media marketing to increase your brand engagement, focus on these metrics:

- How many likes do your posts get?
- How many comments on your posts?
- How many people are mentioning your brand? Are you replying to them?

3 Increasing site traffic. This is a key part of converting someone into a customer—especially if you are selling your invention on your website. If you want to use social media marketing to drive site traffic, you can use a service like Google Analytics to track the following metrics:

- How many visitors are coming to your site from social media platforms?
- Is that number increasing or decreasing?
- What percentage of your total website traffic is coming from social media?
- Is the traffic coming from social networks of high quality? Do they tend to engage with the site, or do they have a high bounce rate?
- Are people clicking on your social media posts? Are your posts driving traffic?

4 Generating leads. If you have an invention or product with a longer sales funnel, such as one that is more expensive and less likely to be an impulse purchase, you may want to use social media to help generate leads.

What is a lead? In general, that's a person who has expressed interest in your company or in the product you are selling and who has provided some sort of personal information, such as an email address.

For example, if you offer a 10 percent off coupon in exchange for entering an email address, people who enter their email address become a lead. By showing an interest in what you have to offer by accessing a coupon code, they've given you their email address—which you can use to further market to them.

If you're using social media to generate leads, pay attention to metrics related to lead generation:

The average social media user spends 147 minutes per day on its platforms.

- How many leads (for example, email addresses) have you collected through social media directly?
- How many leads have you collected on your site that came to your site via your social platforms?
- Are people entering their email address or other information to obtain a coupon code or download something else you have to offer?
- Are people participating in your social media contests?
- Are the leads generated through social media turning into customers?



5 Growing revenue. Using social media marketing to grow revenue simply means using social media to sell your invention. Whether you use organic social media to send traffic to your site and purchase your invention or you use paid social media advertising to drive sales, here are some metrics to note in the analytics tool you prefer:

- How much of your total revenue is driven by organic social media?
- How much of your total revenue is driven by paid social media advertising?

6 Improving customer service. To measure your efforts at improving customer service, consider metrics such as:

- How many customer service-related inquiries are you getting on social media? Is there a demand for customer support on social media among your customers?
- How are your response times? Are you able to answer your customers' inquiries quickly?
- Are your customers satisfied with your service? You may need to launch a survey to answer this one.

7 Building a community. Some brands, products and inventions naturally lend themselves to community building.

Facebook groups and similar features on other platforms make this simple. If you opt to use your social channels to build a community, be sure to track these metrics:

- How large is the community?
- How engaged is the community in terms of posts, likes and comments?
- How many people are actively involved in your community on a regular basis?

A SMART reminder

As you consider how you are using social media, if at all, and what goals you want to reach while doing it, make sure you set SMART goals—those that are specific, measurable, achievable, realistic and timely.

Carefully consider where you are now, where you want to be, and how to get there as you build your social media strategy. 📌

Elizabeth Breedlove is a freelance marketing consultant and copywriter. She has helped start-ups and small businesses launch new products and inventions via social media, blogging, email marketing and more.



Safe at **Homes**

JOURNAL/PLANNER OFFERS COMFORT FOR KIDS AND PARENTS IN CO-PARENTING SITUATIONS **BY EDITH G. TOLCHIN**

HERE'S A FUN, hands-on product that benefits young children and parents who have suffered the challenges and pain of separation and divorce.

According to the inventor, Fiona Kong of Los Angeles: "My mission through 'Home Sweet Homes' (journal and planner) is to help co-parents and their child stay connected while bringing a child comfort and joy across their two homes."

Edith G. Tolchin (EGT): How did this invention come about?

Fiona Kong (FK): The Home Sweet Homes journal and planner is a tool I created to help co-parented children heal from trauma caused by parental divorce or separation. It takes a unique, loving and compassionate approach to help families stay connected and communicate, all the while supporting a child's mental health during a confusing and often difficult time.

It combines features of a journal and yearly planner to function as a shared family diary. The child keeps it with them from home to home and is a vehicle where both parents and child participate in and can share milestones, memories, as well as essential scheduling and calendar information. It includes empowering affirmations, activities and more, which ultimately will become a treasured keepsake.

The idea for this began in June 2020. I'd been co-parenting for about a year. When my son was at his father's home, I'd feel disconnected from him, wondering what he was doing, eating, and how he was feeling and coping emotionally.

I really wanted a way to make sure my son always felt supported and loved despite our separation. It was a purchase of a \$2 dollar store planner that led me to create my Home Sweet Homes co-parenting journal business.

EGT: Tell us a bit about yourself, your family, education, and background. Has it helped in creating your business?

FK: I am a first-generation American, born and raised in Maryland. I am of Chinese descent, a middle child of three.

My parents moved to the States in 1980 to pursue the American dream of a better life. They held blue-collar jobs. As a child, I remember them working a lot to provide for us.

My childhood was really tough. My very first memory as a child was a traumatic one, followed by two decades witnessing or experiencing physical and emotional abuse. It took me a long time to realize how toxic an environment it was to grow up in and the huge impact it had on my life, relationships, personality, and my sense of self-worth.

My background has taught me such important life lessons personally and for my business, the power of connection, love, and the need to address and heal generational trauma.

EGT: How many tries did it take before you had the perfect working prototype?

FK: Creating a book is different from creating a product prototype, so I wouldn't say it took a certain number of tries. I began in August 2020, where I'd go to the local bookstore and leaf through all the journals, making note of the elements I liked. I then used Canva to create a mock version.

I hired a designer in September and the final book was completed in early January 2021, with the whole design process taking roughly 4 months.

EGT: Have you ever applied to "Shark Tank" or done any other type of crowdfunding?

FK: I ran a crowdfunding campaign via Indiegogo in May 2021. Being a one-woman show, I was

happy to just get the campaign together and told myself I'd be satisfied with whatever the outcome. I didn't run any advertising or do much marketing besides using my personal network.

I raised nearly \$4K, which paid for the majority of my first bulk order. I haven't applied to "Shark Tank," but I'd absolutely go for it—even though it'd be terrifying!

EGT: Where are the journals manufactured? If overseas, have you had any logistics problems due to the pandemic?

FK: I first looked into domestic manufacturers, including print on demand. However, due to my journal being nearly 300 pages in full color,

it was most economical to work with a Chinese manufacturer.

I ordered samples from two factories, although ideally I would have wanted to get 3-4 samples before making a decision. I placed my bulk order in May 2021; the shipping time and cost was very much affected by the pandemic. The ports were very backed up, so the time to clear Customs took an extra few weeks once it arrived.

EGT: Where are you selling?

FK: The Home Sweet Homes co-parenting journal is available on my website (home-sweethomesjournal.com) and on Amazon. I

A "really tough" childhood eventually taught Fiona Kong "the power of connection, love, and the need to address and heal generational trauma."

"When my son was at his father's home, I'd feel disconnected from him, wondering what he was doing, eating, and how he was feeling and coping emotionally." —FIONA KONG



haven't begun approaching retail outlets yet but plan on looking into wholesale opportunities.

EGT: What product development obstacles or difficulties have you had?

FK: The biggest obstacle was communicating with the manufacturer in China.

There were things I didn't know to ask, and miscommunication and misunderstandings occurred. I'd suggest finding an agent or vendor you feel completely comfortable with, ask lots of questions, and confirm things multiple times.

EGT: What advice do you have for anyone interested in developing an invention?

FK: I'd say validating your idea and getting feedback is really important. I don't think most people spend enough time on this step, because they want to jump ahead to the "fun" part and get their invention made and ready to market.

Surround yourself with like-minded people and find other entrepreneurs you can share and exchange information with. Being an entrepreneur

is incredibly grueling and lonely. Your friends and family who haven't done this can't really relate or offer you the advice or support you need.

