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AUGUST 2023 Volume 39 Issue 08

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Pool Noodle Wars
INVENTORSHIP DISPUTE
IN ITS FOURTH DECADE

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DIRECTOR'S BLOG

Patenting Climate Science Innovation

USPTO patent examination policy advisor, on exchange program with NOAA, helps researchers understand importance of protecting their IP

A Q&A with Parikha Mehta from the U.S. Patent and Trademark Office, posted June 27, 2023.

Parikha Mehta has spent the last four months focused on the intersection of intellectual property and climate and environmental technologies while on an employee exchange at the National Oceanic and Atmospheric Administration (NOAA) from the U.S. Patent and Trademark Office. Her goal is to help researchers understand the importance of protecting their inventions so that NOAA's research and technology can better serve the public and inspire future innovation.

The work overlaps with her job as a senior patent examination policy advisor at USPTO. "In my USPTO role, I focus on advising all types of stakeholders on our patent policy—soup to nuts of the whole patent process," she says.

At NOAA, Mehta visited labs and fisheries science centers and interviewed researchers about their knowledge of the patent process and technology transfer. We asked her about her experience, and intellectual property issues.

How did you hear about the employee exchange opportunity with NOAA? What motivated you to apply?

I heard about this opportunity through the USPTO detail announcement program; our agency is really supportive of career development through short-term reassignment opportunities.

My background is in science and engineering, and I was excited for the chance to spend some time a little closer to that. I was also eager to share my knowledge of patent law and policy to hopefully help people who are trying to solve problems I care about personally.

Before I started this detail, I knew broadly that NOAA was engaged in important research in a lot of different areas, but I didn't appreciate the full scope of the agency's impact until I got here. I've so enjoyed talking to the talented scientists and engineers here; meeting people and learning about their work has been incredibly rewarding, and also just a lot of fun.

Why is it important for researchers to patent inventions?

I've been inspired by how passionate NOAA researchers are about using science and engineering to help the public and the planet. Patents are a great vehicle for that, because they create a pathway for transforming innovation in the lab into something that the public can access and benefit from in day-to-day life.

Patents are also a tool for protecting the integrity of the important work that's being done at NOAA. If somebody else tries to claim ownership of an idea, or use it in a way that doesn't meet NOAA's high standards, that can harm the agency and the public. Patents can provide insurance against those things.

For example, I met several NOAA researchers who are working on innovative tools for collecting improved data from the ocean or the atmosphere. If those tools are patented, NOAA can confidently share them for broader public use knowing there is a measure of protection against anyone else distributing sub-standard knockoffs or erasing NOAA's rightful credit for that innovation.

Parikha Mehta and Wayne Mackenzie discuss Dr. Bianca Baier's innovative AirCore atmospheric sampling device and the HORUS glider at the NOAA Global Monitoring Laboratory.



What is holding people back? Why do you think people don't seek out a patent?

I think it's mostly a matter of awareness. Scientists, engineers, and managers are often unfamiliar with how patents work, how they relate to federal research, and how to apply for them.

The next two USPTO detailees (exchange participants) will use what I've found to help NOAA's research workforce learn about these topics, and hopefully help them feel more comfortable and confident when initiating discussions about how to protect NOAA inventions.

What do you say to someone who is hesitant about patenting?

Researchers sometimes feel that their inventions aren't suitable for filing a patent application because they are too niche, too specific to a particular problem they are trying to solve in their lab. They assume that nobody else is going to want or be able to use their invention, so they talk themselves out of trying to pursue a patent for it. To that, I would say don't sell yourself short; no invention is too small.

The NOAA Technology Partnerships Office has talented people who can guide that part of the decision making process; all you have to do is let

them know you invented something, and they'll help figure out the best path forward from there.

What has been the biggest surprise to you about NOAA and the culture here?

I don't know if I would characterize this as surprising, but everyone's strong mission identity and commitment to public service here has definitely made an impression on me. People show up to work here because they genuinely want to do good and help others; this really shone through in my interactions with every person I met at NOAA, not just the researchers.

It's been wonderful, and probably one of the things I will remember most about this experience.

Mehta is the first of three USPTO employees assigned to NOAA this year. While Mehta has been working at NOAA, another detailee has also gone from NOAA to USPTO to share climate science with their staff and advise on USPTO green initiatives. We will talk to that detailee about their experiences in a forthcoming article.



Dr. Paul Johnston shows Mehta an engineering work in progress at NOAA's Physical Sciences Lab.

MAGIC MOMENT 1 MILLIONTH DESIGN PATENT ON THE WAY

We've come a long way from the first U.S. design patent, which did not even involve a drawing.

According to USPTO projections, the 1 millionth U.S. design patent may potentially be issued in October of this year. Whenever the event happens, it will continue a fascinating history involving one of the most important intellectual property protections for Americans.

The first design patent—a protection for how something looks, not how it functions—was issued to George Bruce on November 9, 1842. Only 13 design patents were issued in that first year of eligibility.

The USPTO Design Patent Application Filing Guide says of design patents: "The

drawing disclosure is the most important element of the application."

Not so almost 200 years ago. Bruce's design patent—for a new typeface—was described in words. He even admitted to a lack of novelty, according to research by IP Watchdog:

"I do not pretend that I am the first who have cast the Types called Script, nor the first who have cast them of the size called Double Small Pica, nor to originality in the outlines of any of the types for which I now ask a patent, nor do I wish to prevent other founders from cutting and casting similar and better articles.

"But these Types are different from all others in their size, proportions,

details and impressive effects, combining peculiarities by which they are distinguishable from all others, and these as a whole I claim to be mine."

In 1842, U.S. patent laws were updated to allow for the patenting of ornamental designs. This clarified the application process as well as the patent's protections.

In 1902, the design patent statute was amended to define the allowable subject matter simply as "any new, original, and ornamental design for an article of manufacture."



PTAB and Patent Application

A general guide on how to file, and what to do if your claims are rejected

To get a patent, an inventor must file a patent application at the U.S. Patent and Trademark Office. This article explains the patent process in general, what actions you can take, and how the Patent Trial and Appeal Board (PTAB) may figure into the process.

The patent application must disclose how your invention works and conclude with claims defining the boundaries of your invention. An examiner reviews your application to see if the claims meet the legal requirements for patentability.

If the patentability requirements are met, the examiner will allow the claims, and your patent will issue. But if the claims do not meet one or more of the legal requirements for patentability, the examiner will reject the claims in an “office action” explaining why they do not meet the requirements.

You may respond to the examiner and argue why the rejection is legally or factually wrong and/or amend the claims to overcome the patentability rejections.

The examiner considers your response and then may withdraw the rejection and allow the claims. Alternatively, the examiner may disagree with your response and reject the claims for a second time.

After a second rejection, you may seek review of the rejection by appealing to the Patent Trial and Appeal Board (PTAB). In this process, a panel of three administrative patent judges will consider the examiner’s rejection and determine whether the examiner erred. Judge review of an examiner’s rejection is called an “*ex parte* appeal” because it only involves one party—the inventor.

To initiate an *ex parte* appeal to the PTAB, you file a notice of appeal and pay the required fee. You then have two months to file an appeal brief, explaining why the examiner erred. Then the examiner will file an answer to the appeal brief, and you will have the opportunity to reply to the examiner’s answer.

A panel of three PTAB judges then reviews the entire record.

You may request an oral hearing to verbally present your case before the judges. Examiners usually do not participate in oral hearings.

Results of PTAB appeal

The PTAB can affirm or reverse the examiner’s rejection, in whole or in part. An affirmance means the judges agree with the examiner’s rejection. A reversal means the judges disagree with the examiner, and the application is sent back to the examiner. At that point, the examiner can either allow your patent to issue or re-open prosecution of your application.

In rare instances, the PTAB may issue what is called a “new ground of rejection.” You have two options if this occurs: (1) reopen prosecution; or (2) request rehearing before the PTAB.

To reopen prosecution, you reply to the new ground of rejection with new evidence and/or amend the claims—which sends the application back to the examiner. Examination proceeds as if the new ground was raised in a first office action.

To request a rehearing, you must file a brief explaining why you feel the PTAB’s decision was incorrect. If the rehearing is not successful, reopening prosecution is still possible.



Helpful resources

The USPTO maintains a roster of registered patent agents and attorneys you can consult (see oedci.uspto.gov/OEDCI/).

For those inventors with limited financial resources, the USPTO sponsors three programs that help qualified inventors find legal assistance. The Patent Pro Bono Program and Law School Clinic Program are available during the examination process. The PTAB Pro Bono Program may assist you with appeals. See “Patent Trial and Appeal Board Pro Bono Program for Independent Inventors” at uspto.gov.

The PTAB offers several resources to help with appeals, including an Appeal Brief template (uspto.gov/patents/patent-trial-and-appeal-board/resources/preparing-ex-parte-appeal-brief) and monthly Inventor Hour webinars (uspto.gov/about-us/events/inventor-hour-events).

JOURNEYS OF INNOVATION

A Renewable Resolve

In the aftermath of Hurricane Maria's devastation, a Puerto Rican couple build a low-cost energy startup to improve struggling business climate

On the morning of September 20, 2017, as the roar of Hurricane Maria gave way to an ominous silence under an overcast sky, Vanessa Carballido Clerch and her parents made their way down a residential street in Guaynabo, a suburb of San Juan, Puerto Rico, back to the home they had evacuated in the middle of the night.

Carballido Clerch and her husband Francisco Laboy Colondres had decided that she and their 7-year-old son would ride out the storm at her parents' house in Guaynabo, believing it would be safer than their apartment near the ocean.

But during the night, water started to seep into the house. Carballido Clerch and her cousin ran around frantically unplugging electronics, turning off the breakers, and placing passports and other essentials on tables as the sewage water—identifiable by its repugnant smell—continued to rise.

Furniture and everyday household objects floated throughout the house. Outside, the 155 mph winds pounded the windows and bent the trees. The idea of going out in the Category 4 hurricane was terrifying, but they knew they couldn't stay inside.

Everything was lost

Over the following months, the complete collapse of the island's infrastructure led to a profound humanitarian crisis, with a death toll that rose to 2,975 as the extended lack of power crippled key facilities like hospitals and nursing homes.

The waters had receded, but Carballido Clerch's parents had lost everything.

Carballido Clerch spent the next month with her parents, throwing out everything they

had owned, painstakingly cleaning the house to make it livable again, and patiently salvaging what they could.

Her father, Jorge, had fled Cuba for Puerto Rico in 1991, convinced that his family would have a better future there.

Now, as they became aware of the extent of the damage across the island, Carballido Clerch said she wondered if she would have to leave everything, too.

A dream re-energized

During the past year, she and Laboy Colondres had been trying to launch a renewable energy startup. According to the U.S. Energy Information Administration, households in Puerto Rico pay much more per kilowatt-hour than in the States, businesses pay just over double, and industries almost triple.

On an island with 44 percent of its residents living below the poverty line at that time, an almost 12 percent unemployment rate, and a steadily declining population, energy costs hindered the ability of existing and new businesses to succeed and affected the island's ability to attract new businesses and industries.

