PATENT MYTHS EXPOSED

The Invention Guru’s insider look at inventing to save you time & money

By Bob Montgomery
Founder: Patently Brilliant

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A famous violinist was once asked: “What’s the best way to get into Carnegie Hall?” The answer was: “Practice! Practice! Practice!” Just like there is no quick and easy way to make it as performer on the stage of the world renowned Carnegie Hall, there is no quick and easy way to get an invention on the shelves of Wal-Mart. It takes time, hard work and a dose of good fortune.

Assuming that you’re the typical inventor, the goal is to get your invention on the shelves of Wal-Mart, the world’s largest retailer. Saying it is one thing, but actually doing it is another thing entirely. Even if you have a good product, there are a lot of hurdles to jump over. The good thing is that Wal-Mart has an open submission policy as well as a local test market program. Getting into Wal-Mart for an inventor is like getting into the major leagues for a baseball player. And just like a ballplayer has to first exhibit success through the minor leagues, an inventor should try to build sales momentum with smaller retailers before approaching Wal-Mart.

Wal-Mart has a strictly defined submission process before there is ever a chance to meet face-to-face with a buyer. But even before that step, the inventor will have to have production and packaging worked out with a real product. The inventor can choose to be in charge of production themselves or join forces with an existing manufacturer. Once that decision has been made, and there is product and pricing, then in order to get involved with Wal-Mart’s National Program go to: www.walmartstores.com/suppliers and download the online submission package. It is best to include current real-life sales data with the submission form. What’s next? You wait for the buyer to respond.

Another option with Wal-Mart is their Local Buying Program where at least one local Store Manager must be convinced to stock your product. This program requires completion of a Local Supplier Questionnaire and approval of a District Manager. This option can be used while waiting for the national buyer to respond. On the surface, this seems like something doable but getting the face-to-face appointment to pitch the Store Manager is not so easy. So the first job is to sell the Store Manager on granting an appointment followed by selling the Manager on the salability of your invention product. This normally will take months, so it would be best to try every store manager in your area.

When you get your appointment either with a local store manager or with a national buyer, you will have one shot so be ready. Here are 10 items to have ready to present with a business-like approach when the time comes:

✦ Sales records especially re-orders (if the product is already on sale)
✦ Pictures of the product on retail shelves or on-line sales page
✦ Testimonials from satisfied buyers
✦ Copies of display ads and PR
✦ Product testing results
✦ Point of sale promotional materials
✦ Demonstrate the ability to ship large quantities on time
✦ Sharpen your pricing but be ready to make some cuts
✦ Have bar codes
✦ Have product liability in place

Although Wal-Mart has two ways to get your invention product onto their shelves, that doesn’t mean that you’ll have an easy time getting an appointment with either a national buyer or a local store manager where you can make your presentation. You might be shut out and never get the chance. But there is another avenue, establish a working relationship with an existing manufacturer or a distributor for companies with only one or a very few products. A company with more products, including a more established business history, will stand a better chance. If nothing works at first, go back with what you have learned and try it all again.

Getting your product into Wal-Mart is difficult, but people do it. I’ve had a couple clients be successful. It wasn’t easy and there were some bumps afterwards too, but there’s nothing like seeing something you created on the shelves of the world’s largest retailer.

A new Walmart opens every 38 hours.
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The Beginnings: Patents and Copyrights

Patents and Copyrights had its beginnings in 1790 with the ratification of The Constitution.

United States Constitution, Article I Section 8 Clause 8:

"To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

This Constitutional clause is the foundation upon which the United States' Patent and Copyright Laws are built. Interestingly neither term "patent" or "copyright" appear. "Author" and "Inventor" were used to recognize the rights of the individual.

Because our fore fathers were mainly descended from Britain, they knew that rewarding ingenuity was vital to the growth of a strong nation. As a template, English Parliament in 1624 provided inventors with 14 years of exclusive rights in the Statute of Monopolies, and a 1710 English statute provided authors of books with sole publishing rights.

Today, Copyright Law protects a variety of "original works of authorship," including in part: literary, dramatic, music, jewelry designs, sculptures, sound recordings, photographs, software and other intellectual works. It is not a requirement that a copyrighted work be published. One confusing aspect of copyright law is that a copyright cannot protect an "idea", but rather, a copyright can protect the author's "expression of the idea."

Here in the United States, Congress passed the Patent Act of 1793 requiring that a patentable invention be "new, useful" and be of a "physical form." Ideas and theories were not patentable. The updated Patent Act of 1952 further added that an invention had to be "non-obvious to a person having ordinary skill in the pertinent art" to be granted a patent. These four standards continue through today.

In the 21st century, the Writings and Discoveries of United States Patent and Copyright holders continue to lead the world with Progress in Science and in the useful Arts.

1% Inspiration, 99% Perspiration

In one form or the other I have counseled inventors for the past twenty-seven years. Two ever-recurring observations come quickly to mind.

First is that most people, inventors definitely included, procrastinate and do nothing and then get upset when they see an invention or a business opportunity take hold down the road. Edward Wolff, a professor of economics at New York University, reports that the top 5% of the population has more wealth than the remaining 95% all added together. My history shows that about 5% of inventors do something meaningful with their inventions. It’s certainly curious how that 5% number keeps coming up.

As for my second observation, I am constantly reminded of the words of America’s greatest inventor, Thomas Edison: “Genius is 1% inspiration and 99% perspiration.” Perspiration comes from hard work and forging on while others tire and quit. Once again Edison is our example: it is an often told story that while struggling for months to invent a commercially viable light bulb, Edison was asked by a young reporter if he felt like a failure and had considered giving up. Edison responded, “Young man, why would I feel like a failure? And why would I ever give up? I now know definitively over 10,000 ways that an electric light bulb will not work. Success is almost in my grasp.” Then after another thousand attempts or so, the light bulb was invented. Thomas Edison had both the inspiration and the perspiration that was needed to succeed.

So never procrastinate getting started toward a goal and don’t be afraid of hard work and a little perspiration.
How Do You Make It Work?

Many “would-be” inventors think they have something “new, novel and non-obvious” as the Patent Office requires an invention to be in order to get a Patent, only to be stopped short and told “not so fast to the land of patents and riches.”

I have looked at more than 100,000 invention ideas in my time, and probably 30,000 times I asked the Inventor a simple question – HOW? Can you make it work my dear inventor? The confidential disclosure usually presents a most wonderful list of features and benefits along with a beautiful drawing. A first reading of the invention shows potential for a valuable new product. But wait — there’s no enabling disclosure; in other words, there is no technical explanation as to HOW the thingamajig is made.

The “would-be” inventors know what they want, and they know how to sell it, but they can’t figure out HOW to do it. Even worse, the proposed invention often requires technology that doesn’t exist. So when asked the HOW question, the popular answers are: Answer A – use a computer chip or Answer B – run with it and I’ll give you a cut of the profits. Of course neither response answers the question. To really have an invention that can pass the Patent Office’s “new, novel and non-obvious” test, the inventor has to know HOW to make it. The HOW is very important because without a really good technical description (aka: enabling disclosure), there is no invention, only a concept. Knowing HOW separates inventor from dreamer.

What is a Registered Professional Engineer?

What is a Registered Professional Engineer, also known as a P.E.? To a client, it means that the person providing engineering services or a feasibility opinion has at least a four-year college degree in engineering, worked under the supervision of a Registered Professional Engineer for four years or more, passed two competency exams and earned a license from a state’s licensure board. To keep the license valid, a P.E. must update and improve their skills through continuing education.

Only a century ago, a person could work as an engineer without a degree. In order to protect the public, licensure laws were enacted. Engineers can now earn an advance certification as a Professional Engineer in every state by meeting high standards of professional and ethical practice. It is certainly not necessary to be “licensed” in order for a person to get a job as an engineer. In fact, the actual percentage of individuals having a college engineering degree that becomes a P.E. is no more than 20%. A good analogy is that of an Accountant as oppose to a Certified Public Accountant (CPA).

PEs are responsible for how their work, and their staff’s work, affect the lives of others. Being registered by one or more states is a legal requirement for an engineer who elects to head an engineering firm or to be a private practitioner. Furthermore, many states require college engineering instructors to be Professional Engineers.
It is important to note that only a Professional Engineer can prepare, sign, place a seal, and submit engineering plans to a public authority, to public or private clients, or when providing an opinion of technical feasibility.