Last of all, believe in yourself—because you ultimately are and will always be your biggest and loudest cheerleader.


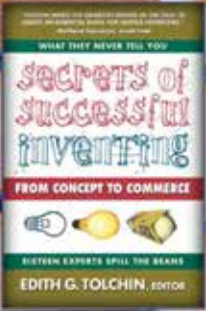
EGT: Any words of wisdom concerning co-parenting?

FK: I'd say take time to heal your past wounds. For the longest time, I couldn't see the connection between my childhood trauma and how it's shaped me. It's this acute awareness that I believe makes me a better person, parent and co-parent.

And finally, be the parent you wish you had. There are no second chances. Children need and are deserving of genuine connection and love to become their best selves. 🍷

Edith G Tolchin has written for *Inventors Digest* since 2000. She is an editor (opinionatededitor.com/testimonials), writer (edietolchin.com), and has specialized in China manufacturing since 1990 (egtglobaltrading.com).



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6 Methods of Inventing

INVENTOR WITH 57 UTILITY PATENTS REVEALS HIS CONTINUOUS THOUGHT PROCESSES **BY DAVID J. HAAS**

MANY YEARS AGO, I was involved in the “invention marketing business” before I actually invented anything. Then I invented several successful products myself and operated a start-up business for 21 years.

Recently, I have been learning how individuals actually invent products. I never paid much attention to how I invented products—I just concentrated intensively on each new product idea at the time—but this interested me enough to investigate my own methods of invention.

During the past 50 years, I have accumulated many patents, but for the first time I made a comprehensive list of all 57 utility patents with my name on them (along with 45 design patents). I recalled that only eight of the 57 utility patent inventions were associated with a “eureka moment.”

Most of my “invention-ideas” occurred to me while seriously working on a problem, project, product, or process. I was always deeply involved with the *particular issue*; these were not casual thoughts.

My 6 invention methods

I determined that six invention methods were used to create each of my patented inventions. Each method proved to be a different sequence for the invention-idea to form in my mind.

Each of these six methods began with a stimulus to initiate my thoughts:

- The only information on this stimulus were my prior thoughts on the product/process. I continued to purposely think about the product over time, and a successful invention-idea appeared.
- From thinking about a specific product/process that I had studied, an invention-idea spontaneously appeared.
- From thinking about a specific product/process that I had studied, I continued to purposely

think about the product/process over time, and an invention-idea appeared in my mind.

- During actual experimental research on a product/process, an invention-idea spontaneously appeared in my mind.
- During actual experimental research on a product/process, I continued to purposely think about the product/process over time, and an invention-idea appeared in my mind.
- Without prior thoughts, a spontaneous invention-idea appeared in my mind.

Most scholars who write about inventions believe that people invent things to solve a problem they have encountered. This appears to be true, and as Matt Ridley wrote in his 2020 book “How Innovation Works”:

“No economist or social scientist can fully explain why innovation happens, let alone why it happens when and where it does.”

In my case, most of my 57 utility patents were just that—to solve problems for our business product lines.

I organized the utility patent inventions into 14 groups of similar products, each group identified by the earliest utility patent filed for that particular type of product. Nine of the “invention-groups” were to solve a particular problem, four were invented to improve products, and only one invention was the result of years of scientific research.

Writing it all down

While I was working on a product issue, I frequently would sit in an isolated place with a blank notepad in front of me. I always made a list of characteristics of the problem to be solved, drawing a large square box on a blank page so I could create a visual design.

I always jotted down *all* ideas that came into my head about the problem; sometimes a great idea

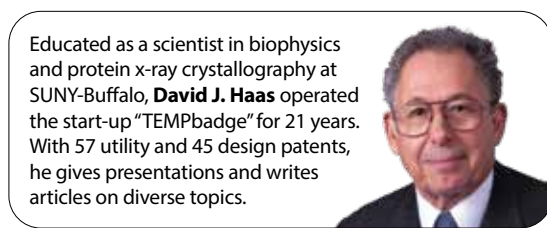
Frequently, an idea comes (and a solution to the problem), but I would have no idea how it came—only what it did to solve the problem.

I turned my first invented idea to a problem immediately exciting and kept working on the design for days. I had only a few inventions where I felt “Eureka.”

The problem to be solved was considered as an insurmountable barrier. I would have considered the idea really original. Of course, there were many invention ideas rejected because they were just too far from reality (never fall in love with your idea—it’s fatal!). But every idea was worth trying for a day or two.

An illustration of a woman with dark hair tied back, wearing a purple long-sleeved shirt and yellow pants, sitting at a desk and writing on a piece of paper with a green pen. Above her head, a large, colorful cloud-like shape contains numerous white line-art icons representing various concepts: light bulbs, gears, stars, wings, clouds, bees, musical notes, hearts, hot air balloons, rockets, speech bubbles, suns, leaves, and a cup of coffee. The background behind the woman is a solid blue color.

Educated as a scientist in biophysics and protein x-ray crystallography at SUNY-Buffalo, **David J. Haas** operated the start-up "TEMPbadge" for 21 years. With 57 utility and 45 design patents, he gives presentations and writes articles on diverse topics.



Proposals

Polls

Create a Community

Calls for Submission

Competitions

 geojam



Making Stars Align

SOCIAL ENGAGEMENT APP GEOJAM BRINGS INFLUENCERS, FANS CLOSER TOGETHER VIA SHARED INPUT AND REWARDS

BY REID CREAGER

SARAH FIGUEROA grew up listening to Cuban music and, later, punk rock. She always had a pounding passion for music. She realized the public wanted short-form video content with music even before investors did.

But even as a visionary with a varied background that includes starting a company to rent apartments to students during her college days in New York City, she couldn't have foreseen she would someday lead and build an army.

That's her role as founder of Geojam, an iOS social engagement app that she describes as "the first community-first social network driven by cryptocurrency."

The platform, which she started in 2019 with co-founder Sam Krichevsky, is "turning fans into a celebrity army. Whether we're talking about a new album, a new merchandising line, or they need help designing a skateboard that they're making, your fans become your army and your fans are getting rewarded with crypto for doing so.

"We're redirecting the flow of incentives back in the hands of celebrities and the fans themselves."

The celebrities Geojam has enlisted represent some of entertainment's top brass: Mariah Carey; rappers Machine Gun Kelly and 24kGoldn; and champion skateboarder Nyjah Huston.

Geojam Version 1 is a social music discovery app. Version 2—now in testing and coming out soon—promises to be much more.

There are plenty of platforms designed to monetize creator content. The difference with Geojam, Figueroa said, is "we're allowing creators and their fans to monetize *the creation* of that content. ... We allow fans to propose ideas to celebrities"—be it adding a line to a song lyric or proposing a merchandise line.

The crypto connection

Based in Los Angeles, New York City and Singapore, Geojam released its first app in 2020. It has a 15-person team with experience in social media, cryptocurrency, marketing, artist management, tech and user experience.

The platform utilizes \$JAM, a cryptocurrency that both artists and fans can own. This is part of bridging the gap between them by allowing both to contribute and benefit from the same pool of finances.

\$JAM is used to create and vote on proposals, reward users for providing quality content to the ecosystem, and redeem products, merchandise, NFTs (non-fungible tokens, a blockchain currency), and exclusive once-in-a-life experiences in the \$JAM Shop. \$JAM can be purchased through centralized and decentralized exchanges.

Sarah Figueroa founded Geojam with cofounders Sam Krichevsky (top left) and Justin Rosenbaum in 2019. The platform utilizes \$JAM, a cryptocurrency that both artists and fans can own. Fans can monetize creation of content by giving suggestions to artists about content and strategies.