Laboy Colondres and Carballido Clerch envisioned a business that would provide an alternative to the expensive island grid.



Francisco Laboy Colondres and Vanessa Carballido Clerch, shown at the 2019 Global Entrepreneurship Summit, envisioned a business that would provide an alternative to Puerto Rico's expensive grid.

Read more about how Francisco Laboy Colondres and Vanessa Carballido Clerch realized their mission at uspto.gov/learning-and-resources/journeys-innovation.

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Her Social Is Our Security



“Where’s my makeup person?”

None of the panelists said anything like this during the short camera and audio setup for our national podcast on July 19. But there was an air of excitement and anticipation before “Preliminary Marketing & Advertising,” part of the Successful Inventor series by the USPTO and the Licensing Executives Society-Silicon Valley Chapter.

The founder of that latter organization is Larry Udell, executive director of the California Invention Center. As moderator for the panel, he oversaw a comfortable but information-filled 90-minute session that featured speakers Devon Blaine of the Los Angeles public relations firm The Blaine Group; marketing veteran/encyclopedia Bill Seidel, principal of America Invents LLC; some guy who is editor-in-chief at *Inventors Digest*; and Elizabeth Breedlove (left), our monthly Social Hour correspondent.



It was a pleasure to see Elizabeth enlighten a national audience with her vast knowledge about inventors’ myriad options and marketing strategies on various social media outlets. The pleasure wasn’t all mine.

A wife and mother to 3- and 5-year-old boys on the coast of North Carolina, she said, “It was a joy to share what I’ve learned through using social media to market hundreds of new products prior to launching them.”

Her interest in marketing on social media dates to her first job after attending UNC-Chapel Hill, when she was a copywriter for a digital marketing agency that focused on building websites for small businesses with inbound marketing in mind. Eventually, she worked for another agency that focused on launching products, where her role involved content marketing, copywriting and social media.

“That’s where I really learned how to use social media to market a new product. By the time I left that agency to freelance, I was working closely with the sales team managing the overall digital marketing strategy for the agency itself.”

Since her first *Inventors Digest* article in June 2017, Elizabeth’s articles have reminded inventors that “setting yourself up for success involves so much more than simply inventing a great product that solves a need.”

This fact needn’t be daunting. In fact, it should spark a different air of excitement and anticipation—about succeeding as an inventor in the 21st century.

—Reid
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Inventors

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CORRESPONDENCE

Do companies require a working physical prototype to get money for your invention? Is a virtual prototype video good enough?

—JAMEY WHITMAN

From Enventys Partners Engineering Director Jeremy Losaw, who writes about prototyping each month in Inventors Digest: Video is OK. When companies license IP, they are paying for the rights to use the technology cited in the patents. A prototype is not necessarily required.

However, having a working prototype of the product is a great communication tool to show potential licensees the potential of the product and can be key to closing a deal.

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NOT FUNNY AT ALL: COMEDIAN SUES CHATGPT

Here come the lawsuits against ChatGPT, and one question: What took them so long?

Although many swear by the AI tool that combines vast information from websites, news articles, books and more, just as many are swearing at it. Since ChatGPT's launch last November, horror stories range from the professor who was falsely accused of sexual harassment to students who use the human-like AI for plagiarism.

Comedian Sarah Silverman is among three writers suing ChatGPT maker OpenAI and the tech giant behind it, Meta, alleging copyright infringement. She is joined as plaintiffs by authors Christopher Golden and Richard Kadrey.

In the lawsuit, filed July 7 in the San Francisco Division of the U.S. District Court of the Northern District of California, the plaintiffs say that

when prompted, ChatGPT produces a summary of their works. They claim this is copyright infringement because they did not consent to their books being fed to ChatGPT.

Each suit seeks just under \$1 billion in damages, according to court filings.

The authors alleged the two tech companies had "ingested" text from their books—including Silverman's copyrighted memoir "The Bedwetter"—into generative AI software and failed to give them credit or compensation.

Weeks earlier, bestselling authors Mona Awad and Paul Tremblay sued OpenAI for copyright infringement on similar grounds. Attorneys well versed in intellectual property say more suits are inevitable.

In June, The Authors Guild, a U.S.-based advocacy group that supports



the working rights of writers, published an open letter calling on Big Tech and AI CEOs to get permission from writers to use their copyrighted work in training generative AI programs and compensate them fairly. —Reid Creager

BRIGHT IDEAS



Moss Air

DESKTOP-SIZED HUMIDIFIER AND PURIFIER
moss-lab-air.com

Featuring a soothing alternating light display, Moss Air's moss panel filters out fine dust and converts carbon dioxide into oxygen for a fresher and greener living environment.

When the humidifying hole is covered, the mist generated pools into the moss chamber, keeping it hydrated. When the magnetic ball at the top of the unit is removed, the mist fills your immediate space, humidifying your room.

The unit's small size and sleek exterior make it an attractive design piece with up to 8 hours of battery life. The LED light inside lets you watch as mist fills the panel when in terrarium mode, and watch sleeping moss spring back to life when moisturized.

The product, which will retail for \$99, is to begin shipping for crowdfunding backers in December.

FlameShip

3D ELECTRIC STEAM FIREPLACE
flameship.tech

FlameShip provides the beauty of a flickering flame that remains cool to the touch while employing an eco-conscious approach without using gas or ethanol.

Strategically positioned LEDs interact with fine water molecules to produce the visual effect. Via remote control, FlameShip offers four operating modes, each emulating the diverse personalities of real flames.

Inside, the fireplace acts as a super-charged home humidifier, utilizing ultrasonic technology to transform freshwater into a cool steam that shapes into a lifelike fire. Special lamps emit a warm 2,300 Kelvin light, capturing the color temperature of authentic flames.

With planned October shipping to crowdfunding backers, FlameShip will retail for €279, or about \$310 U.S.





Campster 2

FOLDABLE, PORTABLE CAMPING CHAIR

sitpack.fulcra.com

Campster 2 is a one-piece, lightweight (3.3 lbs.) camping chair designed to make your outdoors experience more comfortable.

The chair, with an advertised 5-second unfolding time and 300-lb. capacity, features an airflow backrest to limit dampness; four loops to hold drinks and bottles; two big side pockets; an insulated can/bottle holder; carry bag and carry strap, and detachable rubber feet.

For setup, remove the strap and let the seat poles unfold from the quad-supported legs. Give each a gentle pull until they click into place.

Campster 2 will retail for \$110, with shipping for crowdfunding backers set this month. A bundle package with add-ons, which includes a seat warmer and ground sheet, will retail for about \$200.

"If I had asked the public what they wanted, they would have said a faster horse." —HENRY FORD

LITO

WEARABLE WALKIE-TALKIE

beebestshop.com

A 14mm body is a highlight of this vibrant yellow walkie-talkie.

With a hands-free option and communication for up to 36 miles, LITO is compatible with Bluetooth earphones and action camera accessories. It is designed to be easily mounted on standard action camera mounts like arm straps, helmets and more.

You can control it using the Smart Ring Controller, which allows you to activate LITO by pressing the controller button during sports activities. With a high-capacity 2190mAh battery, the walkie-talkie can provide five days of standby time and at least 16 hours of continuous usage.

LITO will have a retail price of \$99 after crowdfunding. Shipping to backers is to start in October.



This Ain't 'Marco Polo'

2 MEN'S LONG FIGHT OVER WHO INVENTED THE POOL NOODLE LACKS ONE IMPORTANT THING: A PATENT **BY REID CREAGER**

F RICK KOSTER and Steve Hartman had a sense of humor regarding their bitter dispute over who invented the pool noodle, they would create some fun PR by staging a duel where they whack each other silly with the long, colorful foam toys.

But they don't. So they won't.

More important, if either of the two Canadians had a patent for their claimed invention, they could put the issue to rest forever.

But they don't. So they won't.

Inventors Digest has long supported the notion of patent protection, while giving equal time to those who question its importance. But in this instance, there is little room for bending.

Backer history

There is nothing complicated about the toy itself: a colorful piece of flexible, buoyant polyethylene foam (usually about 5 feet long and 7 centimeters in diameter) used for play and as a flotation device.

The pool noodle originated with the backer rod—a cylindrical foam rod used to fill gaps or joints in masonry or concrete walls.

Hartman told marketplace.org

he and his father founded a company that made backer rods, Industrial Thermo Polymers (ITP), in Toronto in 1980.

"We always had these foam rods. They were gray and 9-footers, and it seemed like every time we jumped in the pool, we were playing with these things."

Hartman said he mixed up a batch with color and tried to sell them to a few pool supply stores, to no avail. He said Canadian Tire then took the plunge, priced the pool noodles low enough to spur some interest, and ultimately they took off.

Koster, with kids who were competitive swimmers, said he discovered the fun of playing with the foam pieces in a pool around the same time. In 1986, after drawing up a series of ideas for floating noodles, he came up with the Water Woggle—originally a white foam serpent with multicolored spots and stripes.

2 different truths

A 2014 *Toronto Star* story chronicled the dispute, which included a short-lived partnership.

Koster has dated invoices, documents and promotional material for his Water Woggles. Hartman did not keep records of his business from that time but said he was selling foam pool noodles in several colors before meeting Koster.

"For some reason, he thinks he invented the foam rod." —STEVE HARTMAN



“They took (my) concept, they saw the success of it, and they wanted to cash in on it.” —RICK KOSTER

Koster said he and Hartman began working together in 1990, when he approached Hartman’s company (ITP) to mass produce his Water Woggles. That did not end well.

Hartman’s version of the partnership was that his company signed a deal with Koster but that Koster decided against the arrangement when he found out ITP was already selling pool noodles.

Koster told the *Star* that after he declined a “lowball” offer from a retailer to stock the Water Woggles and was reviewing an order destined for other stores, he found a cluster of pool noodles identical to his product that were being shipped to the retailer for sale.

He claimed Hartman tried to steal his idea and took him to court, dropping the lawsuit when he said he ran out of money.

“They took (my) concept, they saw the success of it, and they wanted to cash in on it,” Koster said. “I want the truth to be told.”

Countered Hartman: “For some reason, he thinks he invented the foam rod. We were already making them, and making them for (use) in pools.”

Though Hartman is serious about his claim as inventor, he told the *Star* that he is not preoccupied with getting credit for it. Not so for Koster, who wrote an unpublished book about the experience.

Trademark initiative

By the mid-1990s, pool noodles were sold by many different manufacturers that did not have to worry about patent infringement.

Toy and game manufacturer Jakks Pacific, founded by Jack Friedman, filed a trademark application for FUNNOODLE with the USPTO in late 1996 (serial number 75206975) and continued to renew it decades later. This is where the term “noodle” originates in connection with the toy.

As one can imagine on an internet where fact-checking is often lax and misinformation

copied and pasted, sites differ on the identity of the actual inventor.

A site called pooltoy-inventor.com says Koster “set in motion the design, development and marketing of a product that would forever change the excitement associated with swimming.” It also reads: “One product in particular that he made was responsible for inspiring what would eventually become the World’s Most Popular Pool Toy and the first inductee into the Pool Toy Hall of Fame.”