Use a Licensed Practitioner

Many individual inventors try to write and file their own patents. This is usually a BIG MISTAKE. Did I say that loud enough? The better choice is — hire a licensed Patent Attorney or Patent Agent, also known as Patent Practitioners, who have a background in helping individual inventors. If you have an invention idea that you think has market potential, don’t trip and fall coming out of the starting gate.

The following is excerpted from the United States Patent Office’s booklet General Information Concerning Patents:

“The preparation of an application for patent and the conducting of the proceedings in the Patent and Trademark Office to obtain the patent is an undertaking requiring the knowledge of patent law and rules and Patent and Trademark Office practice and procedures, as well as knowledge of the scientific or technical matters involved in the particular invention.”

“Inventors may prepare their own applications and file them in the Patent and Trademark Office and conduct the proceedings themselves, but unless they are familiar with these matters or study them in detail, they may get into considerable difficulty. While a patent may be obtained in many cases by persons not skilled in this work, there would be no assurance that the patent obtained would adequately protect the particular invention.”

“Most inventors employ the services of registered patent attorneys or patent agents. The law gives the Patent and Trademark Office the power to make rules and regulations governing conduct and the recognition of patent attorneys and agents to practice before the Patent and Trademark Office. Persons who are not recognized by the Patent and Trademark Office for this practice are not permitted by law to represent inventors before the Patent and Trademark Office. The Patent and Trademark Office maintains a register of attorneys and agents. To be admitted to this register, a person must comply with the regulations prescribed by the Office, which require a showing that the person is of good moral character and of good repute and that he/she has the legal, and scientific and technical qualifications necessary to render applicants for patents a valuable service. Certain of these qualifications must be demonstrated by the passing of an examination. Those admitted to the examination must have a college degree in engineering or physical science or the equivalent of such a degree.”

Johann Sebastian Bach (1685 – 1750)

Bach, one of the greatest musicians of all time, composed 15 inventions for his keyboard students. The inventions were not mechanical; but rather, two-part contrapuntal exercises. According to Bach, the purpose was “to obtain good inventions (ideas) but to develop the same well.” Although Bach composed during the Baroque era bringing that style to absolute perfection, his genius was not recognized until the mid-1800s. Even Jerry Garcia of Grateful Dead fame called Bach the greatest musical genius of all time.
There’s an old saying: A person who is his own attorney has a fool for a client. This is especially true for inventions and patents. Allow the Patent Office to do you the favor of testing, licensing and regulating knowledgeable patent practitioners of high integrity.

A Brief History of Black Inventors

Any discussion of Black Inventors will always be incomplete because an inventor’s race is never required on a patent application. Of all our institutions, the Patent Office has always been color-blind, a place where every man and woman is judged by their inventorship.

What is known, as best as possible, about Black Inventors prior to 1900 come from the efforts of Charles Duell and Henry Baker, both Patent Office employees. Their work identified approximately 800 patents issued to inventors of color prior to 1900. Baker published a booklet “The Colored Inventor – A Record of Fifty Years” and a 4-volume treatise “Patents by Negroes [1834-1900].”

Even before the establishment of the Patent Office in 1790, Benjamin Banneker is credited with the creation of the first striking clock built in the United States in 1852. Unfortunately, many other inventions and their names are lost to the mist of time.

Although slaves were prohibited from receiving patents on their inventions, free blacks were legally able to do so. Thomas Jennings, born in 1791, is believed to have been the first inventor of color to be granted a patent. At age 30, Jennings’ dry cleaning process was patented. Around the same time, the first woman patent holder of color was Judy W Reed for her hand-operated machine for kneading and rolling dough. Interestingly, Ms. Reed was illiterate.

Henry Blair, born in Maryland around 1807, was the only person in The Patent Office records to be identified as “a colored man.” In 1834 Blair is recognized as the second black inventor to receive a patent for his seed planter, and then another patent in 1836 for a cotton planter.

No discussion of Black Inventors can ever be complete without mentioning George Washington Carver. Carver was inducted into the National Inventors Hall of Fame in 1990. Although he was credited for many discoveries and innovations throughout his life, Carver received only three patents. Carver was quoted as saying, “God gave them to me. How can I sell them to someone else?”

Beginning with Benneker in 1852, on to the early patents by Jennings, Reed and Blair, continuing with the great George Washington Carver and on to today, Black Inventors have played an invaluable role in America’s technological advancements.

Is It A Patent?

“Intellectual Property” is the big umbrella term used to describe Patents, Copyrights, Trademarks and Trade Secrets. Because the general public uses the term “patent” when referring to all legal rights for inventions and creations, this blog provides a quick frame reference to the many types of “Intellectual Property.” So consider the following as just a starting point.

PATENTS:

UTILITY – Most patents fall into this category with protection centered around how the invention is made and works. Utility inventions are mostly mechanical, electrical or chemical. Term is 20 years from patent filing.

DESIGN – Patents that protect an invention’s shape or its ornamental design are in this category. Examples are athletic shoes’ uppers and treads. Term is 14 years from the date the patent is awarded which is different from a utility patent.

PLANT – Asexually reproduced and newly discovered botanicals are in this patent category. Vegetables, fruits, flowers and fauna dominate the classification. The term is 20 years from patent filing just like a utility.

PROVISIONAL – This is not an actual patent, but rather, a 1 year pre-utility filing used to protect an invention while finishing, testing, or marketing it.

COPYRIGHTS:

GENERAL INFORMATION – Copyrights give the Author exclusive rights to copy, distribute and adapt their work. Copyrights are generally valid for the Author’s lifetime plus 70 years, or 95
years from publication, or 120 years from creation, whichever is shorter, for works “for hire.”

**TEXT (TX)** – protects the written word such as books and game instructions.

**VISUAL ARTS (VA)** – protects paintings, sculptures and jewelry designs.

**PERFORMANCE ARTS (PA)** – protects movies, stage plays and videos.

**SOUND RECORDING (SR)** – protects music and spoken word recordings.

**OTHERS** – the previous four copyrights are the most common; however, other copyrights exist for various unique forms of authorship.

**TRADEMARKS:**
A trademark protects a unique name, word, slogan, sign, or logo that identifies the source of goods or services sold in interstate commerce by an individual, business, or other legal entity. A Trademark can remain in force as long as the product or service is in commerce.

**WORD MARK** – protects a product name or slogan like Kodak.

**LOGO MARK** – protects a company logo, a symbol or a design such as the popular Nike “swoosh.”

**SERVICE MARK** – protects a service to be rendered rather than a product.

**TRADE SECRETS:**
Trade Secrets attempt to protect a formula, recipe, process, compilation of information or other creatives strictly through secrecy. No government filing is performed. Typically, Non-Disclosure Agreements between individuals or business entities are used and enforced by various state and federal statutes. The formula for Coca Cola is often used as a Trade Secret example. The formula has remained a secret for over a hundred years; whereas, if a utility patent had been filed, the formula would be public information reducing the commercial value.

Now you know the basics, in reality, the very basic basics. It’s a good starting point. There is so much more to know. Before filing anything or making anything public, do your homework and consult a reputable professional.

**THE FRISBEE: HOW TO SELL AN INVENTION**
Before there was Jim Morrison of The Doors (1960s recording group famous for “Light My Fire” and other Top 40 Hits) the star of the family was Uncle Fred Morrison. In fact, The Doors’ first record might not have been made if it weren’t for royalties earned by Uncle Fred. On September 30, 1958 Walter Frederick (“Fred”) Morrison was

**PROVISIONAL PATENT OFTEN MISUNDERSTOOD**
There are some misunderstandings relating to a Provisional Patent. It is often misused by inventors, television hucksters and misguided invention companies. To help bring a little clarity to this topic, I consulted with my son Robert, a Licensed Patent Practitioner and President of Montgomery Patent & Design.

Misunderstanding #1: I have a Provisional Patent.

Provisional Patents do not exist. It is actually a Provisional Patent “application” establishing priority rights which could be continued within one year into a Utility Patent application.