Baby Boomers reading those previous two paragraphs needn't feel lost. Figueroa said the company's mission is not to make it a crypto platform.

"It just so happens that we use crypto as a tool to connect fans and bring them and families closer together. ... If you know nothing about crypto, it wouldn't be a problem."

Geojam began utilizing crypto in September 2021, when the agreement with Constellation Network was announced. The goal was to increase rewards for those using the app. Before then, Geojam's tool for rewards, called Jam Points, only had value if exchanged for artist merchandise or experiences in Geojam's Jam Shop.

Created for creators

Figueroa said she has wanted to utilize cryptocurrency to monetize fandom since meeting co-founder Krichevsky years ago. (A second cofounder is Justin Rosenbaum, chief growth officer.)

She was impressed by his strong tech and music background that includes founding TanZ, a full-service live event production company.

Krichevsky said Geojam's audience and users also encompass "influencers, athletes, bloggers, artists, gamers, any kind of creator. In this day and age, with all the tools and apps that we have, pretty much anybody can be a creator. That's how we see it."

THE CREATOR ECONOMY

In Sarah Figueroa's and Sam Krichevsky's interview with *Inventors Digest*, the terms "creator economy" and "creator economy network" were often mentioned. (Geojam is a creator economy network.) Understanding this is important for current inventors, and especially inventors of the future.

The "creator economy" refers to the class of business—now exceeding \$100 billion in value, Figueroa said—that

focuses on independent content creators, curators and community builders such as the various types Krichevsky listed in this story. They appear and perform on social media sites that include Facebook, YouTube, Instagram, Twitter, TikTok, Snapchat and Clash.

Creators monetize their efforts through means that commonly include sponsored content, as well as ad revenue, live events, merchandise and more.



© JAMES TURNER/SHUTTERSTOCK

Video, music, photo, polls, proposals, experiences and NFTs are available in creator communities.

Because of its unique goals and format, the company already has branding associated with it, as well as copyrights and trademarks. Figueroa said Geojam is in the process of applying for a design patent and will apply for a utility patent as well.

Praise from Mariah Carey

The fact that Figueroa is a rare female tech CEO who launched Geojam during the height of COVID is not lost on Mariah Carey.

She participated in a promotion last December in which a fan won a video call with her (viewable on YouTube). In June, a fan won a private jet ride with her for a two-night stay in New York City when the singer was inducted into the Songwriters Hall of Fame, including two tickets to the induction ceremony.

“During COVID, I became very interested in the digital art world and quietly explored the community of artists in that space,” Carey said for this story. “Geojam, for which I am an executive advisor, is a tech company with an amazing young female CEO and it’s great to see more women represented in this space.”

Rapper 24kGoldn, also a celebrity advisor, said “Geojam is a one-stop shop for fans to create a community around their favorite artists, movies, things that they’re passionate about, and people they’re passionate about!”

And from Machine Gun Kelly:

“Opening at No. 1 on Billboard’s chart and becoming the first rock album to hit No. 1 in over a year was incredible. I was super excited to celebrate this milestone with my fans and with Geojam.”

Fan Jimmy Pierce wrote that Geojam “feels like the next TikTok.” Other fans say it’s the next frontier in social engagement apps.

“We’re redirecting the flow of incentives back in the hands of celebrities and the fans themselves.”

—SARAH FIGUEROA

“On traditional social platforms that we’re all accustomed to using, I never felt like I could communicate with creators in an easy streamlined manner,” Stefani Siciliani wrote. “Geojam allows me and my community to submit proposals and engage with our favorite creators in a fun way.” 🎧

Details: geojam.com/about/

Above: Fan Giovanni Marrero won an NFT boarding pass with Mariah Carey for her trip to New York City in June, when she was inducted into the Songwriters Hall of Fame.





10 QUESTIONS

From Frames to Claims

BRUCE BERMAN IS IN HIS FIFTH DECADE OF PROMOTING THE IMPORTANCE OF INTELLECTUAL PROPERTY

HE'S AN ACTIVE grandfather living north of New York City in Westchester County who likes to cycle, sail, hike and kayak. He and his wife are planning a trip to Africa.

Bruce Berman's professional career is every bit as busy and accomplished.

He is managing director of Brody Berman Associates, a management consulting and communications firm that works with innovative businesses and investors. He is responsible for five books about intellectual property. IP CloseUp, a weekly update on trends that he publishes, has generated more than 340,000 visits and is read in more than 60 countries. He has mentored entrepreneurs in Colorado, Kenya and Uganda.

Most recently, Berman is founder and chairman of the Center for Intellectual Property Understanding, an independent nonprofit that raises awareness about the impact of IP on people, business and society. *Inventors Digest* editor-in-chief Reid Creager spoke with him about his influential career in innovation and role with CIPU.

Tell us about your background, and how it led you to a career that was focused on innovation and the importance of protecting it.

Writing, music and movies interested me from a young age. I was fascinated how truth lives on the border of fact and fiction.

I grew up in the northern tip of New York City, where I attended DeWitt Clinton High School and CCNY, the "Harvard of the working class." City College at one time graduated more students that went on to obtain a Ph.D. than any other university in the world.

I sold my first article at 19. It was about taxi drivers, which I did part time to earn enough money to travel in Europe for a few months.

At CCNY I studied literature and journalism, graduating with honors. I went on to earn a master's in cinema scholarship from Columbia University, where I taught for four years while pursuing my Ph.D.

As a 25-year-old instructor at an Ivy League institution, I learned the meaning of research and preparation. I completed my course work and exams, but my heart was no longer in film criticism as a career.

I had drifted into writing on business and found it interesting. My route to IP was via the movie business. I guess you can say I went from frames to claims.

This is not as surprising a transition as it may appear, although I was totally unaware of any similarities at the time. Despite an incredible amount of information contained in a photo or frame of film (actually, a picture is worth a lot more than a thousand words), and the specificity of myriad claims in an invention right, they



have a lot in common: Both depend on context for meaning.

Without a meaningful narrative around all that detail—a frame within the frame—the amount of detail is overwhelming. It's a little like seeing the forest for the trees.

Before I started Brody Berman Associates in 1988, I was engaged in investor relations, explaining public company performance and professional service value to journalists.

Brody Berman also supports plaintiffs and defendants in litigation. Either IP owners hire us, or law firms do on behalf of their clients.

When Brody Berman Associates began in 1988, how was the IP landscape different than today—and what has been your biggest satisfaction in seeing the firm's growth?

When I started out in the late '80s, we were working primarily in finance, helping to market stock and bond research. I worked with technology and other analysts at the leading tech underwriting firm of L.F. Rothschild, Unterberg and Tobin.

It was necessary for me to learn about various aspects of the booming technology field at the time: semiconductor production equipment; main frame computers; "mini" or mid-size and micro-computers, which became known as PCs. I loved learning about hardware and the beginnings of unbundled software and helping to explain them.

The Court of Appeals for the Federal Circuit and Bayh-Dole Amendment came about in the early 1980s, and by the late '80s their effect on inventions and inventors was becoming obvious.

In 1989, Polaroid's historic suit against Kodak over instant photography patents was winding down. Polaroid prevailed in a \$909 million award that today would be worth more than \$2 billion. Polaroid was asking for \$12 billion in damages, so the law firm representing Kodak—the highly

respected IP firm of Kenyon & Kenyon—did a great job at mitigating damages.

But the headlines did not depict it that way. It simply looked like its client had lost the costliest patent case in history.

I knew an associate at Kenyon who introduced me to the managing partner. After some research, he hired Brody Berman Associates to help convey, subtly, that Kenyon was not only still here but thriving and one of the best IP firms in the business.