Perhaps undermining the legitimacy of that account, *Inventors Digest* could find no evidence there is a Pool Toy Hall of Fame—or that one ever existed. But we did find a site (teachingexpertise.com) that listed 20 pool noodle games, ranging from a tunnel to a water wall to an ocean scene sensory bin.

Sounds like a lot more fun than two guys still arguing because they didn’t bother to pursue a patent. 🍷



INVENTOR ARCHIVES: AUGUST

August 7, 1906: The **Flexible Flyer**, popularized in the movie “A Christmas Story,” was trademark registered.

The company was founded 17 years earlier by Samuel Leeds Allen, an inventor and entrepreneur. His original sled design featured a flexible wooden runner.

Flexible Flyers from the early 1900s are highly collectible, sometimes bringing prices in the hundreds or thousands of dollars. A vintage Airline Pursuit Flexible Flyer salesman sample sold on eBay earlier this year for \$274.95.



Licensing Your Patent By Mail

IF YOU FIND TRADE SHOWS TOO EXPENSIVE, CONSIDER YOUR TIMING OPTIONS AND FOLLOW THESE GUIDELINES **BY JACK LANDER**

I F YOU HAVE read my columns over the years, you know I recommend attending trade shows to find companies and their director of marketing, who are excellent candidates for licensing your patent.

But visiting a trade show generally involves flying or driving to a location, usually in a big city. And you may want to stay overnight, which means a hefty hotel bill plus food.

If you feel you can't afford the trade show approach, don't give up. Contact candidate companies by mail.

First question: Should you wait until your patent issues before making contact, or should you make contact as soon as your application is filed?

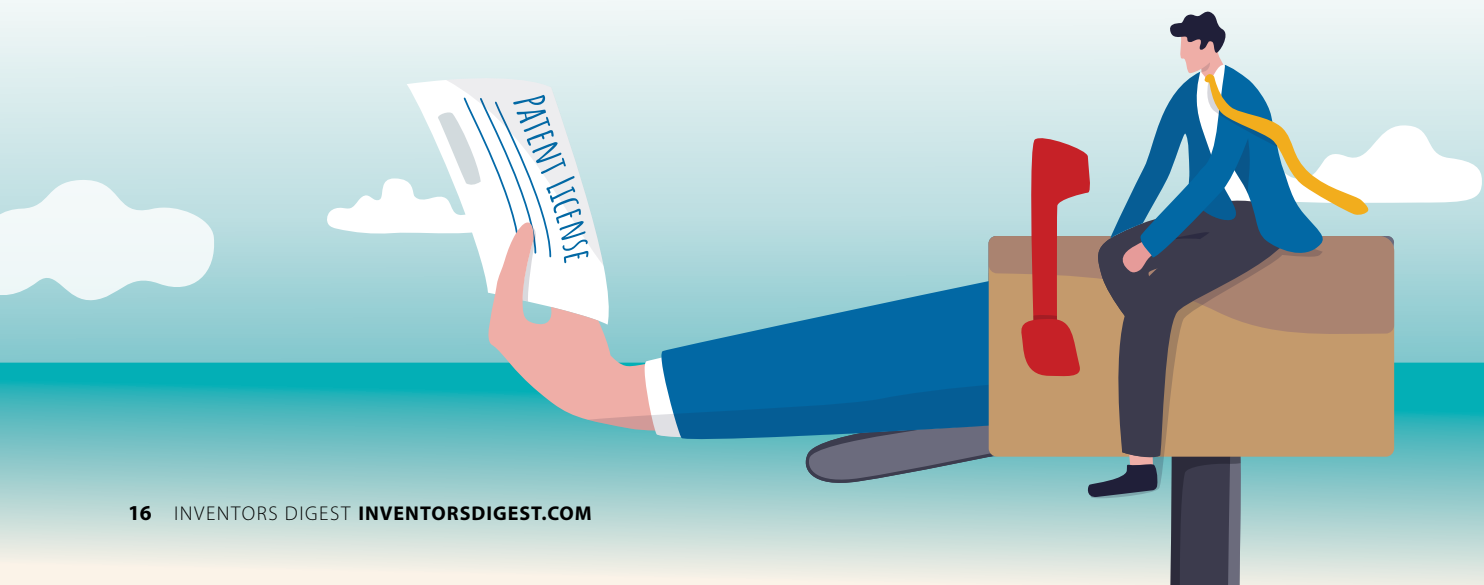
Each option has advantages and disadvantages. Inquiring soon after your application has been accepted by the United States Patent and Trademark Office saves time, but it also wastes

time if your application is ultimately rejected. Waiting until your patent issues likely will result in your invention being taken more seriously, and responding companies won't worry as much about a legal entanglement as they do when you are trying to sell only a promise of a patent-protected invention.

My experience has been that most companies won't answer your inquiry because they don't want to get involved with inventors—especially inventors who don't yet have their patent in hand. You can improve the odds of getting an answer with these pointers:

- Prepare a list of companies that market products with which yours will be a good fit, and check each for a website.
- Take time to make your inquiry letter compelling to read. By that, I mean its physical appearance must invite the recipient to at least read much, if not all, of the letter.

**Chances of getting a reply are low.
But you can improve your odds with these pointers.**



- Make your letter brief and to the point. Check fanatically for misspellings and punctuation errors.
- Include a return envelope, with postage, and a return card or letter with a check box for each stock answer. Your objective is to make the response so easy and fast that your respondent will feel guilty by not answering. We often feel better receiving a response that is negative than being ignored altogether.
- Always address your mailing to the director of marketing, using that person's name and correct title—not just the title—unless you've tried your best and can't determine the person's name. You can phone to get this information. If you are using an artificial intelligence app such as ChatGPT, you might find it by querying the AI.

Your letter's format

No colored paper or odd size. Use ordinary, computer-printer paper. Insert your first and last name at the top of the page. (No address; leave that for your return envelope and the bottom of the letter. Your return address after your name at the top of the letter is a waste of prime space and an unnecessary distraction.)

Use black toner only for the message and a standard, highly readable, 12-point type such as Times New Roman or Georgia. Absolutely no imitation handwriting or other fancy type.

Begin your letter with Dear Ms. Jones or Dear Mr. Jones.

Use 1.15 or 1.5 spacing, not single space. A short letter should not appear crowded into the first third of the page.

The body of the message should read something close to the following:

Dear Mr. Jones,

My patented can opener is easier to use than any on the market. And it is safer.

My hope is that it will complement your line of cooking accessories. I will be happy to mail you a copy of my patent for your review.

In any case, please check the appropriate box on my return card and mail it back to me. I will

greatly appreciate it.

Thank you for your time and consideration.

—Name

Sign immediately above your printed name. Don't use the word inventor anywhere in your letter or response card. Companies often get handwritten letters from inventors raving about their "great new invention"—and this sloppy approach has given the title of "inventor" a bad name. Such letters are often discarded unanswered.

You may use the end of the paper for your address. I suggest that you do not provide your website or email address. You want your card returned, not an email.

Be sure to spell the word "complement" with an e in the middle, not an i. You aren't praising the company, you're suggesting that your can opener will "complete" its product line and fit in with it.

Locating companies

I used ChatGPT to find a list of companies that market cooking accessories, as though I were the inventor with the novel can opener searching for a licensing candidate. I didn't specify a quantity of names and received 15, but ChatGPT offered to provide more if I wanted them.

Names including KitchenAid, Cuisinart, Nordic Ware, Rubbermaid and Pyrex topped the list. These are "gold" for those of us who will test licensing our patent by mail.

If you don't already have an AI app, be sure one comes with your next phone.

I'm not a gadget person, but I love my AI device and use it several times each day. I highly recommend it for inventors and writers. It's a spell checker, an improver of adjectives and synonyms, a definer of unfamiliar words, and a hundred other things.

Good luck. 🍀

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.



The Micro-Influencer

INVENTORS CAN USE GROWING TREND TO TARGET NICHE AUDIENCES ON A BUDGET **BY ELIZABETH BREEDLOVE**

IN THE ever-changing world of digital marketing and social media marketing, a new trend has emerged that offers exciting opportunities for inventors and entrepreneurs with smaller budgets: micro-influencers.

These social media content creators have a modestly sized but highly engaged followings. By connecting with these niche influencers, businesses can effectively reach their target audiences without breaking the bank.

Here's more about the power of micro-influencers and how they can be leveraged on social media to drive success for inventors and entrepreneurs.

Definition, characteristics

Micro-influencers, typically defined as content creators with a social media following ranging

from 1,000 to 100,000, possess a unique advantage when it comes to engaging with niche audiences.

Unlike their macro-influencer and mega-influencer counterparts, micro-influencers tend to have a higher percentage of dedicated and loyal followers who trust their recommendations and opinions. Their smaller scale allows them to foster genuine connections and interact more personally with their audience, resulting in higher engagement rates.

For inventors and entrepreneurs looking to introduce their innovative products or services to the market, micro-influencers can prove invaluable.

These influencers are often highly specialized within a specific niche or industry, making them well equipped to connect with a target audience that is genuinely interested in their content. Whether it's tech gadgets, sustainable products or fashion accessories, there are micro-influencers on every social media platform who have built communities around these specific interests.

Leveraging Instagram

Instagram, with its visual nature and massive user base, has become a go-to platform in recent years for micro-influencer partnerships and collaborations.

The platform's algorithm prioritizes engagement, making it an ideal environment for niche targeting. Inventors and entrepreneurs can start by identifying micro-influencers who align with their brand values and have followers who match their target demographic.

Then, by partnering with these influencers, businesses can leverage their authentic content to promote their products to an audience already interested in similar offerings.

Consider an entrepreneur who has developed a line of eco-friendly cleaning products. He or she could collaborate with a micro-influencer who has established a following within the sustainability community.

MICRO-INFLUENCER BENEFITS



Cost-effectiveness. One of the significant advantages of working with micro-influencers is their affordability. Compared to macro-influencers and mega-influencers who charge exorbitant fees, micro-influencers are often more open to collaborations at lower costs or in exchange for free products. This makes it an ideal option for inventors and entrepreneurs with smaller marketing budgets.



Authenticity and trust. Micro-influencers are known for their genuine and relatable content. Their followers typically perceive them as peers or friends, creating a sense of trust and authenticity. When a micro-influencer promotes a product, their audience is more likely to trust their recommendation, leading to higher conversion rates for you.



Targeted reach. Micro-influencers specialize in catering to niche audiences. They have built their followings around specific interests or industries, making them highly effective in reaching a target demographic. By collaborating with micro-influencers who align with their product or service, inventors and entrepreneurs can ensure their marketing efforts reach the right audience.



Micro-influencers, typically defined as content creators with a social media following ranging from 1,000 to 100,000, possess a unique advantage when it comes to engaging with niche audiences.

The influencer might share their experience using the eco-friendly cleaning products, highlighting their effectiveness and explaining the environmental benefits. Collaborations like this allow inventors and entrepreneurs to tap into niche markets and gain credibility within those communities.