Misunderstanding #2: Receiving an Official Filing Receipt from the Patent Office means that I have a patent and no one can steal my idea or sell anything like it.

This is not true. Although a provisional application receives an official filing date from the Patent Office, the Filing Receipt does not bestow patent rights. A provisional application will not be searched or examined, it will never become a patent unless converted to a utility application that issues, it will automatically expire in one year, the application can not be renewed or re-filed, no patent certificate is issued by the Patent Office, you cannot legally stop anyone from selling a similar product, and the Patent Office’s “Reference Number” is not a Patent Number.

There is a lot more to discuss about Provisional Patent Applications, but correcting these two major misconceptions is a good start. We’ll address this topic further in the future.
awarded Design Patent #:183,626 entitled Flying Toy. Unlike his nephew who left us too soon at 27, Uncle Fred Morrison passed away after 90 good years on February 9, 2010.

The idea for a flying disc toy came to Morrison in 1937 as he and his wife to be, Lu, threw popcorn can lids to each other on a Santa Monica, California beach. Fred and Lu soon developed a small beach business making and selling a sturdier version called “Flying Cake Pans.”

Morrison held onto his idea, and learned a little bit about aerodynamics, while serving as a P-47 Thunderbolt pilot in World War II. After the war, and after serving as a Prisoner of War for 48 days, Morrison returned to his flying cake pan invention idea. In 1948 a partnership was formed with Warren Francisci to make “Whirlo-Way” flying saucers and sell them at fairs. Costs proved to be too high to really go commercial. Not giving up, Morrison and Lu designed the first generation of flying toy discs in 1955 calling it “Pluto Platter”.

Later in 1957 Fred and Lu sold their “Pluto Platter” rights to the Wham-O Manufacturing Company. A design patent application was filed on July 22, 1957 in the name of Walter Frederick Morrison under the technically descriptive name of Flying Toy. Wham-O continued to sell its new flying disc toy as the “Pluto Platter”, but in 1958 the name was changed to “Frisbee.”

The registered trademark name “Frisbee” originates from The Frisbie Baking Company of Bridgeport, CT, the maker of pies sold to New England colleges. Throwing the empty Frisbie pie pans was a popular activity for students on college campuses. So when the bakery ceased doing business in 1958 with Wham-O looking for a new name to jump start sales of their flying disc, they adapted the baking company’s name by replacing the “ie” with an ending double “e” for “Frisbee”. Today Wham-O and Frisbee are part of Mattel.

And there you have it — the story of Fred Morrison’s invention that started on a California beach in 1937 and ended in 1958 with the adoption of the name “Frisbee”.

How Patents Feed the World

Most of us have heard of utility, design and provisional patents, but there is one more – Plant Patents.

Plant patents are awarded for twenty years to those individuals who invent asexually reproduced varieties of living plants, such as: vegetables, some tubers, algae and macro fungi. A new “macro fungi” is always something to look forward to. But seriously, plant oriented inventions have helped feed the world by producing larger harvests as well as fruit, vegetables and tubers that are resistant to disease. Plant patents also make our world more beautiful with great new varieties of flowers and foliage.

The Plant Patent Act of 1930 amended our patent laws originating from 1790. The purpose of the 1930 Act was to encourage discoveries important to the nation and mankind by providing plant breeders with financial incentive and control over their work.

Per the United States Patent Office, asexual plant reproduction must be stable assuring that the inventive plant variety retains the identical uniqueness. The patent rights are only for one specific inventive plant. The rights do not extend to future asexual varieties of the patented plant.

In 1970 the Plant Patent Laws were amended by the Plant Variety Protection Act. No longer does the Patent Office accept applications for human-manipulated plants that can be sexually reproduced from seeds. Also excluded from receiving a patent is the Potato. With the 1970 Act, intellectual property protection for original seed reproduced plant varieties, and newly invented potatoes, are through the Plant Variety Protection Office that grants a Certificate of Protection. This Certificate provides
Invention Promotion Companies

Caveat emptor – “buyer beware” – important advice when dealing with an Invention Promotion Company.

An Invention Promotion Company is a business model designed to take a new product and promote it to the market with the goal of making money on the product. Sounds fine conceptually, and some Invention Companies do try to do a good job, but there are far more companies that talk a good game while delivering nothing of value. Remember: “If it sounds too good to be true, it probably is.”

Businesses, both large and small, often employ the services of a promotion or marketing company to market their products. It makes perfect sense in many cases and is a common business tactic. The problem is unsuspecting, small-entity inventors who have little business experience can become the prey of unscrupulous companies. An Invention Promotion Company is not by definition a bad thing. It is the execution, or rather, the lack of execution that cause the problems.

Let’s say you have an invention that you think will sell, but you have a full-time day job and no industry contacts, your only choice to get your invention to the marketplace is to hire a marketing company. Before you get started, realize that many really good inventions fail for one reason or the other. It’s a tough business. Although an overnight success can happen every once in awhile, expect that the process will be considerably longer than you want to imagine. An inventor should therefore consider the money spent on the invention process as “risk capital.”

It is difficult to select a good Promotion Company from a bad one. All you can do is learn as much as you can before spending any money. Don’t necessarily shy away from a company if they have a few complaints, some clients are never happy. Get to know the people you’ll be dealing with. Know the exact services and materials that will be provided. Be sure to use only a Registered Patent Attorney/Agent licensed by the Patent Office. Prove that your invention works by building a proof-of-concept prototype, or a virtual prototype, made from real engineering drawings. Insist on all final approvals. Require regular updates. In essence, what you want to do is become the CEO on your project.

For many inventors, an Invention Promotion Company is necessary. Do your homework to make sure that it doesn’t become a necessary evil.

In spite of the

the holder with exclusive commercial rights.

The inciting force behind the Plant Patent Act and the related Plant Variety Protection Act was America’s greatest Horticulturist and a 1986 inductee into the Inventors Hall of Fame, Luther Burbank (1849-1926). The Acts were enthusiastically supported by Thomas Edison himself. Although the holder of multiple Plant Patents, sadly, all of Burbank’s patents were awarded following his death.

Post-It® Notes: It Wasn’t An Accident

The story begins in 1968 with Dr. Spencer Silver, a research scientist (aka company employed inventor) working for the 3M Company. According to legend, Dr. Silver was attempting to invent a super strong adhesive but failed, instead he invented the adhesive called Acrylate Copolymer Microspheres which would someday become the stickam for Post-It® Notes by 3M. The story, like most legends, is great for Hollywood but a bit short in reality.

Spencer Silver holds 22 patents, but it is his 1972 Patent #:3,691,140 for a low-tack, reusable, pressure sensitive adhesive that would eventually bring him fame. Silver’s initial thought was to make his new adhesive into a spray, or possibly a tacky surfaced bulletin board on which to place and remove temporary notes. It seems almost impossible today to think that Dr. Silver’s adhesive would languish within the 3M corporate world for five years without being developed into a product, but that’s reality.

In 1974, 3M Product Development Engineer, Arthur Fry, enters the story with his attendance at one of Silver’s internal seminars promoting his adhesive. It was not immediately a “eureka moment” for Fry. According to 3M, the “eureka moment” came sometime later while “Fry [was] singing in the church choir. His bookmark kept falling out of his hymnal, causing him to lose his page.” To solve his problem, Fry used some of Spencer’s pressure sensitive adhesive on his bookmark. Thus, a product concept was born.

Although a need was found and a solution in place for a viable home and office product, 3M waited three more years to take a chance on releasing the new product to consumers. Many in the company were unconvinced of the Post-It Notes’ commercial potential. In spite of the
naysayers, the product was launched in 1977 and promptly failed.

A year later 3M tried one last time to launch Post-It Notes by flooding Boise, Idaho with thousands upon thousands of free samples. The test was phenomenally successful with 90% of the users wanting more. Post-It Notes hit the United States market in full force in 1980. Now thirty years later Post-It Notes are found in virtually every office and many homes around the world.

Contrary to legend, the invention of Post-It Notes was not a happy accident, but rather, the happy result of hard work and persistence.

Negative Patent Opinions

What to do if you receive a Negative Patent Opinion from a licensed Patent Practitioner.