Most patent attorneys are engineers. As such, they like to know how things are put together. Kenyon wanted to understand BBA's methodology, which I was glad to share with them.

At the same time, the managing partner wanted me to understand what set Kenyon apart. I worked with the firm on an almost daily basis for five years. They trained me in IP law—which, to my surprise, I enjoyed—and I asked a lot of questions.

Founder and chairman of the Center for Intellectual Property Understanding, Bruce Berman has a master's in cinema scholarship from Columbia University. "My route to IP was via the movie business," he said.



What was your prime motivation in launching CIPU in 2016?

IP communications is something I have done under Brody Berman Associates for the past 34 years. The more I learned about IP rights and how they function in business and society, the more I realized they are needed to level the playing field.

Juries did not know much about patents. Most intelligent people, including investors, educators and entrepreneurs, knew little or nothing about how IP worked and who it benefited.

IP still is not on the balance sheet in any meaningful way. It is often abused and misvalued.

Independent invention is the hallmark of innovation in America. We need to make key audiences aware of IP rights, their purpose and whom they benefit.

The rhetoric surrounding patent trolls, false and blown out of proportion, has become a dangerous meme. CIPU is a source for understanding why IP matters and how it works that draws on other organizations' content, not just its own. We also need to have more dialogue around how topics like COVID, China and diversity are affected by IP and how IP affects them.

CIPU recently announced that Tiffany Norwood has been added to its board of directors. Which specific skillsets and attributes does she bring to the mission of understanding the importance of intellectual property?

Tiffany is an inventor who is also a successful serial entrepreneur. She understands the impact of narrative on new ideas, and the role context and storytelling play in conveying new and complex ideas.

IP is something that every student should know something about from a young age. It would benefit our nation and others in many ways. It is important to foster a culture that respects the work of all creators. Respect is the road to appropriate credit and compensation.

Who was your most interesting interview on the "Understanding IP Matters" podcast series that CIPU produces, and why?

We have started production on the second season, which will start to air in late September. Two veteran IP journalists were interviewed together: Sue Decker, who for 23 years wrote on patent and other IP litigation and legislative developments for Bloomberg News; and Gene Quinn, founder and CEO of IPWatchdog.

They compared notes, and discussed challenges and related IP war stories. It was a lot of fun. They did not always agree.

What is the biggest challenge facing the independent inventor?

Making certain that Americans don't lose sight that the nation's history has been tied to invention and inventors since the beginning—and

Berman, who is responsible for five books, is in demand as a public speaker.

"IP still is not on the balance sheet in any meaningful way," he said. "It is often abused and misvalued."

"Despite an incredible amount of information contained in a photo or frame of film and the specificity of myriad claims in an invention right, they have a lot in common: Both depend on context for meaning."

— BRUCE BERMAN



that it will continue to be. Invention and creative expression are inscribed in our Constitution and a part of the fabric of the nation and its success.

Invention is in our DNA. It sets us apart. Invention and inventors will not continue to be a source of strength unless policy and the courts allow them to.

Some businesses are afraid of inventions and patents they can't control, and regard them as potential disruptions. Without strong, reliable invention rights, the best-capitalized businesses will determine in their self-interest what is innovative—and a playing field which was never entirely level will be even less so.

Do patents still help monetize innovation in the same way they did, say, 20 years ago?

Patents still play a vital role in defense. However, licensing has changed and it is much more difficult to get a company to take a license even under the fairest of terms.

Without the threat of an injunction, the economics are no longer there. Businesses can “efficiently infringe” or use an invention with little risk. The vast majority of those who own infringed rights don't have the time, experience or capital to stop them—and infringers know it.

Policy and the courts have made life difficult for inventors of all types. Monetizing patents today is more about risk management and mergers and acquisitions.

In most areas of art, patents are nice to have but are no longer a potential ticket to success. Areas like pharmaceuticals, biotech and medical devices, where patents are less subject to challenge, are the exception.

Many companies involved in ecommerce, social media and software are relying less on patents than in the past because of their uncertainty. Despite this, some of the biggest players continue to file actively in the United States and abroad.

Which innovators/entrepreneurs are on your short list of favorites, and why?

I look up to people like Dan Brown and Josh Malone, who have fought the good fight at great expense. Dan founded LoggerHead Tools, which developed the “Bionic Wrench.” He won a

case against Sears—which clearly stole the idea for his product—and won in court, only to have the damages portion thrown out by the judge.

Josh is responsible for Bunch O Balloons. To defend his patents from knockoffs, it cost him at least \$17 million in legal costs.

I also admire companies like Qualcomm, which conducts heavy R&D and continually comes up with patentable solutions that businesses want to license.

If you met a young inventor and had a chance to give him or her advice, where would you begin?

Don't wait to get burned to learn about patents and other IP rights. Trademark and trade secrets may be more of your friends than you thought. Hire a good lawyer who encourages you to pick his brain every step of the way: You don't have to be as good as he or she is, but you have to know how he thinks.

What's on your professional bucket list?

A clear IP story and message means higher value for most companies and inventors. The kind of outside perspective and modes of communications that I offer through Brody Berman Associates can make a difference in shareholder value.

We have worked with HP, Philips and AT&T, as well as investors and dozens of independent inventors. Our experience in IP as well as finance and technology can increase credibility and help move the IP value needle in the right direction.

For CIPU, we want to be the go-to portal or entry point for audiences who need to know more about IP—including creators, educators, investors, students and consumers. They don't need to spend a ton of time learning the basics.

Teachers and parents need to know why it is important to reinforce these lessons. We need IP professionals, from lawyers to creators, to be more committed to explaining accurately the purpose and importance of patents and other IP rights. They have a responsibility to demystify intellectual property so that it can be respected. 🍷

Can Tech Innovation Beat the Global Heat?

2 POSSIBLE SOLUTIONS: REDUCING GREENHOUSE GASES, ADJUSTING TO EXISTING THREATS **BY DEVIN PARTIDA**

(Editor's note: The existence of climate change and/or global warming is a subject of some debate. But according to NASA, 97 percent of actively publishing climate scientists agree that humans are causing global warming and climate change.)

THE IMPACT of climate change is present more than ever. With the fifth-hottest June on record and the average temperature consistently rising above pre-industrial times, there's no denying global warming on Earth.

As technology advances, many companies and organizations are working to slow or stop climate change by reducing emissions and using Earth-safe materials.

Though advances exist, there's skepticism on how severe climate change actually is, and whether tech advancements are beneficial.

However, some scientists say it is possible to end climate change, and technology could be a way to do it.

According to the United States National Aeronautics and Space Administration (NASA), two things must happen to end climate change:

- Mitigation—Reducing the number of greenhouse gases released into the atmosphere.
- Adaptation—Adjusting to the effects of climate change already set in motion.

Let's look at the development of accessible technologies in both areas.

Mitigation

It's possible to lower the number of greenhouse gases already released, and technology is only part of that solution.

Non-technological: There are two ways to take carbon gas out of the air without high-tech equipment: forests and farming.

Trees are natural air purifiers that absorb and store carbon dioxide through photosynthesis. This superpower can be maximized when trees are together in a forest setting. Unfortunately, deforestation and natural disasters reduced the number and quality of the world's forests, but it isn't too late to get them back.

By restoring and expanding properly managed forests, the world can slowly remove carbon from the atmosphere and regain the other wonderful benefits these ecosystems provide.