Utilizing YouTube

YouTube, as a long-form video content platform, offers inventors and entrepreneurs an opportunity to showcase their products in-depth and provide valuable insights to their target audience. Collaborating with micro-influencers on YouTube can help businesses reach potential customers who prefer video content and detailed reviews.

Imagine an inventor who has developed a smart home automation device. He or she could partner with a micro-influencer who focuses on tech reviews and demonstrations. The influencer could create a dedicated video showcasing the product's features, installation process and overall benefits.

This type of content has the potential to generate considerable interest and drive traffic to the inventor's website—which will, hopefully, convert into sales.

TikTok's viral potential

This social media platform has exploded in popularity, especially among younger audiences. Its short-form, highly engaging videos present

an exciting opportunity for inventors and entrepreneurs to showcase their products in a fun and creative way.

TikTok micro-influencers, with their ability to quickly produce captivating and entertaining content, can help businesses gain exposure and reach a vast audience quickly.

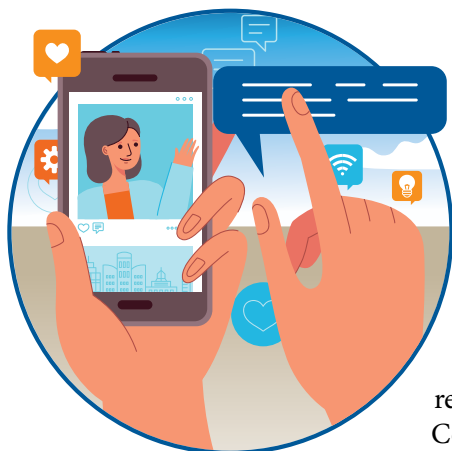
An entrepreneur who has developed a unique fashion accessory could collaborate with a TikTok micro-influencer who specializes in styling tips and fashion hacks. The influencer could create a series of short videos showcasing different ways to incorporate the accessory into various outfits. The catchy, shareable nature of TikTok content can lead to rapid brand awareness and potentially even viral success.

What to look for

It's crucial to thoroughly research and identify micro-influencers whose content aligns with your brand and target audience. Look for influencers who have an engaged following, relevant content and a genuine connection with their audience.

Some social media analytics tools can provide valuable insights into an influencer's reach and engagement metrics, and help you determine if an influencer is a good fit for your product or company and your goals.

When reaching out to micro-influencers, make sure to personalize your messages. Show genuine interest in their content and explain why you



When reaching out to micro-influencers, make sure to personalize your messages.

believe a collaboration would be beneficial for both parties. Personalized messages are more likely to grab their attention and generate a positive response.

Consider what you can bring to the influencer collaboration beyond financial compensation. Micro-influencers often value meaningful partnerships that go beyond a simple transaction.

Offer them exclusive access to new products, unique experiences, or opportunities for cross-promotion. By providing value, you can foster stronger relationships with influencers and encourage long-term collaborations.

When working with micro-influencers, it's essential to allow them creative freedom to showcase your product or service in an authentic and organic way that fits their established brand.. Micro-influencers have cultivated their style and tone, and know exactly what resonates with their audience. Trust their expertise and avoid micromanaging the content creation process. Let them determine the best way to highlight what you have to offer. 📱

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.



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'Tonight's Top 10 List'

QUESTIONS FOR INVENTORS TO CONSIDER WHILE BITING INTO THEIR PIE (PRELIMINARY INVENTION EXAMINATION) **BY DON DEBELAK**

A **PRELIMINARY** Invention Evaluation (PIE) can help you determine whether your idea is worth pursuing. Consider these 10 questions.

1 Does your product have that “wow” factor?

When you first thought of the idea, did your eyes open wide? Did you say to yourself, “Yes this is it, I’ve got a great idea”?

2 Do people agree with your premise? You should ask at least 10 people and have five agree to believe you have a great idea.

3 Does the product offer a total solution?

Cutting the number of products required for an activity from three to two isn’t that impressive in the market, but you hit paydirt when you cut the products needed to just one.

4 Does the product evoke passion? When people care about a product category, they evaluate it closely, read trade magazines, go to trade shows, visit websites and talk to like-minded enthusiasts. All that interest makes it easier for inventors to inexpensively reach their prospects.

5 Does the product relate to an emerging market?

When the scrapbook industry started, dozens of inventors and new product entrepreneurs were able to introduce their product because there was a shortage of products to buy. Inventors have a much better chance any time a market is emerging.

6 Does the product target new trends in an existing market?

This is similar to No. 5, although in an established product. When golfers switched from pull carts to push carts, there were many opportunities for inventors—both for the carts themselves and for accessories such as cup holders, umbrella holders and baskets to hold supplies.

7 Does the product offer few or no technical challenges?

Inventors can and do introduce technically difficult products, but this type of invention requires more money, time and expertise than most inventors have.

8 Can targeted customers easily find the products?

Products are easy to find when prospects can find them at specialty stores and catalogs. Eventually, most inventors want to be with mass merchants, but typically they don’t have the money or product success to land with them right away.

9 Does the product convey its major benefits quickly?

Ideally, people should be able to understand your product immediately, within two seconds and without any explanation you. Consumers, retail stores and distributors are turned off by a product they don’t understand.

10 Does the product avoid competitors that dominate the category?

These companies have broad product lines and get premium shelf space—and they are not above complaining about any space given to a pipsqueak inventor trying to get started. If the dominating company likes your idea, it will try to figure out a way to get around your patents and will have lots of resources to come after you.

If you can answer yes to the vast majority of these questions, consider moving to the next step of investing in a patent and prototype, and spending 3-12 months developing your idea. ☛



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



Now Hear This!

NORWEGIAN'S MOBILE RECORDING STUDIO FACILITATES HIGH-QUALITY AUDIO FOR PODCASTS **BY JEREMY LOSAW**

WITH PAINSTAKING research and an ability to see an opportunity in the marketplace, Audun Solvang has something he wants you to hear.

Nomono is a mobile recording studio for podcasting and recording studios for recording high-quality audio streams. It is portable and easy to set up, with one button to record and one button to push the recording to the cloud.

The system has three elements: the mics, recorder and travel case—the latter which also serves as a charger for the mics and recorder.

The lavalier microphones, low profile and unobtrusive for creators, filter out distracting background noise in almost any environment without dropouts. The recorder captures the audio in 3D for an immersive experience and transfers the files to the cloud without having to keep track of a stack of SD cards.

Post-production in the cloud provides additional tools, including AI enhancement, filtering and leveling to produce pleasing episodes.

Addressing a problem

Solvang's invention comes during a time when the recent podcast phenomenon is still emerging.

Nothing has changed audio media more in the last half century than the podcast. It has brought long-form audio media out from under the arm of radio stations and big media companies, and allowed anyone with a microphone to record and publish their stories for the world to hear.

Podcasts have democratized storytelling and provided a platform for many that would otherwise never have the opportunity.

However, the platform has its problems.

You can almost always count on high-quality audio from mainstream radio, but this can be hit or miss in the podcast ecosystem. Not everyone has good recording equipment or takes the time to edit and adjust the levels properly. Listeners can often either not hear some of the guests on a podcast or get their ears blown out when people laugh at a higher volume than when presenters are speaking normally.

Audio issues can deter an audience and ruin a great story. But Solvang and the Nomono team have created an audio recording system that will help content creators distribute high-quality audio without any hassle.

Leveraging a tech specialty

The development of Nomono started when Solvang conducted his PhD research in spatial audio and microphone array processing at Norwegian University of Science and Technology in Trondheim. After a stint in industry, the format for 360 audio was established and suddenly his research became relevant.

Solvang joined Trondheim-based SINTEF—one of Europe's largest independent research organizations—and tech incubators to continue his work on 3D audio. Their mission was to create a proof of concept for the hardware and software to support 3D video applications.

During this time, podcasts went from being an experimental fringe media to completely mainstream. Early adopters included comedian Adam Carolla and film director Kevin Smith.

By the time Solvang officially started his



"If you look at the enormous amount of content that is created today, it is (often) not created by audio professionals. These types of users have totally different needs." —AUDUN SOLVANG



company in 2019, more than 18 million new podcast episodes were being released every year—an exploding media that had challenges and was ripe for innovation.

This was the perfect opportunity to merge his spatial audio technology with the exploding world of podcasting.

“For this to get big, you need to shift focus,” Solvang said—“still focus on content creators and ease of use and spatial audio, but let’s refocus into the podcast market. We saw that spatial audio was a big trend, and also that podcasting is a megatrend.”

Streamlining for non-pros

This realization led Solvang to understand his customer. He noticed that most podcasters are not professionals, but most of the mic systems available have a user experience and features that are geared toward professionals.

“If you look at the enormous amount of content that is created today, it is (often) not created by audio professionals. These types of users have totally different needs,” he said.

This led him and the team to streamline the entire recording process, and the development of one button to make the recording and one button to enhance the sound. They also updated the design for ease of packing up and portability.

“In order to have a successful podcast, you need to have listeners come back. If you have bad audio quality, that is a showstopper for most people,” Solvang said.

Protection via patents

He has a robust patent platform for Nomono.

Solvang has been filing two to three patents per year, primarily focusing on U.S. and European patents—his primary markets. He feels that patents are a tool to give him the freedom to operate and are a necessity for a tech company. This has also helped in the capital raises he has had, though he admits IP filing takes a lot of time and focus to see it through.

Nomono is manufactured in Norway. Even though it is an electronic device, which is often something that is outsourced to Asia, it is a premium and relatively low-volume product. The assembly house is an hour flight from Solvang’s office, allowing him the flexibility to oversee details of production and quality control testing.

Solvang is focused on getting the product in the hands of creators and improving the product. It is being tested with award-winning producer Jack Levy, as well as the We Are Makers video series about people that create physical products.

He is also continuing to enhance the product, with plans to add more editing tools coming online toward the end of 2023. 📍

Details: nomono.co

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



Nomono has three elements: the mics, recorder and travel case—the latter which also serves as a charger for the mics and recorder. Its portability is great for podcasts at remote locations.

Dangling Proposition

ALASKAN'S VERSATILE, COMPACT FOOTREST PROVIDES RELIEF FOR LOWER BODY ON LONG TRIPS **BY EDITH G. TOLCHIN**

LINKEDIN is a powerful social network for meeting like-minded career people. In my case, it's great for meeting inventors with products or stories I find interesting.

I met Candy FitzPatrick, inventor of RestAngles. She hails from Cooper Landing, Alaska—my first Alaskan interview!

Edith G. Tolchin (EGT): Where did you get the idea for RestAngles? How does it work?

Candy FitzPatrick (CF): RestAngles was invented out of necessity while sitting on very long flight routes from my home in Alaska to my job in Antarctica. I felt pressure on the back of my knees and pain in my lower back, hips, and lower extremities due to my legs dangling off the edge of my seat. My legs were dangling because my popliteal height is only 15 inches.

Popliteal height is the distance from the bottom of your feet to the area behind your knees while sitting. The average popliteal height is from 15 to 19.9 inches; the average chair seat height is from 17 to 19 inches, leaving a 2-to-4-inch gap and creating “dangling legs.” This is common in many chairs and seats.