Although a Negative Opinion was not the news you were hoping for, keep your wits about yourself and relax. Study the Opinion and the cited references. Consult with your Attorney/Agent. Begin with the belief that there are no perfect products, and that there are no monopolies, so now you have option of making the Negative Patent Opinion either a bump in the road or a cliff to fall off.

Don’t shoot the messenger. The Patent Practitioner is on your side. A Patent Attorney/Agent would prefer that your invention be patentable so they can earn fees for preparing and prosecuting a patent application. Professional ethics, however, require licensed Practitioners to provide their clients with their best legal advice. The Negative Opinion alerts the Inventor of a probable negative outcome for a patent filed on the invention in its present form. Of course, predicting whether a patent application will be successful is not an exact science. Patent Opinions are based on the Attorney/Agent’s cumulative patent prosecution experience.

In the most basic terms, a patentable invention must be:

- New – not publicly disclosed anywhere in the world for more than one year;
- Useful – specifications and drawings from which to build a working model; and,
- Non-Obvious – the combining of various patents or other citations is not anticipated.

For inventions by Small-entity Inventors, Negative Patent Opinions are often the result of either an incomplete enabling disclosure (technical specification and drawings), or that several cited references when viewed together could be considered obvious. It is the duty of the Patent Attorney/Agent to inform their client of expected prosecution problems before committing time and money on filing an application.

By reading the Opinion, and through consultation with the Attorney/Agent, you will determine the reason(s) for the negative opinion. You may agree or disagree, but the facts are the facts. It is time to eliminate emotions and to reflect carefully upon the findings. In most cases, an Inventor can rethink their invention and find a suitable path to an even better invention and to a positive opinion. It might not be easy, and it may not happen overnight, but a solution can usually be found.

A Negative Patent Opinion is a warning sign that danger may lie ahead providing the Inventor with either a disappointing end, or the foundation for a new beginning.

The patent pending notice provides no indication as to whether the patent filing was for a provisional, utility, design or plant. It is unknown if the application was drafted professionally or by the inventor. There’s no indication if a patent search had been done to determine if the filed application had a reasonable expectation of being issued. It just means patent pending. However, when the notice is used on a commercial product, it can mean so much more.

As you now know, patent pending doesn’t provide any real information other than to inform others who might try to copy the invention that they could be liable for damages if and when the patent issues. Damages in some cases can be financially severe. Complicating matters further is that all pending patent applications are held in confidence by the Patent Office with no public record for at least 18 months, or unless issued earlier. Some inventors even file their applications as “non-publish” which excludes public record until the patent actually issues, which most often take years.

The patent pending notice seems to be straightforward enough, but there is no guarantee that it’s being used properly. Some small-entity inventors file a patent (usually a provisional) and then start making a prototype. Changes then occur while prototyping to lower costs, make it easier to use, or for a variety of other reasons; unfortunately, the finished prototype no longer is covered by the pending application.

Some promotion companies use the patent pending declaration as a marketing ploy. Watch television “pitch men” and you’ll soon hear that their product is patent pending, or that their weight loss pill has a patent pending formula. This type of product pitch attempts to attach credibility to their product by saying that it’s “patent pending in the United States Patent and Trademark Office.” The objective is to insinuate that the product being sold has been vetted and approved by the Patent
The pitch men hope that consumers will connect the dots and assume that a patent pending product is therefore of superior quality and value. Alas, that's seldom the case when used as a marketing ploy.

So what does patent pending really mean? It means that a patent application has been filed and that you better watch out. Watch out for the real meaning behind those two powerful words.

The One-Year Rule

Many inventors seem to think that because they thought of an invention, or even built the invention, they have unlimited rights to patent their invention. That is not the case.

Inventors have said to me: “I've been using my invention for the past six years. Everyone who sees it, wants one. So now I want to get a patent and make some money.” To their dismay, these inventors learn about the United States Patent Office’s One-Year Rule requiring an inventor to file a patent application within one (1) year of any public use, publication, or either the offer to or actual sale of the invention anywhere in the world. After one year, the invention is considered to be in the “public domain” and free to be used by anyone. The invention is also unpatentable by anyone including the original inventor. Even the detailing of the invention to family members will start the one-year clock.

The Supreme Court established a two-part test in 1998 to objectively determine the start of the one year countdown for what is called the “on-sale bar.” Part one of the test starts the clock when the invention is offered for sale. Part two starts the clock when the invention is publicly disclosed in sufficient detail so that a working version could reasonably be made by someone in the business. Inventions that somehow do get through the Patent Office and have a patent issued in violation of the One-Year Rule can have the patent invalidated later.

There are some exceptions to the one-year time period. One exemption is provided for disclosure to a limited number of people under a signed confidentiality agreement. Experimentation under the inventor’s control and within limited disclosure guidelines is another exemption. Likewise, inventions that need to be worked on or tested in the open can be exempted. For example, an inventor needing to build a prototype outdoors is normally fine as long as there are no explanations, demonstrations or the like. In other words, the inventor cannot provide any meaningful disclosure, regardless of how general, and cannot describe the function and use of the invention being built.

It is important to note that the One-Year Rule being discussed here is only for the United States and not for the rest of the world. Patent laws in other countries are mostly not as generous as the U.S. Inventors wanting to file in foreign countries, or in multiple countries, have options that only an experienced Patent Practitioner with full knowledge of the facts can properly answer.

So in order to protect your patent rights, do your homework and consult a competent Patent Practitioner before making any public disclosure of your invention, even to your family. If you are concerned that the one-year clock might already started ticking, contact a licensed Patent Attorney/Agent immediately for a professional opinion and advice.

Great Canadian Inventors

Maybe it's in the water, but whatever the reason, North America is the home of many great inventors. Not to be out done by their southern neighbors, Canada has had more than their fair share.

Canada’s population is about 33 million with over 2 million patents granted by the Canadian Intellectual Property Office in Gatineau, Quebec. Those numbers compare very favorably with 300 million people in the United States and a little over 8 million issued U.S. patents. The following is a short list of Great Canadian Inventors submitted as evidence of Canada’s contribution to making the world a better place.

Although Thomas Edison might have invented the first commercially viable light bulb, it was Canadian Henry Woodward in 1874 who actually first patented the electric light bulb. Woodward sold his rights to Edison and the rest is history.

Alexander Graham Bell along with Canadian Emile Berliner co-invented the Gramophone, the forerunner to the phonograph record, cassette tape, CD...
Trade Shows—They Are Important!

Trade Show attendance is a hot button for most inventors. There seems to be an expectation by some inventors that by attending a trade show, manufacturers will line up wanting to make licensing deals. Deal making usually happens well before the trade show. Anyway, let’s take a closer look at Trade Shows.

First, Trade Shows is a generic term. There are three distinct categories of trade shows: Industrial – Consumer – Invention. Each of these shows can be further subdivided as national, regional and local. They all have a purpose.

**Consumer Trade Shows:**

Examples of Consumer Trade Shows are the Auto Show, Boat Show and Home & Garden Show that travel around the country and are open to anyone for the price of admission. These shows are for local distributors and retailers to promote their goods and services directly to the public.

In 1989, Masaru Emoto took his passion for water and its ability to transform when exposed to the environment and turned it into a business. He released his first book, “The Message of Water,” followed by “Messages from Water” and “Water: The Amazing Significance of Life’s Most Essential Substance.” His works have been translated into 22 languages and have sold over 7 million copies worldwide. In 2011, Emoto was nominated for a Nobel Peace Prize. Emoto’s unique perspective and research continue to inspire people around the world to think about their relationship with water and the environment. He has spoken on this topic at numerous conferences and events, including TED Talks, where he shared his insights and encouraged others to follow their passions and pursue their dreams.

and the iPod. Bell and Berliner collaborated in Brantford, Ontario.

As we drive our cars, vans and trucks we glance occasionally at the odometer to determine the distance traveled, or to calculate fuel economy. In 1838, Charles Finerty of Halifax, Nova Scotia was the first to think of, and invent, the odometer.

The popular Macintosh Apple was developed in 1796 from wild apple saplings found along the St. Lawrence River in Ontario. The Canadian inventor was John Macintosh.