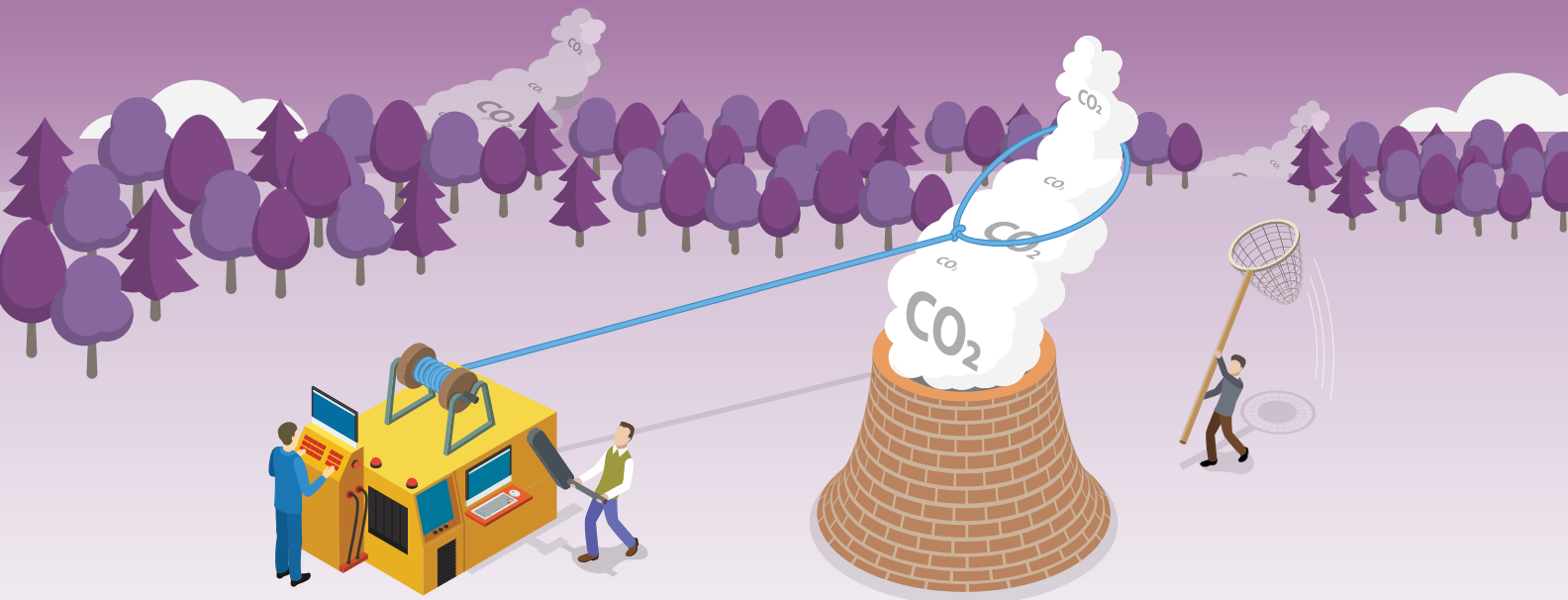
Farms capture carbon through the soil, which naturally stores carbon. The carbon-rich earth helps keep it from affecting the atmosphere and benefits the crops grown in it.

An obstacle to this winning solution is the demand of the food industry. When a field is overused, the carbon-storing properties of the soil weaken.

Planting cover crops in empty fields can increase photosynthesis, removing carbon from the air for soil to store. Agricultural scientists are also developing deeper roots for crops to deposit more carbon into the soil while protecting them from drought.

Technological: Bio-energy with carbon capture and storage (BECCS) uses technology to utilize biomass, then captures its carbon and stores it underground or in a product like concrete. If used carefully, this technology will encourage photosynthesis and decrease the amount of carbon in the air that would otherwise release into the atmosphere. But there's a risk that overproducing the bioenergy needed for this process will harm food production and displace ecosystems, harming the world in other ways.

Direct air capture effectively scrubs the atmosphere clean from carbon emissions. It draws



It is possible to lower the number of greenhouse gases already released, and technology is only part of that solution.

carbon directly from the air and stores it similarly to BECCS.

However, one study estimated that the technology would cost at least \$92 per metric ton. The process also requires a lot of low or no-carbon energy, which could cancel out the benefit of the direct air capture.

Adaptation

Electric vehicles, on the road already, significantly reduce the carbon emissions put out by cars. The main concern of electric vehicles is the emissions used in producing lithium-ion batteries. Thankfully, new technologies can reduce the number of emissions used in manufacturing through solid-state batteries.

Experts estimate that producing solid-state batteries could reduce carbon emissions by 29 percent, compared to lithium-ion batteries. Using sustainable materials during manufacturing could reduce their carbon footprint by 39 percent.

Companies including Volkswagen are working on using renewable energy completely throughout the manufacturing process, becoming carbon neutral by 2050.

Computer servers take up a lot of energy and emissions. Using cloud computing can cut 88 percent of carbon emissions from the computing industry. Microsoft is working to be carbon negative by 2030; other tech companies are working toward similar goals.

While corporations work on transforming their business practices for the environment, some practices at home will adapt and prevent further climate change.

Food travels thousands of miles on trucks and shipping containers to get to grocery store shelves. By buying local foods, you aren't contributing to the emissions caused during transportation.

By shopping at farmers' markets, co-ops and growing food, anyone can ensure their food is as local as possible. By choosing to eat locally, you will also get fresher, more nutritious food benefiting the environment and your body.

Plastic water bottles take up to 450 years to decompose. By using a reusable water bottle, you are keeping those bottles out of landfills and reducing the amount of carbon emitted from the production and degradation of them.

With current innovations in technology, it's safe to say that with continued improvements it will greatly contribute to stopping and reversing climate change. These innovations aren't yet perfect, so it's important that people take sustainable measures where possible to reduce emissions from everyday items. 📦

Devin Partida is a freelance technology and innovation writer. She is also editor-in-chief of ReHack.com. You can find Devin on LinkedIn and devinpartida.com.



5 Pointers on Pitching

DON'T FORGET THESE IMPORTANT BASICS WHEN PRESENTING YOUR INVENTION TO COMPANIES **BY APRIL MITCHELL**

THERE ARE so many things to be aware of when pitching or presenting your invention to companies. Often, first-time inventors can be nervous (I surely was), which can easily derail them.

Sometimes, we don't realize how a few little things can make such a big difference. Consider these reminders, even if they seem simple, before and during your next pitch meeting.

It is common for inventors to feel they are "bothering" a person or a company when asking of their time to pitch to them, when in reality we could be helping them.

1 Mindset matters. Be confident and positive in your product and your abilities. Energy feeds off energy.

Don't be apologetic about any part of your project or presentation. If you are excited about your product and let the company know how happy you are to present to it, its representatives are more likely to be excited about it as well and see your product in a positive light. If you apologize for something not being good enough or to their standards, they may start with that thought in their mind—and it could taint their true perception of your product.