Comfortable sitting posture happens when you can rest your feet flat on the floor.

RestAngles brings the floor to your feet. An extremely portable footrest that you can take with you anywhere, it folds flat and weighs only 12 5/8 ounces. RestAngles' patented, one-piece design can be configured for use as a 4-inch platform, 7-inch height when placed on its side, and two different wedge angles.

When used as a 4-inch platform, placing your feet toward the edges leads your knees to naturally fall slightly to the sides, followed by your hips. This position promotes a more comfortable sitting posture.

There is built-in dynamic movement in the center, which moves with your changing needs.

When used on its side, RestAngles elevates your knees above your hips, which can provide further relief for your lower back. In its wedge form, the footrest promotes stretching your muscles in your lower legs.

EGT: Would RestAngles be beneficial in any way for people of average height?

CF: Absolutely! RestAngles may seem primarily designed for shorter people, but it's determinedly the length of a person's popliteal height that applies.

For example, if someone is somewhat tall, they could have a shorter than average popliteal height. Ergonomically, many people can experience more comfort when using a footrest while sitting for extended periods.

EGT: What materials are used?

CF: Gray polypropylene plastic with anti-static “magic,” and four non-slip silicon rubber feet.

EGT: Please share your background.

CF: Over 30 years, I careered a patchwork of jobs together—primarily on the ground side of the aviation industry—to amass a fun and varied dual continental career. In 2017, I decided to focus on my portable footrest idea.

Being an inventor often means becoming an entrepreneur. Our mission is to help people who experience pain while sitting due to dangling legs feel more comfortable anywhere they wish to sit!

My first invention was based on my mother's idea for a stand-alone lighted Christmas ornament, which I used to learn about the patent system. The utility patent was issued, but I did not pursue it commercially.

Years later, I was issued a design patent for an early version of RestAngles.

EGT: Have you done any crowdfunding? Any plans for trying out for “Shark Tank”?

“RestAngles may seem primarily designed for shorter people, but it’s determinedly the length of a person’s popliteal height that applies.” —CANDY FITZPATRICK



CF: Yes, we did a modest Kickstarter in April 2022 and are forever grateful to our backers for their generous support, as our campaign fully funded.

In 2018, I pitched at an Alaskan-style “Shark Tank” event. The judges were actual “Shark Tank” casting producers!

I pitched with very early prototypes made of painted wood and duct tape. Cheering for each was great fun. I then submitted a video and completed their detailed application, which was a valuable learning experience for me. But RestAngles was not selected. In 2021, I interviewed with a producer but was again not selected. ...

It’s curious that it is presumed that having equity partners at any stage or phase of business is ideal. The effects the show can have on sales are incredible, but ultimately it should be a mutually beneficial business transaction.

Keeping equity and bootstrapping for as long as you can is a stressful road, but the learning experience in the slog is important and necessary. Someday, I will apply again. What a thrill that would be!

EGT: Is RestAngles patented? Trademarked? Please share your patenting process, and any issues you might have had.

CF: Yes, we hold U.S. utility patent No. 10,966,536 B1, and a U.S. trademark. In addition, we have a registered trademark in Malaysia, where RestAngles is manufactured.

I work with a fabulous local patent agent. The utility patent for “Folding Footrest” was filed in July 2018 and issued in April 2021. The United States Patent and Trademark Office issued a 230-day term of patent extension to compensate for that delay.

The patent issued with an incorrect title, so we went about obtaining a Certificate of Correction,



which is attached at the very end of my patent. It’s a quirky oddity.

EGT: Have you done any safety testing on the product? For example, up to what (body) weight will the product hold?

CF: Yes, we load-tested up to 110 pounds, which includes the weight of any combination of your lower extremities and any footwear. We also tested compliance with California Proposition 65.

EGT: How is the product packaged?

CF: We use sustainable packaging whenever possible and have just finalized our new retail packaging. The retail box is made from eco-friendly kraft paper and can be recycled.

Inside the box is a crossbody tote bag, which is made from rPET (recycled plastic bottles). Our mailer bag is made from recycled plastic materials. It can be reused and then recycled with other soft plastics.

EGT: Are you manufacturing in the United States, or overseas?

CF: All early-stage prototypes, including market-testing units, were made in Alaska. We re-engineered for injection mold manufacturing in Idaho. Our injection mold tool and production runs are made overseas. After making



many RestAngles tote bags myself, I had our new cross-body tote bags and retail packaging made overseas.

EGT: Have there been problems or obstacles you've encountered during manufacturing or importing?

CF: After quite a few setbacks in manufacturing due to COVID-19, our first production run was completed in December 2021, coinciding with the overseas shipping backlog. Our units finally arrived in April 2022 at a hefty cost.

EGT: Where are you selling RestAngles?

CF: On our company website, at Lieber's Luggage in Albuquerque, New Mexico, and locally at markets in our co-operated "She Invented Alaskiosk."

EGT: What advice do you have for novice inventors developing a household product?

CF: Dream big, write things down and take that first step (research your market).

Have patience; progress may take longer than you think it should and cost more money than you planned.

There aren't any shortcuts, so go at a pace that you can handle mentally, physically, financially and emotionally.

Small hinges open big doors. Offer to help others when you can.

Mentors are everywhere. Look for groups that can offer inspiration and honest feedback. For me, there are two: an Alaskan Founder's group that meets virtually once a month, and a Facebook group called the "Women Inventors Club—Product-Based Entrepreneurs." You may be a one-person show, but you'll need others along your way. 🍷

Details: RestAngles.com

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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Shhhh!

TRADE SECRETS, AN IMPORTANT ASPECT OF INTELLECTUAL PROPERTY, PROTECT COMPANY FORMULAS

Coca-Cola and WD-40. What do these well-known products have in common?

They use trade secrets as a means of protecting their intellectual property.

Famous trade secrets are a hallmark of intellectual property law being put into practice. Coca-Cola protects its syrup formula, and WD-40 protects the formula used in its multi-use product.

We'll explore what a trade secret is and how they are used to protect IP.

Trade secret defined

What exactly is a trade secret? The United States Patent and Trademark Office defines it as follows:

- Information that has either actual or potential independent economic value by virtue of not being generally known;
- Has value to others who cannot legitimately obtain the information; and
- Is subject to reasonable efforts to maintain its secrecy.

According to the USPTO, all three of these components are required to maintain trade secret protection. For example, if the CEO of Coca-Cola were to disclose the ingredients behind its syrup formula, the product would no longer be protected.

Interestingly, trade secret protection does not have a time limit for expiration, unlike patents. As long as the information has not been publicly revealed, the protection continues indefinitely.

Coca-Cola

The Atlanta-based company is well known for the somewhat extreme measures it takes to ensure its formula remains secret.

It houses the information in a high-security vault at corporate headquarters. In addition, only two employees of the company know the formula at the same time. These employees don't ever travel together, and their identities are not publicly disclosed.

This is a rather extreme example of protective measures, as the Coca-Cola formula is a commercially valuable piece of information. Though it is important to take precautions, there are some other equally efficient, yet more cost-effective ways to obtain trade secret protection:

- Ensure all confidential information is indicated as such. This can be as simple as stamping documents "confidential."
- Utilize locking cabinets or desks to ensure access to confidential documents is limited.
- Confidentiality agreements and nondisclosure agreements should be utilized for employees, contractors, vendors, or anyone who comes into contact with the trade secret information.
- Limit exposure to confidential information for those who "need to know." Not everyone needs to know confidential information to perform their job duties.

WD-40

On its website, the WD-40 Company states it never filed for a patent, and that "only a single person knows every exact ingredient that goes into the famous formula."

Why would a company opt for trade secret protection versus patent protection?

Filing for a patent takes quite a bit of work, as well as financial resources. In addition, there is a time limit for patent protection, usually around 20 years. Also, a patent requires the inventor to

disclose a great deal of information about the product or invention.

However, a patent provides greater protection for an inventor. The holder of a patent has exclusive rights to the invention or product, even if a competitor “reverse engineers” a process and discovers its intricacies.

A trade secret does not entail any costs or even paperwork. As discussed earlier, to be considered a trade secret, the information and product must have economic value, including value to others who cannot obtain the information, and the owner must take significant steps to protect the information and keep it secret.

The fact that a trade secret’s protection is potentially indefinite is also a big plus over a patent. However, a cause of action for a trade secret violation can only be initiated for an unlawful breach, such as if someone stole documents to obtain the secret information.

If a party somehow reverse engineers a product and discovers the secret, there is no infringement. The other party could even file a patent on their product, which is a significant risk to the first company.

Options must be examined on a case-by-case basis to determine which course of action will best suit a particular business.

A company like WD-40 likely weighed these options and found that it was a better business to utilize trade secret protection versus obtaining a patent. As such, it takes many steps to protect the information.

Trade secret protection does not have a time limit for expiration, unlike patents.

It seems to work: The formula for WD-40 has remained a secret for 60 years and is still protected.

AI and trade secrets

Artificial intelligence (AI) is a hot topic these days. One may think AI, particularly algorithms, is generally protected by patents—but because of a 2014 U.S. Supreme Court case, this is not always feasible.

In *Alice Corp. v. CLS Bank International*, the court developed an eligibility test, stating an algorithm is only patentable if it is an abstract idea that can be “converted into a method that is unique, novel, non-obvious, and useful.”

Because of this case, as well as the speed in which technology changes, protecting AI algorithms through trade secrets has proven to be a better solution. As the AI landscape continues to develop, more and more companies will protect their data and models by using trade secrets because it is cost effective and efficient. ☑

The Michelson Institute for Intellectual Property provides no cost IP educational resources to empower budding inventors and entrepreneurs. Michelson IP is an initiative of the Michelson 20MM Foundation, which focuses on a range of issues, including digital equity, smart justice, and open educational resources. It operates with support from Alya and Dr. Gary K. Michelson, members of The Giving Pledge. To access more resources, please visit [MichelsonIP.com](https://michelsonip.com).

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Good Call



ACTRESS TESSA FARRELL BURSTS THROUGH CEILINGS
IN THE PROCESS OF MAKING HER MOVIE VIA IPHONE

THANKS TO phone technology, Tessa Farrell finally holds her career in her own hands. Introduced to Hollywood through her recurring appearance as a supermodel on the long-running HBO series “Entourage,”

Farrell ultimately grew dissatisfied with the lack of quality and meaningful content in roles for which she was auditioning. The result is “Cinema Rebel”—a 90-minute comedy she filmed entirely with an iPhone.

Farrell simultaneously wore the hat of producer, director, writer, camera person, sound editor and many other roles while making a movie about making a movie using a phone, with all the satisfaction, struggles and insight into the human condition. Her efforts earned her 17 independent film award wins and nominations so far.

Inventors Digest editor-in-chief Reid Creager asked Farrell about her innovative triumphs and challenges in a movie-making medium that is here to stay.

Steven Soderbergh is well known for making movies with an iPhone. How does your movie differ?

There are quite a few differences—beyond the obvious difference in budget.