People around the world are grateful for the work of Canadians Charles Best and Frederick Banting. They are responsible for inventing insulin, which in turn, has prolonged the lives of millions who suffer with diabetes. Best and Banting sold their rights to the University of Toronto for $1.00 so that everyone could be helped.

As the company’s website proudly states:

“Every day, around the globe, Bombardier manufactures state-of-the-art planes and trains that help people and goods get where they need to go.” The company’s origins can be traced back to a 1960 Canadian patent awarded to a 14 year old Canadian boy for his snowmobile invention, later to be sold under the name Ski-Doo. The boy was Joseph-Armand Bombardier.

Who is responsible for the “Energizer Bunny”? It was Canadian Fredrick Urry Lewis. Lewis has powered all of our lives with his pioneering inventions of the rechargeable alkaline and lithium batteries.

What a wonderful continent North America is, especially when it comes to great inventors and their inventions. Pound for pound, Canada is a winner.

2011 Patent Law

The America Invents Act was finally signed into law by President Obama on September 16, 2011. Did anyone feel the earth shake like I did? Much of what we knew about patent law has changed. Is the new law good? As with most transformable moments, time will tell. Check back with your Invention Guru in 5 years, maybe 10. It will take that much time before everything in the new law shakes out.

Not everything in the new law will take effect all at once. The Patent Office has some flexibility in rolling out all of the reforms. The absolute single biggest change is the establishment of priority rights for inventors from First To Invent to First To File. This won’t begin until after March 16, 2013, a year and a half in the future.

Let’s look at the highlights of what a typical individual or small business inventor needs to know now about The America Invents Act. Some things will start changing as of Monday morning, September 19, and soon thereafter.

- A new classification of inventor called “Micro Entities” will receive a 75% fee

Inventors can use local and regional shows to test market and get feedback from real people. A positive selling experience can be invaluable when promoting a new product to manufacturers.

**Invention Trade Shows:**

Invention Trade Shows sell booths to inventors in which to exhibit their inventions in hopes of attracting a manufacturer. Inventors who have attended invention-only trade shows have reported dissatisfaction because industry traffic is often light with attendance open to the general public. In my opinion, the money spent on booth space at this type of trade show might be better spent trying to go directly to company decision-makers.

**Industrial Trade Shows:**

Full product line exhibits by the major manufacturers happen at industry-specific Industrial Trade Shows. In recent years some industries have joined together to form mega shows. Every industry generally has at least one major, national trade show often sponsored by a trade association. Attendance is restricted to industry insiders and the media. Booth space can be very expensive. The purpose of industrial trade shows is for manufacturers to sell their products to distributors and retailers, and not to necessarily license products from inventors. Regardless, they are important to attend in order to learn about current trends, make contacts and to gauge the competition.

Since the turn of the century, trade show attendance has declined as “big box stores” have been requiring manufacturers to visit them for a private, product line showing. This has prompted several industries to join forces to maintain viability. Indicative of this trend is The National Hardware Show that now includes Lawn and Garden, Housewares, Painting, Storage Organization, and more, combined with hardware.

Although Trade Shows might not be what they once were, they are still very important when it comes to product marketing. National industrial trade shows, especially, have all of the players in one place, at the same time with entire product lines on display.

Trade Shows are definitely worth it.
• "Small Entity" Inventors will continue to have a 50% reduction.

• Micro Entity classification won’t roll out until the Patent Office establishes a new fee schedule; however, the qualifications that will be used are:

1. Inventor must first qualify for “small entity” status.

2. The inventor can not be listed as an inventor on more than 3 previous patents (provisionals excluded).

3. In the year prior to filing, the inventor’s household income must be less than 3 times the median (about $150,000.00).

4. The inventor’s patent application can not be assigned, or reasonably expected to be assigned, to an entity whose income would fail to meet the “micro entity” test.

• Immediately the general Patent Office fees, including post-issuance maintenance fees, will have a 15% surcharge.

• On November 15, 2011, the Patent Office will impose a $400.00 surcharge for patent applications not filed electronically.

• Inventors can request a “Prioritized Examination” of a patent application within twelve months. The Patent Office fee for this expedited service is an extra $4800.00, or $2400.00 for small entities.

• The Patent Office will speed up the patent application process at no cost to the inventor for inventions that reduce greenhouse gas emissions or provide energy conservation.

• The Patent Office wants to establish pro bono programs to help small entity inventors. Patent practitioners will be encouraged to do free work every so often for inventors with very limited finances.

• For patent disputes, the standard for an inter partes reexamination of a patent is relaxed allowing a requestor to only show “that there is a reasonable likelihood that the requestor would prevail with respect to at least 1 of the claims.”

• The Patent Office will have the financial resources and control to hire the staff necessary to properly examine patent applications faster.

There is much more to learn about our new patent laws. It is almost certain that some provisions will be good and a few maybe not so much. The patent reforms expect to:

1.

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**Who Owns Your Genes?**

Who owns your genes? It seems like a pretty simple question – it has to be you. However, the Patent Office had a different answer.

As background, genes are part of the 3 billion human DeoxyriboNucleic Acid (DNA) bases. The bases are arranged in a two strand spiral called a double helix which is held together by two molecules, one sugar and the other phosphate. Heredity passes the DNA from the chromosomes of one generation to the chromosomes of the next. There are many genes within each chromosome with different genes determining different traits. To recap, genes reside in our chromosomes which are part of our DNA.

Because everyone’s DNA is unique unto themselves, then logically, we must certainly own our DNA. The United States Patent and Trademark Office (USPTO) didn’t see it that way and awarded patent rights to different parts of everyone’s DNA to a number of biotech companies. This changed, however, on March 29, 2010 with Judge Sweet’s ruling in Association for Molecular Pathology and ACLU v. USPTO and Myriad Genetics which invalidated seven Myriad Genetics’ patents for two genes known to be linked to breast and ovarian cancers.

Taking the lead for the Plaintiffs, the ACLU argued persuasively that genes are products of nature and are hence not patentable subject matter. Further, they asserted that patents on human genes restrict research to only one company that could charge whatever amount they wanted. Myriad Genetics’ counter argument claimed that the process of isolating DNA from the human body transforms it into patentable subject matter because the genes were previously unknown, were clearly useful and certainly not obvious. Therefore, the new, useful and non-obvious patent standard was met resulting in a patent granted by the Patent Office.

The Court’s decision in the Myriad Genetics’ case also brings into question the validity of other patents based on human DNA. So far approximately 20% of the human genes have been patented by companies who have invested billions of dollars in research in the hopes of recovering their costs and making a profit. Without a profit incentive, medical breakthroughs could be significantly slowed. Thus with so much at stake, Judge Sweet’s ruling will certainly be appealed.

So, who owns your genes? For right now it’s you, but stay tuned.
The Patent Journey—Step 1 Documentation

‘A journey of a thousand miles begins with a single step.” Lao-Tzu, Chinese philosopher (604–531 BC)

The journey to a United States Patent, which may seem like a thousand miles, begins with Step 1 – Documentation. Because the USA is a “first to invent country,” establishing a “paper trail” (or “electronic trail”) that meets Patent Office requirements of due diligence is vital for the preparation and prosecution of a patent application, as well as for the possible enforcement later of issued patent rights.

In our office, we find that most inventors seldom have proper documentation; therefore, Step 1 is to have a Record of Invention (ROI) form completed. Once the ROI is completed by the inventor, the form is date stamped and notarized establishing the start of the “paper trail.” Regular entries are then made to the record demonstrating regular progress towards completing the invention and filing a patent application. This regular progress is known as “diligence” and will be the subject for another time. Suffice it to say at this point that reasonably paced progress that is documented is necessary in order to maintain the viability of the “first to invent” date. When the patent application is ready to file, our patent practitioners insert a reference to the date established on the ROI form into the patent application.

Some inventors mistakenly believe in using a “Poor Man’s Patent.” This is where an inventor describes their idea in writing and with drawings, then places everything in an envelope before mailing it back to him or herself usually by registered mail. When the mail arrives,

1. shorten the time between patent application and final disposition,
2. reduce the excessive patent litigation which has gone wild recently, and
3. promote investment in new products with the result of more jobs.

Accomplishing those feats will make the America Invents Act worthwhile.