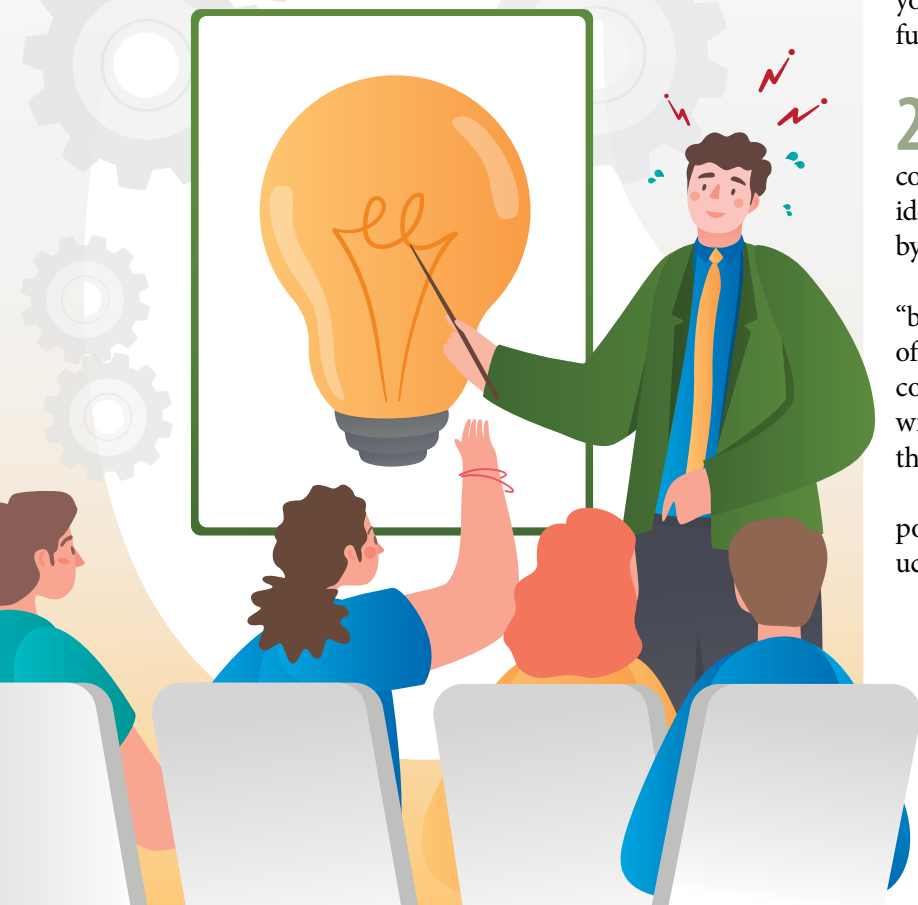
I learned this the hard way. Now, I do my best to present my product in the best possible light—even if I think something could be improved. If a person or company does not like your product or it's not a right fit for them, they will at least see you as a positive and confident person and hopefully be willing to meet with you again.

2 They are just people! You are pitching to people, even if they may be "up there" on the company ladder. They are looking for great new ideas for their company, and you are helping them by providing new possibilities in innovation.

It is common for inventors to feel they are "bothering" a person or a company when asking of their time to pitch to them, when in reality we could be helping them. We are providing them with a service that could make the company thousands or millions of dollars.

Try thinking of the people you are pitching as potential partners to work with on your product—and remember that you are helping THEM.

3 What do you know? Research your prospective partnering company beforehand. Sure, you have heard this before, but what kind of information should you know?



I recommend knowing who you are pitching to and everything about the company you can. Know the company's history and how it got started. Know where it is based, how big it is.

You should know its top sellers and where in its product line you envision a fit for your product. It should be perfectly clear why your product fits with the company and where it fits.

The more you know about the company you are pitching to and about its product line or brand, the more confidence you will have.

4 Do an online run-through. Be prepared, and back things up! Technology can give us trouble when we least expect it.

Have all your materials finalized, saved, and ready to present. If it's an online pitch, be sure to practice and ensure everything works correctly—your video, sound, sharing your screen, etc.

I like to have everything I am going to present to a company opened and minimized on my computer so I can see it and just have to click on it to maximize it. I have everything lined up in the order I plan on presenting it, so I am not spending time searching for what I'd like to present.

If pitching in person and using an electronic device to show a sell sheet or video, be sure to have your materials easy to find or bring up. Most often, time is limited in these meetings. Make the best use of everyone's time.

5 Enjoy the experience. At the very least, the process of pitching your invention to companies is good professional practice. If you are nervous, know that it gets easier and more fun the more you do it because you feel more comfortable and can develop a different outlook about it. 📞

April Mitchell of 4A's Creations, LLC is an inventor in the toys, games, party and housewares industries. She is a two-time patented inventor, product licensing expert and coach, and has been featured in several books and publications such as *Forbes* and *Entrepreneur*.



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Hauntingly Beautiful

INNOVATION TRAINING BOOTCAMP IN NAMIBIA REVEALS UNFORGETTABLE SCENERY AND PEOPLE **BY JEREMY LOSAW**

THERE IS A PICTURE that has popped up on my Windows background for years, and I never knew where it was.

You know the one.

It is a desert landscape with huge sand dunes that reach up to an electric blue sky, with striking dead trees planted in the middle of a vast salt pan. It is a surreal portrait of what was once a thriving ecosystem from a former floodplain that dried up hundreds of years ago.

This beautiful and eerie landscape is called the Deadvlei—one small part of a desert wonderland of the beautiful and sparsely populated Southern African country of Namibia. So, when I won a U.S. State Department grant to oversee an innovation training there, I was as excited to see my Windows background in real life but equally intrigued to meet and work with the people who call this place home.

An obvious theme

Similar to some of the other international training programs I have done, my program in Namibia was a 4-day innovation training bootcamp rooted in design sprint methodology and fast prototyping techniques. The training was set in the capital city of Windhoek, a 5-hour drive from the famed Deadvlei.

I was joined again by Eric Gorman and Julia Jackson from Wily Design in Charlotte. We teamed with Namibia-based Dololo.

Run by Tim Wucher and Chantal Claassen, Dololo is an organization that provides training and support for the business and entrepreneurial community and whose values are perfectly aligned with the spirit of the program. Dololo's help and support were crucial for the success of the event.

Being in a country filled with natural beauty and unique plant and animal species, it was natural for our theme to be wildlife. The sad reality is that because Namibia has great wildlife such as lions, rhinos and elephants and unique plant life such as rare succulents and adeniums (desert roses), it is a target for poachers who illegally take these species from the wild and sell them on the black market.

So our challenge and theme for the program was: How might we leverage technology to monitor, protect and conserve Namibia's wildlife and natural wonders?

Expert guidance

For the lucky 32 people of the 250 who applied for the program, we started by soliciting knowledge from experts in the field.

Professor Andrew Zulu from Namibia University of Science and Technology gave a short presentation on the problem of animal poaching and how drone technology is being used to help curb it. We also solicited insights from Leevi Nanyeni from the National Botanic Research Institute about the plant species that are drawing unwanted attention and whose numbers are being decimated by poaching.



Wouter Vermeulen tests code for a moisture sensor using a Particle Argon WiFi board.



A primary objective of the training was to teach some rapid prototyping techniques, so I brought a suite of electronics to help.

I led a short lab session on how to rapidly create code on the Adafruit Circuit Playground Express. IoT company Particle was again a great sponsor of the program, providing Argon WiFi boards that I used to show the students how to rapidly build IoT devices.

Julia and Eric then took center stage to lead the design sprint part of the program. They did a series of high-energy, hands-on activities to help the teams consider different aspects of the challenge and to purposefully decide what to build before beginning to prototype anything.

Primo prototypes

After two days of training, it was time for participants to rise to the challenge and build a prototype to demonstrate their solution. I was not disappointed.

All six teams built wonderfully executed physical and digital prototypes. Because there was a scandal in recent years involving the fishing industry, two teams focused on solutions related to sustainability in fish harvesting. Other teams concentrated on systems to monitor big game with IoT and satellite technology. Another team's theme was sustainable farming and timber harvesting.

Most of the prototypes were built in diorama form to demonstrate a full ecosystem. Many used the Particle hardware to good effect and were recording real, live data to the cloud from their models.

On the final day, the prototypes were presented to rave reviews from members of the community—including representatives from the telecommunications industry, professional tour guides, farm owners and the botanical garden.



After two days of training, it was time for participants to rise to the challenge and build a prototype to demonstrate their solution. I was not disappointed.

Drive, in overdrive

My favorite part of the training was working with the lovely and talented Namibian residents who participated in the program.