Steven’s film “Unsane” was shot on the iPhone 7 and “High Flying Birds” on the iPhone 8. He used the traditional pre-production process of acquiring a script and budget prior to shooting, along with using a standard size crew during production.

“Cinema Rebel” had no script or budget prior to shooting and incorporated footage filmed on the iPhone 7 with footage filmed on the iPhone X, shot over the course of five years.

What are some other claimed “firsts” you may have in connection with the movie?

Actually, “Guinness World Records” is currently reviewing a few, including most roles in a movie; including crew roles, I played 70. The others are “Most award wins and nominations for a

Tessa Farrell’s movie about making a movie with an iPhone so far has 17 award wins and nominations. Now she aims for a theatrical release.

debuting film director,” “Most film credits for a motion picture artist,” “Most consecutive film festival award wins and nominations for a feature film shot on an iPhone,” and “First motion picture artist to star in and crew the same feature film.”

It seems I’m also the first woman to make a 90-minute feature film on an iPhone; and this movie may be the first to combine real live improv footage with scripted footage to tell a story in and around the making of a series of six short films, which are also shown in the movie.

Of all the awards you have received with this movie, which is most important to you?

They are all equally gratifying, but the first two awards this film won (at the Vegas Movie Awards) blessed me with a very sentimental experience. I found out it won both categories during my sister’s wedding and got to share the news with members from all sides of my family.

It will be exciting to see if there are more awards in its future once it gets released to the public. A dream come true would be to attend the Academy Awards. Although this movie may

have to pull off another “first” because I think it would be the smallest-budgeted film to ever be at the Oscars.

Without getting overly technical, what are some of the biggest challenges of using this medium?

The audio recording was especially challenging because I initially wanted everything about the film to be made with an iPhone. So I used a VideoMic with Rycote Lyre Suspension System from Rode and attached it to the iPhone during filming. However, during post production, it became clear I was unable to acquire high enough quality audio this way.

To address this, I tried utilizing an additional crew member and experimented with two professional sound engineers to see if either one of them could improve the original audio. They were both unable to fix it due to the low quality in source material, so I refrained from using anything they did to stay true to the “one-person crew” element—and spent the next several months engineering and/or recording using intensive ADR (automated dialogue replacement).

“I used a ‘trial by fire’ approach, where I would execute tasks and make adjustments after the fact by discovering what worked and what didn’t.”



You appeared as a supermodel in “Entourage” and have had other bit parts. At what point did you decide you wanted to flex your creative muscles and make a bigger impact?

In 2015, after I began auditioning for other minor parts in TV shows and a few movies, I saw a lack of content being produced that contained substance effective enough to have lasting positive impacts on its viewers.

In film school, they taught us “content is king,” so I always had that understanding in the back of my mind. When I found it to be true through experience, I made the decision to switch focus from acting to screenwriting with the intention of creating roles for myself in projects able to make an impact and improve the lives of their audience.

When did you first develop an interest in making a movie this way?

After learning about Sean Baker’s film “Tangerine” in 2016, I created a teaser for the upcoming “Barbie” project using my iPhone. At the time, “Barbie” was at Sony with no leading lady or script attached.

I then continued making short films on my iPhone, and when Warner Brothers took over the project in 2018, I transformed the teaser into something original that later became an important turning point in the plot of “Cinema Rebel.”

How long did you have to study the process?

I used a “trial by fire” approach, where I would execute tasks and make adjustments after the fact by discovering what worked and what didn’t.

It was exhilarating in the moment but came at the cost of taking several years to finish the movie.

In its entirety, “Cinema Rebel” was created from 2017 to 2022 with a more singular focus on its creation in 2019 to 2022.

Your father, Scott Farrell, is an author. How did this influence you creatively?

He started writing, initially as a hobby, shortly after I began screenwriting. So I think we’ve inspired and influenced each other along the way.

I’m actually beginning the script based on his novel “Celerity”—an adventurous, dynamic



TESSA FARRELL

BIRTHPLACE: Scottsdale, Arizona

HOME: West Hollywood, California

FAMILY: Father Scott Farrell, author; mother Catherine McGinley, real estate agent; sister Kelsey, half-brothers Ryan and Shane

EDUCATION: Stony Point High School, Round Rock, Texas; University of Texas in Austin, Bachelor of Science in Radio, TV, Film

HOBBIES: Painting, designing my own red carpet dresses, listening to music (everything except country and rap), all types of dance, hiking, traveling, art museums, movie theaters, wine tasting, watching sports, playing UNO with my bestie

FAVORITE MOVIES OTHER THAN HERS:

“Ferris Bueller’s Day Off,” “Labyrinth,” “Austin Powers,” “The Notebook,” “The Grinch,” “Mean Girls,” “Interstellar,” “Gentlemen Prefer Blondes,” “Mr. and Mrs. Smith,” “Weekend at Bernie’s,” “The Nice Guys,” “Blade Runner 2049,” “Jurassic Park”

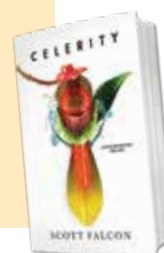
MOST INSPIRATIONAL PERFORMER:

Marilyn Monroe. “Her ability to exude beauty and poise onscreen while remaining an icon decades after her death is rivaled by none.”

(ONE OF) MY FAVORITE BOOKS: “Celerity”

by Scott Falcon (her father’s pen name)

“because I’m about to turn it into a screenplay!”



psychological thriller that will make a very fun movie. And yes, I will be playing Celerity!

From the trailer and photos I've seen, the movie looks like a comedy. I understand there is a "Mr. Bubble" cartoon-type character who alternately annoys you and urges you on. So how do you accomplish more meaningful impact within this format?

Yes, laughter is a key ingredient in the experience. Comedy is actually a very fast and effective way to reach the hearts and minds of an audience because when we laugh, we are open. It gives a creator the opportunity to express a message in a way that simultaneously prepares the viewer to receive it.

In other words, comedy lays the groundwork for content to be impactful because, as humans, we grow more easily in a state of openness.

What is it like to be the editor, producer, camera person, main character and more?

Each job has its own pleasures and challenges.

I fell in love with editing because I got to see firsthand movie magic come to life and was given more tools to create even more magic! The producer role was, and is, a challenge for me because it mostly utilizes the logical part of the brain, but I need to essentially operate using the creative part of my brain to be an effective artist. I'm also naturally very down to earth and shy, so a lot of the producer tasks do not come second nature to me.

The camera person—well, I don't want to spoil the movie because that's a part of the "Cinema Rebel" story. Playing the main character, especially during the split-personality scenes, was a blast ... and a cakewalk for me. I was able to slip into each of those characters and have them all talk to each other simultaneously without much effort.

Recording those scenes felt kind of like destiny in a sense, because I didn't have to think about it. I could just do it.

"I fell in love with editing because I got to see firsthand movie magic come to life and was given more tools to create even more magic."



How do you keep all this straight?

There were a lot of times I couldn't, really—especially in the beginning. I would have to slow down and really focus, redo things or even try them a different way.

Over time, doing multiple things at the same time became easier. It eventually felt like juggling, where the mind and body are doing different things, at the same time, and you don't even notice you're doing it.

I saw a recent podcast with you about the movie, and you sounded quite emotional at times. How do you think your passion for this project helped see you through?

Passion was the only way I was able to see this project through. It was so difficult at times, and I was becoming very sick during the last several months of post-production. There was water damage that caused mold to grow inside the walls and AC vents of my home office.

How did you manage to finish?

Eventually, I had to work, live and sleep inside my editing studio while I finished the movie because the air outside it became so toxic, and I wasn't able to move or rebuild the editing studio at the time.

Did you file for any intellectual property in connection with the movie—like patents, copyrights or trademarks?

Of course. In today's world you must protect your IP. This film is copyrighted with the United States Copyright Office.

How are you doing in your quest to get your movie into theaters?

I haven't spoken with any distributors yet, and it's on short pause for now because I have four new film projects being prepped for pitch meetings. I will, of course, include the distribution of "Cinema Rebel" in these pitch meetings and hopefully get a result from that.

The time it's taking to get it released may be a blessing in disguise, because I may not have otherwise had the opportunity to get these next four movies ready for production. 🍷

EARLIEST PIONEERS

First narrative feature shot entirely on an iPhone: "Uneasy Lies the Mind" (2014) on an iPhone5, and using a lens adaptor called the Turtle Back.

The makers, who chose the iPhone5 to replicate a 16mm film look, often had to keep the phone warm under their armpits at frigid shooting locations. The movie was reportedly filmed on a \$10,000 budget.



Biggest breakout: "Tangerine," a breakout hit at the 2015 Sundance film festival, was shot with three iPhone 5 cameras using the Filmic Pro App. According to theconversation.com, the \$8 app "delivers a close up, social realist edge to a story that crosses the boundaries of drama and documentary."

Smartphonefilm.com said another key innovation by budget-conscious director Sean Baker was using an anamorphic lens adaptor for the iPhone 5s. "By squeezing the image into a 16-9 frame, the filmmakers could achieve a 2:40:1 ratio. This made the footage look different from the standard Smartphone image. It also provided some good lens flares."



Soderbergh's sold: High-budget director Steven Soderbergh said after the success of his shot-by-iPhone thriller "Unsane" five years ago that he would probably stick with that method. He cited superior filming quality as iPhone technology continues to improve.

"There's a philosophical obstacle a lot of people have about the size of the capture device," Soderbergh told IndieWire. "I don't have that problem. I look at this as potentially one of the most liberating experiences that I've ever had as a filmmaker, and that I continue having."



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EUROPEAN INVENTOR AWARD

ENVIRONMENTAL PROTECTION
A RECURRING THEME FOR 2023 WINNERS

Catalyst chemistry. Hydrogen storage. Safer batteries. Noise reduction. Green energy. Protecting livestock. Education accessibility. Cleaning the oceans.

These environmental protections were the goals of innovators honored with the 2023 European Inventor Award, announced July 4 in Valencia and livestreamed to an audience watching online around the world. Winners chosen by an independent international jury came from China, Finland, France, Ireland and Spain.

The categories and their winners on this 50th anniversary of the founding of the European patent system:

Industry

The Finnish team of **Pia Bergström, Annika Malm, Jukka Myllyoja, Jukka-Pekka Pasanen** and **Blanka Toukoniitty** turned waste into renewable fuel. Their work converts waste and residue raw materials, like animal fat waste and used cooking oil, into premium-quality renewable fuels. The renewable diesel reduces greenhouse gas emissions by between 75-95% compared to fossil diesel, according to the inventors' company.

Non-EPO countries

Chinese inventor **Kai Wu** and his team lowered the risk of car explosions caused by lithium-ion batteries. Wu's team developed a safety short circuit device (SSD), a protection device integrated into the battery. When triggered, the invention stops the battery charging, eliminating the risk of battery failure caused by overcharging.

Research

The French team of **Patricia de Rango, Daniel Fruchart, Albin Chaise, Michel Jehan** and **Nataliya Skryabina** found a safe and efficient way to store hydrogen. The

team developed an atomic structure and process that results in safer, sustainable and more stable hydrogen storage. The quintet also won the Popular Prize, which is chosen by the public.