Many people, your Invention Guru included, have been opposed to the United States moving away from First To Invent to the European model of First To File. The reasoning for keeping First To Invent was that it has served America very well for so long – there’s no reason to fix something that’s not broken. Implementation of First To File won’t start until March of 2013. By then, strategies that work with the new patent law are expected to be developed to protect the small entity, and the new micro entity, inventor from being run over by big business.

The gates of a brave new patent world have been opened.

National Inventors Hall of Fame

In Northeast Ohio at the intersection of Interstates 76 and 77 is Akron, the Rubber Capital of the World. Akron is also the home of The National Inventors Hall of Fame (www.invent.org). The Hall of Fame began in 1973 and moved to its present Akron home in 1995. America’s greatest inventors are enshrined there amidst a science, discovery and museum complex called Inventure Place.

Travelers to the Inventors Hall of Fame may be interested in knowing that 40 minutes due north on Interstate 77 is The Rock And Roll Hall of Fame on the shores of Lake Erie in Cleveland. About 30 minutes due south down I77 is the Pro Football Hall of Fame in Canton. The entire area from Cleveland down to Canton is the home of many well-known businesses: Goodyear, Hoover, Maytag, Firestone, Goodrich, Babcock & Wilcox, Diebold, Progressive Insurance, Sherwin & Williams, Eaton Corp. and many more. Bordering by Detroit, a couple hours northwest, and Pittsburgh, a couple hours southeast, the corridor including Cleveland-Akron-Canton is an important manufacturing, technological and educational sector for the United States.

The stated goal of the National Inventors Hall of Fame is to honor “the women and men responsible for the great technological advances that make human, social and economic progress possible. Each year, the Selection Committee of the National Inventors Hall of Fame Foundation selects inventors for induction.” Although induction ceremonies are usually in May, the 2010 Hall of Fame class of inventors will be honored on March 31.

The Hall of Fame sponsors an outreach program called InventNOW (www.inventnow.org) with the United States Patent and Trademark Office to foster inventing creativity in children ages 8 through11. The slogan for the program is: “Anything’s Possible. Keep Thinking.” Camp Invention is another program which is a week long summer day camp for kids in grades 1 through 6. These invention camps travel out to sponsoring schools. Starting in 1990, InventNow sponsors an annual contest called the Collegiate Inventors Competition with cash prizes. The competition has “recognized, rewarded, and encouraged hundreds of students to share their inventive ideas with the world.”
With any discussion of the National Inventors Hall of Fame, there is one question: Why Akron Ohio? The answer is that the citizens of Akron wanted the honor of housing the Hall of Fame on the campus of Akron University as a way of remembering Thomas Edison, generally recognized as America's greatest inventor, who was born nearby in a small town between Akron and Cleveland.

Another part of his legacy is Paul's innovative guitar and sound recording advancements that include: overdubbing, delay and phasing effects, dual-pickup guitar, 14-fret guitar, a variety of electronics used on guitars and in the recording studio, as well as the first multi-track recordings. However, it was Paul's collaboration with Gibson Guitars and the production of that instrument manufacturer's signature, six-string guitar called the “Les Paul” that brought him world prominence.

In the 1950s, Paul and his wife, Mary Ford, were a top selling recording act. Their hits included “Mockin’ Bird Hill,” “How High the Moon,” “The World Is Waiting for the Sunrise” and “Vaya Con Dios.” His playing usually featured lightning-fast runs and double-time rhythms. When not recording and performing alone or with his wife, Paul recorded and toured with Bing Crosby going back into the 1930s. For those too young to remember, Bing Crosby was to his day what Frank Sinatra, Elvis and Michael Jackson were to their generations. A serious automobile accident in 1948 threatened to end Paul’s playing career until he convinced the doctors to set his arm permanently in a guitar playing position.

Paul always enjoyed experimenting with electronics, but it wasn’t until Crosby gave him an early audiotape recorder that sound engineering changed forever. Paul created new recording techniques and altered the electronics to achieve overdubbing, delay and phasing, and ultimately, multi-track recording. He invented it all, did it all, and it’s still the industry standard today, nearly sixty years later.

While in his late 80s, Paul was asked if he was still inventing. He replied that he had never stopped. So what was the man who reinvented how music is played and recorded working on next? Les Paul replied: “Same thing I was working on in the ’20s: I’m trying to make it better. There’s a million ways of improving, there’s a million different directions to go in, and I try to do all of them.”

The World’s Most Famous Patent Clerk

Our story begins in 1886 with a 7 year old Jewish boy attending catholic school in Munich, Germany. Although he displayed an aptitude for mathematics and for playing the Violin, his school...
grades were nothing special. Teachers noticed that his mind seemed to wander.

At age 15, the family moved from Germany to Italy for work leaving the boy behind in Munich to finish school. Perhaps it was the family separation or just poor study habits; regardless, the boy failed his college entrance examination. Later he wrote of this period saying: “If I were to have the good fortune to pass my examinations, I would go to Zurich. I would stay there for four years in order to study mathematics and physics. I imagine myself becoming a teacher in those branches of the natural sciences, choosing the theoretical part of them. Here are the reasons which lead me to this plan. Above all, it is my disposition for abstract and mathematical thought, and my lack of imagination and practical ability.”

Undaunted, the boy persevered and graduated in 1900 determined to become a math or physics teacher. Unfortunately, finding a teaching position proved difficult. By mid-1901 he settled on a temporary appointment teaching math in a Swiss Technical High School, which was followed by another temporary position in a private school. Rather than go from one temporary position to the next, the young man applied for a clerkship in the Swiss Patent Office as a Technical Expert 3rd Class.

As a young man now of 22 making his way in the world, he worked in the Patent Office from 1902 to 1909 being promoted to Technical Expert 2nd Class in 1906. While working as a Patent Clerk, he married in 1903 and had a child the following year. His Patent Office duties came easy to him affording plenty of spare time to work on other projects. As for his education, he was a late bloomer earning a doctorate from the University of Zurich in 1905.

The year of 1905 was full of astonishing achievement. Besides working at the Patent Office and earning his doctorate, the young man published three ground-breaking, scientific papers. The first paper contradicted the current accepted electromagnetic theory. His second paper outlined the theory of relativity. The third paper of the year centered on statistical mechanics. All three papers were academic sensations and formed the foundation for his future work.

By 1909 having turned 30, he resigned from the Patent Office never having been promoted to Technical Expert 1st Class; however, this Patent Clerk Second Class had grown to be recognized as the greatest scientific mind in the world. Before his death in 1955, he earned every significant accolade possible as a scientist and an intellectual. Posthumously, Time Magazine named him “The Man of The 20th Century.”

The Swiss Patent Clerk’s name was Albert Einstein.
Understanding the Parts of a Utility Patent

An inventor considering filing a Utility Patent application, or reviewing issued patents, should have a working knowledge of the Parts of a Utility Patent.

**COVER PAGE – Above The Line**
On the left above the line is the last name of the first listed inventor, while the top right side has the Patent Number and the Date of Patent meaning the date the patent was formally issued.

**COVER PAGE – Below The Line**
This space has two columns with a drawing at the bottom consisting of:

**TITLE** The invention’s title is a technical, descriptive name, and not a marketing name, that should identify the invention.

**INVENTOR** All of the inventors are listed with a contact address.

**ASSIGNEE** This line is not on every patent. It appears only on patents where the rights have been transferred (licensed) to another entity, usually a company, and that the assignment was recorded with the Patent Office prior to publication.

**APPL. NO.** This is the original patent application number.

**FILED** The date the patent application was originally filed.

**RELATED U.S. APPLICATION DATA** — This section includes:
(optional) On some patents there is an indication here that the patent application was preceded by another filing.

**Int. Cl.** – Listed in bold type is the primary International Class for the invention with any other cross-classifications for portions of the invention.

**U.S. Cl.** – This is the same as for the International Class except this line is only directed to the United States.

**Field of Search** – This is a list of the search classifications used for this invention from filing of the patent through to issuance.

**References Cited** – All of the patents, or other public references, that were cited either by the Applicant or the Examiner during the prosecution of the patent application.

**Primary Examiner** – This is the name of the Primary Examiner at the Patent Office. Occasionally, an Assistant Examiner is listed underneath.