I was blown away by the drive and creativity from the students, who ranged from college students to middle age and came from a diverse set of economic and cultural backgrounds. Many were budding entrepreneurs working on their own projects to build apps to support tourism for the domestic national parks and build shipping container classrooms to teach vocational skills to locals.

Many of the participants—victims of the high unemployment rate of about 40 percent for young Namibians—used the training to gain skills in hopes of breaking into the job market or starting their own businesses.

Namibia is a staggeringly beautiful country, due to its natural wonders and the people who live there and take care of it. I am incredibly grateful for the opportunity to visit and contribute my knowledge, and to make some new friends. 🇳🇲

Jeremy Losaw is the engineering director at Enventys Partners, leading product development programs from napkin sketch to production. He also runs innovation training sessions all over the world: wearewily.com/international





Leaving Us in the Mud

SUPREME COURT AGAIN PASSES ON A CHANCE TO CLARIFY
PATENT ELIGIBILITY **BY LOUIS CARBONNEAU**

EIGHT YEARS AGO, the Supreme Court issued its now infamous *Alice* ruling. This paved the way for a progeny of cases from the United States Court of Appeals for the Federal Circuit that further muddied the waters.

(Editor's note: In *Alice Corp. v. CLS Bank International*, SCOTUS ruled computer-based ideas have no invention or innovation—a major blow to software patent eligibility.)

So how do you know if a patent recites patentable subject matter (aka U.S. Patent Code Section 101)? Well ... you don't! It has become the weapon of choice for those wanting to challenge the validity of any U.S.-issued patent on these grounds.

According to IAM patent data, the number of motions under Section 101 in the five years preceding the *Alice* decision in 2014 was only 116. Post-*Alice*, there have been more than 1,700 such motions—and the success rate of challengers is close to 40 percent (combining full and partial grants of motion), high enough to warrant this strategy.

One would think these statistics would give the Supreme Court reason to pause as it was considering accepting a request to revisit this issue in the case of *American Axle & Manufacturing Inc. v. Neapco Holdings LLC*. In fact, both the United States Patent and Trademark Office and the U.S. Department of Justice had pleaded for the court to hear the case, as everyone recognizes that the status quo cannot continue because it is directly hurting U.S. patentees and the economy.

So, what did the Supreme Court do this time? For the 20th or more time (I've lost count), it had a chance to rule on this issue and simply declined to hear the case—again leaving everyone wondering what is next.

Of course, Congress could also fix it; but we all know that is not going to happen, as there

is already a compendium of proposed patent reform bills that have been dead on arrival ever since the America Invents Act of 2011.

U.S. losing out to Europe

It is no great surprise for those watching the global IP chessboard to see Europe emerging as a powerhouse where patent owners battle to have their IP respected around the world.

People are essentially avoiding the United States as a venue and bringing their cases to Europe, with much better results. They then leverage those decisions to put in place world-wide licenses.

It's important to note that it used to be the other way around! This (yet again) highlights just how far the American patent system has fallen, now viewed as a lesser-grade environment for those who need to protect their rights. With the European Unitary Patent System and Courts about to take off, we believe this trend will continue to accelerate.

Predictions revisited

Early this year, I made my initial five predictions for 2022.

- Kathi Vidal will be the new USPTO director.
- The U.S. Department of Justice will revise its Standard Essential Patents policy.
- The U.S. Supreme Court will confuse everyone, again.
- Judge Alan Albright will continue to lose control over cases in the Western District of Texas.
- The International Trade Commission will become the forum of choice for large patent cases.

On these 5, I pretty much have a perfect batting average so far.

Vidal was confirmed a few months ago despite some real grassroots campaigning from the



Everyone recognizes that the status quo (uncertainty about what is eligible to be a patent) cannot continue because it is directly hurting U.S. patentees and the economy.

inventors' lobby. The Department of Justice did back off on its proposed policy earlier this year. SCOTUS just left us as confused as we were before by declining to hear the *American Axle* case.

Judge Albright is definitely having the hardest time keeping his cases in the Western District of Texas, with defendants successfully transferring cases to friendlier districts for them. This includes Apple, which somehow convinced the federal circuit that having tens of thousands of employees in Austin does not create enough of a nexus to be sued there.

Finally, ITC cases are on the rise, but only for the high-risk /high-reward cases—given the astronomical costs required to sustain a complaint there. On that last one, it also seems some cases that could have been brought before the ITC are instead asserted in Europe where the courts can readily issue an injunction and adjudicate on damages, which the ITC cannot.

Open Innovation? Hmmm

(Editor's note: Open innovation is a business management model for innovation that promotes collaboration with people and organizations outside the company.)

Open innovation stems from the basic assumption that a company cannot possibly develop everything it needs and does not need everything it creates.

Think of it as the IP version of the two small neighboring villages from the antiquity—one on the sea with only fish to consume and the other one inland with only grain and game. It did not take long for those neighbors to realize

that trade was the best way to get enough of everything instead of too much of one thing.

In the IP world, technology verticals and underlying IP rights should normally flow the same way: Company A should be getting what it doesn't have from Company B instead of replicating the perennial wheel. Conversely, Company B should be able to license technology it no longer needs, or which can be used in other non-core verticals.

That is the theory. But in practice, this rarely works—and a lot of the reasons stem from human nature and behavior rather than the difficulty of transferring rights from A to B.

I remember my days at Microsoft, when the IP team I managed was responsible for all the research labs the company had in the world (there were five). These top-notch researchers cranked out amazing innovations, most of which were naturally geared toward Microsoft flagship products. There was even a well-resourced internal team whose only charter was to facilitate the tech transfer from the labs to the product groups.

On paper, it was perfect. It should have led to a very high percentage of innovations being incorporated into products in a rather short time.

In reality, it was a small miracle each time a new technology developed in house by a research group made it to a product or did so within a few years after its creation. Why?

Simply put, because product groups are always shipping the version of their product they wanted to ship ... two years ago. What they are essentially doing is incorporating—at



long last—the features they had pegged for the previous version but which had to be canned at the last minute when they had to meet a deadline and the whole focus turned to bug fixing.

Add to this that the people making the tough calls in the “war room” are in the product group. They will naturally default toward removing a feature—regardless of its merits—that did not come from their own group, even if it was developed in house somewhere else.

I know from numerous discussions over the years that this is true elsewhere, and not only in the software world.

Now imagine you are trying to conduct this open innovation between two completely separate organizations—say, a startup or a university trying to license some technology to a Fortune 500 company that has a very rigid development cycle with a very short window of opportunity (counted in weeks) to add a new feature to the next version of the product it is trying to launch.

In addition to what I described, you also have to add the “Not Invented Here” syndrome, a lack of trust as to the pedigree and robustness of technology that has been merely prototyped and never commercialized, culture clashes and different groups moving at very different speeds, etc.

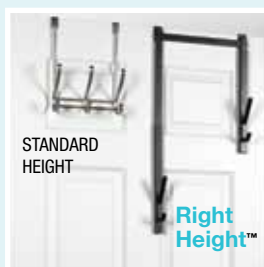
No wonder large companies prefer to implement other people’s ideas internally, rather than work with them to license their innovations. The only problem with that model is that unless the legal system protects the innovators, the implementors will simply take a free ride in replicating these great ideas at no costs to them.

This is what is happening all around us. And if this goes on for too long, we will soon run out of innovators. ☹

Louis Carbonneau is the founder and CEO of Tangible IP, a leading patent brokerage and strategic intellectual property firm. He has brokered the sale or license of 4,500-plus patents since 2011. He is also an attorney and adjunct professor who has been voted one of the world’s leading IP strategists.



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The Answer's Still No

AND THE QUESTION FOR THE U.S. FEDERAL CIRCUIT WAS:
CAN AN AI MACHINE BE RULED AN INVENTOR? **BY EILEEN MCDERMOTT**

All Eye On Washington stories initially appeared on IPWatchdog.com.