SMEs

Irish physicists **Rhona Togher** and **Eimear O'Carroll** invented a material for preventing ear damage caused by noise. Their responsive material works to dampen sound, reducing noise transmission from one space to another. It can be integrated into household appliances and can be used also in the automotive, construction and aerospace industries.

Lifetime Achievement

Spanish chemist **Avelino Corma Canós** is a widely acclaimed pioneer in the field of catalysts. His legacy is the Instituto de Tecnología Química (ITQ, UPV-CSIC), an institution he co-founded to drive chemistry research in energy, sustainability, health and water.

For information about the winner of the EPO Young Inventors Prize, see Page 46.

This year's winners were chosen from over 600 candidates proposed from around the world. The finalists represent 12 countries: Australia, Austria, Belgium, China, Finland, France, Germany, Iceland, India, Ireland, Italy and the United States.

Public nominations for the European Inventor Award 2024 are now open.

For details, and to watch the 2023 awards ceremony:
inventoraward.epo.org

Product, or Presentation?

ONE CAN BE MORE IMPORTANT THAN THE OTHER,
BUT IT'S IDEAL FOR BOTH TO BE STRONG **BY APRIL MITCHELL**

YOUR INVENTION or product itself matters, as does the presentation. But is one more important than the other?

Let's take a look at these different aspects and see what you think.

How great marketing rocks

Have you ever watched a commercial or infomercial showcasing a new product and thought, "I have to have that!"? Most people have, because this is the marketer's goal.

The way a product is presented and marketed to a potential licensee or consumer can make just about everyone want it if done well—even if the product itself is maybe not the brightest idea or the most innovative.

Take the Pet Rock (July 2017 *Inventors Digest*), invented in the 1970s by Gary Dahl in a bar after listening to friends complain about their pets. The "pet" rock would not need to be fed, walked, bathed or groomed, and it would not die.

Maybe you or your parents had one, but can you believe that people actually paid for a rock instead of grabbing one from their backyard to become their "pet"?

More than a million were sold in a short time. There was fun advertising and even instructions on training your rock!

Get your material first

Having solid marketing material *before* starting to pitch or present your product is crucial.

Whether you have a pitch deck, sell sheet or sizzle video or all of them, preparation is key. You may even consider hiring help.

I have seen many inventors show me their marketing material they have created themselves. Now, many inventors have these talents

and skills and they should definitely use them. However, not all of us do. I know I don't!

I can make a great pitch deck and sizzle video, but when it comes to layering and Photoshopping for a sell sheet, I just don't have it down yet. We need to know our strengths and weaknesses and hire out things when necessary to give our product the best possibility of making it onto retail shelves.

The pitch person matters

I have found that the person selling or pitching the idea is just as important as the product itself because of their enthusiasm, passion and knowledge for the product.

An inventor can have the best idea in the world, but often the world doesn't get to see these amazing ideas. Why?

Not everyone who creates ideas has the ability to also market and sell them.

These skills can be learned, but it takes time. Sometimes, inventors are so excited to show their idea or get it into the world that they do so before sufficient marketing material is made.

It is hard to hold back our excitement; I know this feeling all too well. However, being premature with presenting a concept that is not fully ready can hurt your chances as an inventor to either license your concept to a company or make the big sales to retail buyers.

Having the right person to pitch or present a product is key. It may be the inventor, or it may be another professional. Just make sure the person pitching truly believes in the product, because that will be evident to the audience.

The product side

Of course the product matters!

Is it a new innovation? Is it something that is state of the art? Does it change how something

is done or can be accomplished? Does it solve a problem or make life easier? Is it just so adorable you have to have it? Is it exciting or fun? Does it make you think “Wow!”?

We have all bought products that we thought were amazing, and I am sure we all have bought products that were made to solve an annoying problem. Now think back on that product and whether it really delivered.

Did it work as well as you thought it would? Did it do everything it said it could? Did it last as long as it should have, and were you genuinely happy with your purchase?

Now, think back at why you bought it. Did you purchase it because you were looking for a new product to solve a problem you had—or did you need to replace a product and thought this one is new, so maybe it's better? Or, did you see the advertising and think it would solve a problem you didn't even realize you had?

Most often the product matters, as well as many aspects about it. If the product is good enough, many times it will help sell itself.

What's your market?

Have you ever seen products and wondered, “Who would ever buy this?”

Not every product is for everyone. Not every product is going to be made or sold for the mass market, and that is OK. You may have a product that fits a very small niche, but that doesn't mean you shouldn't go for it.

It can take time to find the right company for your product. However, if there is not a lot of room for many sales, you may want to re-evaluate your time and efforts before deciding to move forward.

For example, if the tooling for your product is going to cost more than the profit you could make on 1,000 or even 10,000 units, it may not be worth your time and money or a licensing company's. Be sure to think about these things and evaluate them before going all in.

The power couple

Awesome product + amazing presentation—that is a power couple.



The Pet Rock is a prime example of presentation over product.

If you have a great product and a fantastic presentation, you increase your chances of either licensing your product or making those sales if manufacturing on your own.

Both the product and presentation matter. But can you win with just one of these as a strength?

Yes—but if you can combine the two, you will more likely land where you want. And if you add that wonderful salesperson to the mix, you will go even further. 📌

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*.



Culture Club

YLAI EXCHANGE FOSTERS KNOWLEDGE, ENTREPRENEURIAL GROWTH FOR U.S. AND LATIN AMERICAN COUNTRIES

BY JEREMY LOSAW

FIRST TRAVELED out of the United States when I was a college junior—a term abroad in York, England, in fall 2000. Though the flight was only a few hours, it seemed impossibly far.

Flight reservations had to be made with a travel agent; there were no reliable ways to book online at the time. Few people had cellphones, so copious directions, train tables and documents had to be printed ahead of time and hand carried. If anything went wrong, it was going to take a small fortune in pay phone calls to sort it out.

I carried a film camera and handwrote letters to loved ones, and loved ones soon to be.

My friend, Jack, and I were both accepted into the same term abroad program and were able to travel together. The formative experience was when I realized how powerful and humbling it is to have a cross-cultural experience.

How YLAI works

Fortunately, there are great ways to have meaningful cultural experiences without having to step on a plane.

For the past five years, Enventys Partners has been a supporter and host of the Young Leaders of America Initiative (YLAI), which pairs entrepreneurs, influencers and high flyers from Central and South America with businesses in U.S. cities.

The fellowship gives participants the opportunity to work with American companies to learn business practices and get a flavor of American culture.

Conversely, U.S.-based hosts get a chance to learn about the fellow's business and culture. The goal is to form lasting relationships and foster economic ties between the United States and Latin America.

The YLAI program, launched in 2015 by President Obama, was modeled

after similar programs started in the same era in Africa and Asia. The aim was to “develop joint business and civil society initiatives” between young entrepreneurs and those working on civil society initiatives from Canada and Central and South America.

The program was to help provide skills for entrepreneurs from Western Hemisphere economies, reduce the opportunity gap for youths, and create business opportunities between the U.S. and the rest of the Americas. More than 1,000 fellows have taken part in the once-a-year program since 2015.

The program's main component is the placement of the fellow with a company, university or other organization in cities around the country. It is free to apply.

Once selected for the program, fellows are matched to an organization that fits best with what they are pursuing in their home country. Engineers get matched with engineering companies, lawyers get paired with lawyers, etc., to help maximize the depth of the experience for both fellow and host.

Host cities have about 8-12 fellows per cohort so that fellows can network with each other. They participate in cultural programming together on the weekends. The in-person fellowship last four weeks, and participants work with and alongside their American hosts for four days. Fridays are reserved for group events.

Lucky accident

The first time Enventys Partners hosted a YLAI fellow was 2017. It happened by accident.

Charlotte's city host is the nonprofit organization International House, which reached out when Emil Rodriguez, a fellow from the Dominican Republic, was having an issue with his placement. The organization he was paired

Emil Rodriguez and Jeremy Losaw visited a local maker space in Santo Domingo during Losaw's reverse exchange in 2018.





with was not a great fit, so he began looking for other firms to which he could potentially switch.

Fortunately, he found EP; when International House reached out, it was an easy yes. Rodriguez is an electrical engineer, and EP had some active projects that needed a boost. He came in for a couple weeks and helped advance some of our prototypes. We became fast friends.

At the end of his program, I learned that a key component of the YLAI program is the reverse exchange. The program has specific funding for U.S.-based hosts to travel to the fellow's country to do a project, and I jumped at the chance.

My EP team applied to lead an innovation training in Santo Domingo and was approved. In 2018, we delivered a five-day product development bootcamp at INTEC, a local technical university. As part of the experience, I got to see Rodriguez's development studio and was able to visit electronics manufacturers and injection molding facilities.

The opportunities that YLAI opened up for both Rodriguez and I have been tremendous. Due to the relationship fostered by the program, Emil's firm has become a key partner for EP, and it does a lot of design work for us.

At the close of the reverse exchange, I was granted status as a YLAI alumni—which opened additional opportunities. Emil and I applied for

and were granted funding for an AEIF grant, which is for alumni of exchange programs, to continue collaboration. In fall 2022, we led a STEAM bootcamp in Jarabacoa in the rural Dominican Republic for 120 students from all over the country.

Sharing the wealth

I have hosted six additional fellows in subsequent years. EP has hosted entrepreneurs from Bolivia, Brazil, Nicaragua, El Salvador, and most recently Mexico and Columbia.

EP also hosts tours of our facility to the Charlotte cohort each year and has made connections with other fellows. Many of them have become friends, collaborators and business partners.

Weeks after the 2023 session closed, my fellow from Colombia completed some machining work for a project of ours. We are exploring other manufacturing programs together.

Nearly a decade after its inception, the YLAI program is more than living up to its promise. Two hundred-eighty fellows per year come to the States, making an impact on our soil and bringing knowledge and relationships back to their home countries to foster shared prosperity. 🌱

Details: ylai.state.gov

Approximately 120 students from around the Dominican Republic took part in the STEAM bootcamp in November 2022 that was a result of a YLAI collaboration.



2 Bills Provide Hope

PATENT ELIGIBILITY RESTORATION ACT COULD
HELP PROVIDE MORE BALANCE IN COURTS **BY LOUIS CARBONNEAU**

WE HAVE all heard the running joke that the U.S. Congress excels at doing nothing—and the fate of all patent-related legislation in the past decade is a true testament to this saying. But there could be hope, at least for the optimistic ones among us.

U.S. Sens. Chris Coons (D-Delaware) and Tillis (R-North Carolina) teamed up again and filed not one, but two substantive bills aimed at restoring the long-gone balance between patentees and implementers.

The first, and most significant, is the Patent Eligibility Restoration Act of 2023.

If it becomes law, it will essentially eliminate all judicially created exceptions to U.S. patent eligibility law. In other words, gone would be the 2014 *Alice* doctrine about patent eligibility of business method patents and its progeny, which is the source for so many invalidated patents.