**Attorney, Agent, or Firm** – This line identifies the Patent Practitioner. If no name exists, either the inventor acted on his own or the Patent Attorney elected not to have their name or firm listed on the patent.

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**Felix Hoffman (1868 – 1946)**
Hoffman’s gift to humankind was his invention of Aspirin in 1897 while working for Bayer. The inspiration for Aspirin stems from the bark of the willow tree. Although willow bark properties had been known for centuries, Hoffman was able to buffer the negative side effects. Aspirin has proven to be effective for many ailments including: pain, headache, heart conditions, strokes, some cancers, Alzheimer’s, and vision problems. It has become known as the first wonder drug with over 15 billion tablets taken per year.
ABSTRACT  The abstract is a general language paragraph providing a basic description of the invention. Directly below the Abstract is a bolded line indicating the number of Claims in the patent as well as the total number of Drawing sheets.

DRAWING  The Drawing printed on the patent cover page provides a general, visual depiction of the invention.

Although the Cover Page of a Patent is a source of valuable information that summarizes the whole patent, the rest of the story is inside. All of the drawing sheets are first followed by the text sections. The text sections are divided into two columns per page with reference line numbers down the center of the pages.

The first text section is FIELD OF THE INVENTION which is a sentence or two indicating in language, and not in numbers, the classification of the invention.

BACKGROUND OF THE INVENTION follows describing the state of the art in the classification. It is customary for similar issued patents to be described in an attempt to illustrate the differences from the invention in the patent application.

BRIEF SUMMARY OF THE INVENTION is written in general language describing the unique features and benefits of the invention.

BRIEF DESCRIPTION DRAWINGS describes each figure on the drawing sheets that preceded the text section. The drawings will be referenced in the engineering specification in the next section.

DETAILED DESCRIPTION OF THE INVENTION is an engineering specification technically describing the “best mode”; in other words, how to make and how to use the invention to a level that someone skilled in the art could understand. Another name for this section is Description of the Preferred Embodiment.

CLAIMS are located at the very end of the patent and are not highlighted with a headline like other sections. The section usually begins with “I claim:” followed by numbered paragraphs usually having sub-paragraphs. The Claims are vitally important because it describes in legal patent language the “intellectual property” being claimed. The right word in the right place can make a patent valuable; whereas, the wrong word or too many words could make the patent worthless. The Claims are the heart of the patent.

This should provide a rudimentary understanding of the parts of a utility patent. The only significant difference with a utility application is that the Abstract is positioned at the end.

My Invention Didn’t Sell.
I Was Scammed!

My invention didn’t sell, so I must have been scammed!

Although there are unscrupulous people in every walk of life from inventor agents to the clergy, to doctors, and even to Mom and Dad, the vast majority of people are not out to scam anyone. Admittedly different individuals in every profession have different skill sets and capabilities. Not everyone can be the best. If trying hard but not winning was a crime, the Pittsburgh Pirates major league baseball team would certainly be guilty after 17 losing seasons.

There are a few truths to begin with:
1. No one can accurately predict market success.
2. Everyone is not really out to get you.
3. There are very few millionaire inventors.
Assuming that we all agree to these basics truths, allow me to offer some analogies. If you believe, however, that people are out to get you, please stop reading now.

Sports Analogy
A Baseball Player hires a Sports Agent to represent him. The player trains his body and mind, eats a healthy diet and refrains from drugs. After awhile, he becomes the very best ballplayer that his town has ever seen. He can run like the wind, field like a wizard and hit like Babe Ruth. The Sports Agent against all odds gets his unknown phenom a try out with the New York Yankees. The fateful day comes and our hero steps confidently into the batter’s box and hits fastball after fastball over the fence. The Yankees’ Manager orders the pitcher to throw some sliders and curve balls. Our champion’s waterloo was the dreaded breaking ball. He swung and missed, pitch after pitch. In a few days he’s back home with no major league contract.

Movie Star Analogy
A want-to-be movie actress travels to Hollywood California to be discovered. She gets a job in the famous Scwab’s Drug Store on Sunset Boulevard. She purchases the top of the line make-up and has “head shots” taken to send pictures to Casting Agents. She studies acting, singing and dancing from the very best teachers. Knowing that the best way to get into to the movies is to practice, practice, practice – she does so religiously. A Talent Agent catches a local performance and immediately signs her to a representation contract. Unbelievably, the agent plays golf every Saturday morning with Steven Spielberg and is able to get her a screen test. Our starlet takes her screen test but sadly Director Spielberg says that although there is talent, there is no “it factor.” After many more months of auditions, her movie star dream ends.

Inventor Analogy
An inventor dreams up a million dollar
Is Steve Jobs America’s Greatest Living Inventor?

Is Steve Jobs America’s Greatest Living Inventor? Here’s why it’s hard to argue against him.

Steven Paul Jobs was born to bi-cultural parents in Wisconsin who gave him up for adoption by Paul and Clara Jobs. His childhood was spent in the apricot orchards of California, later to be known as Silicon Valley. Jobs attended Reed College in Portland, Oregon but dropped out in 1972 after only one semester. While searching for his life’s work, he got a position with Atari being in charge of designing the circuitry for the computer game Breakout. Breakout became widely popular and was in large measure responsible for the commercial success of the Atari 2600. The Atari 2600 was the first microprocessor based game box for the home having interchangeable cartridges, the forerunner of the X-Box, PlayStation, Nintendo and the Wii.

After a brief period of travel in search of spiritual and philosophical enlightenment, Jobs returned to California and reacquainted himself with his former Atari colleague, Steve Wozniak. Wozniak had moved on from Atari to Hewlett-Packard, but Jobs convinced him to quit his day job and join him in the development of the personal computer. In 1976, Jobs 21 and Wozniak 26 changed the world forever with the founding of the Apple Computer Company. The personal computer industry for the masses was born.

A stock offering made Jobs and Wozniak multi-millionaires but answerable to Apple’s Board of Directors. Jobs with Apple pioneered the use of mouse-driven graphics for desktop computers in the early 1980s. After creating the personal computer industry with the Apple II and then expanding it with the graphic-rich Macintosh and Lisa computers, Jobs lost a power struggle with Apple’s Board of Directors in May of 1985 and was relieved of his duties.

Immediately following his dismissal from Apple, Jobs founded NeXT Step Computers. NeXt was a computer platform development company specializing in computers for education and for business software development. Although not the commercial success of Apple, it is interesting to note that it was on a Jobs’ NeXT computer that Tim Berners-Lee is credited with developing the original World Wide Web.

Jobs turned his attention to animation with his 1986 purchase of the computer graphics division of Lucasfilm Ltd. The new acquisition was named Pixar Animation Studios. As time evolved, Pixar became the dominant producer of animated feature films for the motion picture industry. The movies include: Toy Story, Toy Story 2, A Bug’s Life, Monsters, Inc., Finding Nemo, The Incredibles, Cars, Ratatouille, WALL-E, and Up, the 2010 Academy Award nominated Best Picture and winner of Best Animated Feature. Pixar and The Walt Disney Company merged in 2006 with Jobs joining the Disney Board of Directors.

Apple approached Jobs with a reunion proposition in 1997 resulting in NeXT buying Apple. Jobs had finally returned home to his roots as Apple’s CEO. Because Apple was in virtual survival mode, Jobs promised to reinvent the company for a salary of only $1.00 per year. What he accomplished with Apple’s reinvention is nothing short of amazing. In 2003, Apple revolutionized the way we buy and listen to music with the iPod and iTunes. A few years later, the iPhone gave us newly imagined capabilities for the cell phone. The iPad was introduced in January 2010 promising to save newspapers, magazines and book publishers.

History is always the final arbiter when it comes to deciding if Steve Jobs should be called the greatest American inventor of our time. His credentials seem overwhelming:

✦ beginning the home computer based gaming craze
✦ creating the personal computer industry for both home and business
✦ bringing computers into the classroom
✦ being a vital conduit for the creation of the World Wide Web
✦ setting a new standard for animated motion pictures
✦ saving the recording industry
✦ redefining the cellular telephone
✦ and now, becoming the expected savior of all things print with the iPad.

It seems to this writer to be an extremely compelling argument for anointing Steven Paul Jobs as America’s Greatest Living Inventor.
What Was Patent #1?