THE U.S. COURT OF APPEALS for the Federal Circuit ruled on August 5 in *Thaler v. Vidal* that an artificial intelligence machine does not qualify as an inventor under the Patent Act.

The decision is the latest in a series of rulings around the world considering the topic, most of which have found similarly. Judge Leonard P. Stark authored the opinion.

In May 2020, the United States Patent and Trademark Office denied U.S. Patent Application No. 16/524,350), titled “Devices and Methods for Attracting Enhanced Attention,” for failure to “identify each inventor by his or her legal name” on the Application Data Sheet. The ADS listed a single inventor with the given name DABUS and the family name “Invention generated by artificial intelligence.” (DABUS stands for “Device for the Autonomous Bootstrapping of Unified Sentence.”)

The USPTO had noted in its decision that the Patent Act repeatedly refers to inventors as natural persons.

The application listed Stephen L. Thaler as the assignee, applicant and legal representative. The U.S. District Court for the Eastern District of Virginia subsequently granted summary judgment to the USPTO.

The USPTO had noted in its decision that the Patent Act repeatedly refers to inventors as natural persons. For example, Section 101 of the patent code states “Whoever invents or discovers,” wherein the term “whoever” suggests a natural person. The USPTO also referred to Section 115, which uses terms such as “himself,” “herself,” “individual,” and “person.”

The federal circuit agreed that the USPTO’s reading of the statute is unambiguously correct and that the court therefore need not consider “metaphysical matters” about “the nature of invention or rights, if any, of AI systems.”

Attempt ‘falls flat’

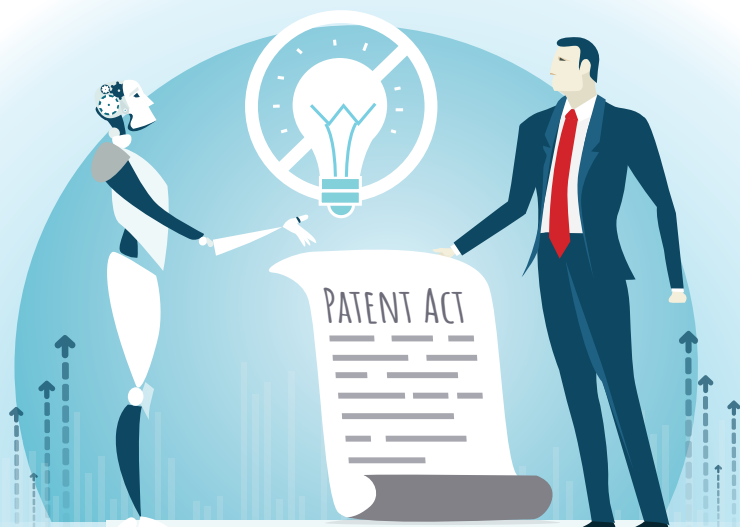
The court said the statute’s repeated references to “individuals,” which ordinarily means “human being” short of “some indication Congress intended” as an alternate meaning, supports this interpretation. Similarly, the use of personal pronouns and the requirement of an oath or declaration from the inventor indicates the inventor must be a human capable of forming beliefs.

The federal circuit explained:

“While we do not decide whether an AI system can form beliefs, nothing in our record shows that one can, as reflected in the fact that Thaler submitted the requisite statements himself, purportedly on DABUS’ behalf.

“Thaler’s attempt to argue that the word ‘whoever’ in 35 U.S.C. §§ 101 and 271 includes references to corporations as potential infringers, and thus must contemplate non-human inventors, falls flat.

“That non-humans may infringe patents does not tell us anything about whether non-humans may also be inventors of patents. The question



before us inevitably leads back to the Patent Act's definition of 'inventor,' which uses the word 'individual' – and does not use 'whoever.'"

Tiny window left open

The federal circuit has ruled in cases, including *Univ. of Utah v. Max-Planck-Gesellschaft zur Forderung der Wissenschaften E.V.* and *Beech Aircraft Corp. v. EDO Corp.*, that neither corporations nor sovereigns can be inventors based on the plain meaning of the statute. Although statutes are often open to "multiple reasonable readings ... Not so here," said the court.

Despite Thaler's arguments that AI must be granted inventorship to encourage future innovation, the federal circuit said it must work within the confines of Congress' words. It left open the possibility that inventions made by human beings with the assistance of AI may be eligible for patent protection.

The court also dismissed Thaler's concerns about "constitutional avoidance," in which he claimed that failing to recognize AI as inventors undermines the constitutional goal of promoting "the progress of science and the useful arts." The federal circuit said this provision is merely a grant of legislative power to Congress, and Congress acted in the form of the Patent Act—which is unambiguous in its language about who can be an inventor.

The South African patent office granted the first patent to DABUS in July 2021 under its "formalities examination," and an Australian court said in August 2021 that an AI system can be an inventor under the Australian Patents Act.

But the federal circuit was not moved by Thaler's citing the South African decision on appeal.

"This foreign patent office was not interpreting our Patent Act. Its determination does not alter our conclusion," the court wrote. ☞

Eileen McDermott is editor-in-chief at IPWatchdog.com. A veteran IP and legal journalist, Eileen has held editorial and managerial positions at several publications and industry organizations since she entered the field more than a decade ago.



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Best wishes, Jack Lander

IoT Corner

The virtual **Alexa Live** developer event revealed a few big headlines for the year ahead for Alexa, including the initiative to support the new Matter IoT protocol.

The newly announced Alexa Connect Kit software development kit is designed to work with Matter natively. This means developers using Alexa-compatible hardware can make minor software changes to be Matter compatible with little effort.

The universal IoT standard has been delayed a number of times but is set to roll out in fall 2022.

Alexa's newly announced interoperability is a big boost for the forthcoming protocol, which seeks to unify the IoT across all platforms. —*Jeremy Losaw*



Wunderkinds

Seventeen-year-old **Robert Sansone** from Fort Pierce, Florida, created a prototype of an inexpensive, sustainable, synchronous reluctance motor that had greater torque and

efficiency than existing ones. He won first prize and \$75,000 at this year's Regeneron International Science and Engineering Fair, the largest international high school STEM competition. The prototype was made in about a year from 3-D printed plastic, copper wires and a steel rotor. Robert has completed at least 60 engineering projects.

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What IS that?

OK, let's assume you know someone who had/is having his or her appendix removed. Let's assume he or she will think it's funny to own a **plush appendix toy** as a reminder. Let's assume he or she will read the card with "fun facts" about the appendix. Let's assume you want to spend \$13.95 on it. And what do they say about people who assume?



555

The number of **intellectual property organizations** in the United States, according to Crunchbase.com. Only six of them—1 percent—are nonprofits.

WHAT DO YOU KNOW?

1 Which was invented first—the digital video recorder (DVR), or the smartphone?

2 Which of these products has not lost its trademark rights?

- A)** Aspirin **B)** Thermos
- C)** Linoleum **D)** iPhone

3 **True or false:** Eli Whitney's cotton gin factory went out of business.

4 Which of these trite slogans is not trademarked by the NCAA?

- A)** Champions Play Here
- B)** Experience it Live
- C)** At Another Level
- D)** Share the Experience

5 **True or false:** Benjamin Franklin never sought a patent for any of his inventions, but others received patents for his inventions in other countries.



ANSWERS: 1. The DVR was invented in 1997 by Anthony Wood, through his company ReplayTV. The first smartphone was invented by IBM in 1992 and released for purchase in 1994. 2.D. The rest have been genericized. 3. True—largely due to patent infringement disputes. 4. C. 5. True.

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