The bill's text states that "The following inventions shall not be eligible for patent protection:

- A mental process performed solely in the mind of a human being;
- An unmodified human gene, as that gene exists in the human body;
- An unmodified natural material, as that material exists in nature;
- A process that is substantially economic, financial, business, social, cultural, or artistic."

Normally, I would predict a similar fate for this bill as all its predecessors. However, as astute politicians, Coons and Tillis are pitching it as a way to fight China and reinforce the U.S. patent system to better compete against the Asian giant. This makes the counter-narrative (and lobbying dollars) from Big Tech much less effective, as they do not want to be labeled as pro-China.

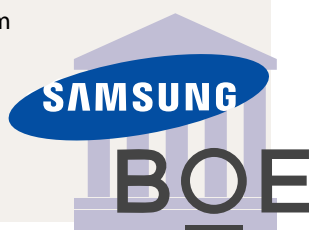
JURY VERDICTS MULTIPLY

Despite how difficult it is for a patent owner to bring a case all the way to trial—given all the motions and parallel challenges defendants can throw at them—there were no fewer than 25 jury verdicts in U.S. patent cases in the span of three months ending in June. This included a \$303 million award against Samsung.

As usual, I would caution against thinking this verdict is final, as it rarely is. This hasn't prevented Samsung from launching its own patent assertion claim against Chinese competitor BOE, accusing it of infringing on five of its patents for displays used in mobile devices.

BOE and others are teaming up to invalidate these patents before the Patent Trial and Appeal Board.

Still, this is an interesting maneuver from Samsung, which could as well have sued Apple directly. But the patent truce that followed years of fierce battles in court between the two behemoths seems to be holding.



Will reform prevail?

On the same day, the same two senators, joined by U.S. Sens. Dick Durbin of Illinois and Mazie Hirono of Hawaii (both Democrats), also filed the Promoting and Respecting Economically Vital American Innovation Leadership (PREVAIL) Act. This one is attacking the second weak link in the chain from the owners' standpoint by reforming the PTAB—another major source of invalidation of patents (roughly 75 percent of all patents challenged).

Key provisions in the bill would:

- Require standing for PTAB challengers—specifically, that they must have been sued or threatened with a patent infringement lawsuit before filing a PTAB challenge—and limit multiple petitions against the same patent by "prohibiting any entity financially contributing to a PTAB challenge from bringing its own challenge";



Pitching the PERA as a way to keep the United States more competitive with China makes the counter-narrative (and lobbying dollars) from Big Tech much less effective.

- Do away with joinder (bringing parties together) for time-barred parties;
- Apply estoppel at the time the challenge is filed, rather than after the Final Written Decision;
- Institute a “clear and convincing evidence” standard for patent invalidity at the PTAB and require claims be interpreted using the “plain and ordinary meaning” standard used in district courts;
- Require the USPTO director to establish a Code of Conduct for PTAB judges and demand more transparency of the USPTO director with respect to their involvement in PTAB decisions;
- Require parties to choose whether to bring their action at the PTAB or in district court, but not both, in an effort to end duplicative proceedings;
- End the practice of filing re-examinations following failed PTAB petitions;
- End fee diversion; and
- Mandate reports that would evaluate “the impact of patents and abusive demand letters on small businesses” and expand access to patent-searching databases that are available only in person at public search facilities.

If this bill comes to pass, it will provide for a major overhaul, needless to say. This is not that uncommon after a decade-long experiment where the PTAB has been maligned by so

many for not fulfilling its promises of providing a “cheap and quick way to get rid of bad patents.”

With both bills, one must now watch how those who benefit from the status quo will react—and whether lobbying money will trump everything else, as it so often does, when we enter an election year in 2024. 🗳️

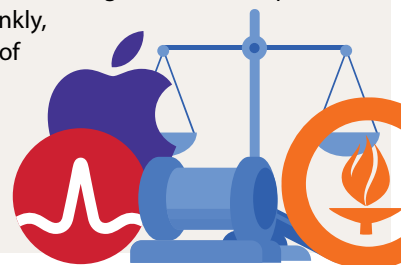
Louis Carbonneau is the founder and CEO of Tangible IP, a leading patent brokerage and strategic intellectual property firm. He has brokered the sale or license of 4,500-plus patents since 2011. He is also an attorney and adjunct professor who has been voted one of the world’s leading IP strategists.



SCOTUS POCUS

The U.S. Supreme Court recently had a few patent-related cases on its docket, which it handled before going on recess by making them disappear magically. In other words, they declined to hear them.

One, involving *Caltech v. Apple/Broadcom*, had to do with broadening the *inter partes* review estoppel to avoid gaming the system by parties filing serial challenges to the same patent. Punting the issue here was, frankly, the right call, as the U.S. Court of Appeals for the Federal Circuit decision had finally put some limits to abuses by companies using the PTAB like an open bar on a Saturday night..





A Win for Instagram

EMBEDDING IMAGES FROM ITS POSTS IN THIRD-PARTY WEBSITES IS NOT INFRINGEMENT, 9TH CIRCUIT AFFIRMS **BY EILEEN McDERMOTT**

All Eye on Washington stories originally appeared at IPWatchdog.com.

THE U.S. COURT of Appeals for the Ninth Circuit upheld a district court ruling that embedding images from Instagram posts in third-party websites does not constitute copyright infringement.

The July 17 ruling involves images from two photographers' public Instagram accounts that were embedded and posted with articles run by *Buzzfeed News* and *Time*.

The ruling involves images from two photographers' public Instagram accounts that were embedded and posted with articles run by *Buzzfeed News* and *Time*.

Perfect precedent

The district court and the Ninth Circuit both cited *Perfect 10 v. Amazon* as precluding relief.

In *Perfect 10*, the Ninth Circuit held that thumbnail images displayed in Google and Amazon search results did not constitute copyright infringement because they did not “display a copy” of the copyrighted images as defined by the Copyright Act.

Embedded images are not by their nature “fixed in a tangible medium of expression” and therefore do not meet the “Server Test” for determining infringement. That test says that “a person displays a photographic image by using a computer to fill a computer screen with a copy of the photographic image fixed in the computer’s memory.”

On appeal, the photographers in the present case, Alexis Hunley and Matthew Scott Brauer (Hunley), argued that the Server Test should only apply to search engine results and that the *Perfect 10* holding is inconsistent with the Copyright Act.

But the Ninth Circuit said *Perfect 10* was not limited to search engines.

“Applying this fixation requirement to the internet infrastructure, we concluded that in the embedding context, a website must store the image on its own server to directly infringe the public display right,” the court wrote.

Furthermore, the court has subsequently applied the Server Test outside of the search engine context in many cases.

Though Hunley argued that other circuits have not adopted the Server Test, the court said this fact is “of little use to Hunley” because, ultimately, “[w]e have not limited *Perfect 10* to search engines, and it is too late to argue that it is so limited.”

As to *Perfect 10*’s conflict with the Copyright Act, Hunley argued that the holding essentially says “an infringer must violate the copyright



holder's reproduction right before the display right can be violated," which "renders portions of the Copyright Act superfluous or insignificant."

Other sections of the Copyright Act that "prohibit transmissions by a party, whether or not the party possesses or controls a copy of the work allegedly infringed" or related to "secondary transmissions of a performance or display" also cannot be reconciled with *Perfect 10*, Hunley said.

However, the Ninth Circuit would not substantively address these arguments as they are "foreclosed by *Perfect 10*," said the court. Although the court said the arguments may have merit in other contexts, the public display right using embedding is governed by *Perfect 10*.

The court explained:

"In *Perfect 10*, we did not address the precise arguments Hunley now presses, but we carefully considered display and distribution rights Even if we thought, in retrospect, that *Perfect 10* created some inconsistencies with other provisions of the Copyright Act, we are not free to overrule *Perfect 10* outside of an en banc proceeding unless there has been a change in the statute or an intervening Supreme Court decision."

The court said that in addressing Hunley's arguments regarding inconsistencies with the legislative history of the Copyright Act, the proper procedure is to seek rehearing en banc.

Court's 3 main arguments

The court found Instagram did not directly infringe because it held a nonexclusive sublicense to display Hunley's photos; it did not secondarily infringe because such a claim would require a showing of direct infringement by third parties, and "[b]ecause *BuzzFeed* and *Time* embedded—but did not store—the underlying copyrighted photographs, they are not guilty of direct infringement." 📱

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

Telefonica-owned, business-focused company Movistar Empresas and Nokia joined forces to improve IoT connectivity in central and South America.

The network solution between the two firms will bring high-speed long-term evolution (LTE) and 5G connectivity to Chile, Colombia, Ecuador, Mexico and Peru. The goal is to increase industrial IoT connectivity in high-growth sectors such as mining and manufacturing to provide operational efficiencies and Industry 4.0 enablement.

Movistar Empresas has 5.3 million IoT connections and leads the market in the region with managed IoT solutions in the industrial sector. —Jeremy Losaw



Wunderkinds

A Maasai who grew up in the wilderness of the Kenya savanna near a national park with rhinos, giraffes, buffalo and lions, **Richard Turere**

developed an automated system that deters lions from attacking livestock in enclosures. His Lion Lights won the 2023 European Inventor Award Young Inventors Prize. The

conflict reduction is reviving a lion population in Kenya that was on its way to extinction. His LED flashing-light system that primarily uses solar energy can be combined with wind energy for cloudy conditions.



EPO.ORG



What IS That?

The company that makes the **Lick'em Cat Scratcher** says the plastic (food-grade) mouthpiece end "goes into your mouth so you can hold your cat and 'lick'em' with the scratcher end to the cat's delight." We are speechless. And we will definitely hold our tongue.

Get Busy!

IPWatchdog Live 2023, an all-topics conference featuring influencers from the IP community, will be September 17-19 at the Hyatt Regency Dulles in Herndon, Virginia. USPTO Director Kathi Vidal will be among the speakers. Details: ipwatchdog.com/ipwlive2023/

WHAT DO YOU KNOW?

1 National Inventors Month, cofounded by *Inventors Digest* in 1998, used to be celebrated in August. In which "M" month is it now celebrated: March, or May?

2 Singer/dancer Paula Abdul got her patent, Dynamic Microphone Support Apparatus (a microphone stand with a concave-shaped base), in August of which year?

A) 1991 **B)** 1999 **C)** 2009 **D)** 2018

3 Was the Beatles classic single "Hey Jude" copyright registered before or after its U.S. release in August 1968?

4 **True or false:** Computer inventor Steve Wozniak (born in August 1950) created a metal business card so he could cut his steak after commercial airplanes stopped using metal knives.

5 Who said this about the invention of television? "There's nothing on it worthwhile, and we're not going to watch it in this household, and I don't want it in your intellectual diet."

A) Gore Vidal **B)** Hedy Lamarr
C) Edward R. Murrow **D)** Philo T. Farnsworth

1. May. The change was made to facilitate the event being celebrated in schools. 2. C. She filed for it 18 months earlier. 3. After. The single was released in America on August 26 but not registered until four days later—the same date the single was released in Britain. 4. True. We love innovation, but hard to make that one up. 5. D. Born in August 1906, Farnsworth was known as the Father of Electronic Television.

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