Who had the honor to be granted the first United States patent? It seems like it should be an easy answer, but alas, it is not.

The Patent Office was established with the ratification of The Constitution in 1790. The first Patent Commission consisted of Secretary of State Thomas Jefferson, Secretary of War Henry Knox, and Attorney General Edmund Randolph.

On July 31, 1790, President George Washington and Secretary of State Thomas Jefferson signed the Patent document granting a patent to Samuel Hopkins. The invention was a process for making potassium compositions used in potash and pearl ash which were integral in the production of soap and agricultural fertilizer. The problem, however, was that Inventor Hopkins’ patent was not numbered #1. In fact, there is even some controversy regarding the identity of Samuel Hopkins himself.

The Patent Office originally issued patents identified not by a number, but by the Inventor’s name and issuance date. This policy remained in effect until the Patent Act of 1836 which was signed into law on July 4, 1836. Later a fire in December 1836 destroyed most of the original patent records. It was estimated that nearly 10,000 patents had been granted between 1790 and 1836. The Patent Office recovered only 2845 patents using whatever available files that could be authenticated. The rest are lost to history.

Under the revised practice procedures legislated in the 1836 Patent Act, the first patent signified by the Number 1 went to Senator John Ruggles of Thomaston, Maine. His invention received Letters of Patent on July 13, 1836 for a cog mechanism used in locomotive wheels. Senator Ruggles' design “multiplied tractive power to the locomotive” while preventing “the evil of the sliding of the wheels.”

So now you know the answer to who had the first United States Patent – it was both Samuel Hopkins, Patent # X1, and John Ruggles, Patent #1.
New Patent Law
Webinar highlights

On October 31, 2011, the United States Patent and Trademark Office held a webinar to discuss the new patent law. Here’s what you need to know:

• Current backlog of unexamined pending patent applications is estimated at 669,625.

• The goal for pending patent applications by 2014 is 350,000 with all applications being examined within 10 months. The 10 month period is important because it will allow two months for inventors to make a decision on whether to file for foreign patents.

• By 2014, the goal for bringing a patent application to a final disposition will be 20 months. 20 months is considered important because patent applications are not published and made public prior to 19 months.

• The Patent Office reported a 5% increase in patent applications filed this year with projections for a continued 5% increase each of the next few years.

• The new Micro-Entity classification for low income inventors, who will receive a 75% discount off Patent Office fees, is not expected to be implemented for 12-18 months.

• The Patent Office is planning on hiring and training 1500 new Patent Examiners starting immediately.

• The Patent Office is accepting patent applications into the 1-Year Expedited Patent Application Examination program. The cost is $2400.00 for “small-entity” inventors, a 50% savings from the normal fee. The maximum number of applications for this faster service is 10,000 per fiscal year.

• Contrary to popular understanding, the America Invents Act does not guarantee that the Patent Office will keep 100% of the fees that are collected from inventors, although this is the stated objective of the law. Each year, Congress must appropriate funds to run the Patent Office. For the current fiscal year, Congress allowed the Patent Office to keep all of the collected fees.

• Prior to the America Invents Act being signed into law by President Obama on September 16, 2011, Congress diverted $208,000,000.00 of paid inventor fees to other Congressional uses.

• When Director Kappos took office a little over two years ago, he placed a heavy emphasis on improving the quality of issued patents. Patent Examiners were encouraged to take whatever reasonable time that was necessary to award or to finally reject an application. Part of the increased backlog was the result of this emphasis on quality. Director Kappos does recognize the need to find a balance between quality and timeliness. According to recent Patent Office’s statistics, the balance is starting to be achieved.

• As of 10/31/2011, the United States remains a First To Invent country. The change to First To File will not begin until March 16, 2013.
Stake Your Claim

Patenting your invention early is vital to establishing your rights

In the U.S., since the America Invents Act of 2011, patent rights are now awarded to the inventor who files first. Therefore, it is important to act quickly getting started with a reputable firm to get your patent filed.

The United States Patent & Trademark Office examines and licenses Patent Practitioners, Attorneys and Agents, to represent inventors. As a point of information, Registered Patent Agents are technical specialists, not attorneys, who are licensed to perform most, but not all, of the same duties of a Patent Attorney. Because inventors are strongly encouraged to seek advice and assistance only from licensed professionals, InventSAI, LLC employs the services of independent Patent Practitioners for their clients through Montgomery Patent & Design, LLC. Both InventSAI and Montgomery Patent & Design are part of Montgomery IP Associates, LLC family of companies.

InventSAI specializes in consulting, performing research and coordinating the invention process for small-entity inventors. For patent and engineering services, InventSAI employs Montgomery Patent & Design and their degreed engineers and registered Patent Practitioners. Advertising, product promotion, websites and representation are provided by Advertising & Business Generation, LLC. Thus, to ensure confidentiality and a coordinated effort, all services are provided exclusively by the related companies of Montgomery IP Associates, LLC.

Our Philosophy

As part of Montgomery IP Associates, we can employ upon your behalf the high caliber staffs of either or both Montgomery Patent & Design and Ad-Gen to assist you with the technical aspects of your invention, represent you in your commercialization efforts or to handle your intellectual property matters with the services of Patent Practitioners registered with the United States Patent and Trademark Office.

That is why InventSAI is the #1 full service agency for inventors. Whether you have a new invention idea or an improvement on an existing product, InventSAI can help!

At a glance

INVENTOR TRUTHS

★ PATENT WHAT YOU KNOW
This seems a simple concept, but the person we consider an "Ideal Client" has an invention they could build or direct others to build.

★ IDEA
★ RESEARCH
★ DEVELOPMENT
The Idea Stage is where the invention takes root, from there virtually every successful product idea goes through R&D (Research and Development).

★ LEGAL
★ TECHNICAL
★ MARKETING
A Patent, Copyright or Trademark provides both ownership and legal protection. The Technical considerations ensure that the idea can work and be produced cost-effectively. Marketing concentrates on commercialization through the many available avenues.

★ DON’T SKIP A STEP
★ DON’T GO CHEAP
All three areas and all three stages are equally important. Likewise, hire the best professionals possible. You need a personal relationship with a Licensed Practitioner, Professional Engineer and Market Specialist.

★ HIRE AN EXPERIENCED AGENT TO COORDINATE EVERYTHING.
Hiring separate professionals that don’t coordinate their work is usually a recipe for failure. There are many examples, but a perfect analogy is: a foreman on a construction site coordinates licensed professionals from various fields working towards one common goal.
Twenty-Four Truths

1. Patents, along with Copyrights and Trademarks, are generally known as “Intellectual Property” rights that are granted by the government.

2. An invention or discovery must be new, useful, and non-obvious to be patentable.

3. Only an individual or group of individuals, never a business entity, can be granted a patent.

4. Companies acquire patent rights from the individual(s) by means of a legal document called an assignment.

5. A patent is a monopoly granted by the government to make and use the invention for a limited time.

6. Patents have expiration dates and cannot be renewed.

7. After a patent term expires, it goes into the public domain where anyone can use the patent for free.

8. On rare occasions, the government will extend the patent term if the pending period was unusually long.

9. Currently, there are 146 countries that issue patents.

10. There is no international patent.

11. Inventors wanting patent protection in foreign countries can file in selected countries, or alternatively become patent pending throughout most of the world by filing a Patent Cooperation Treaty (PCT) application.

12. Non-Provisional Patents include Utility, Design and Plant.

13. Utility Patents are for an article of manufacture, machine, process, chemical composition, and computer software. The term is 20 years from filing.

14. Design Patents protect either an industrial or an ornamental design. Term of a Design Patent is 14 years after issuance.

15. Plant Patents are for asexually reproduced varieties of plant material including flora, fauna, and hybrids of fruits, vegetables and tubers. The Plant Patent term is 20 years from filing.

16. A Provisional Patent is a simplified filing that maintains an early recorded date for a maximum of 1 year unless continued into a Utility application.

17. Patent Pending is a notice used to indicate that a patent application has been filed. The pending process is usually 2 or more years, except Design applications are around a year.
1. There is no such thing as a “Poor Man’s Patent.”

2. Depending upon how the statistics are calculated, either about 8%, or less than 5%, of all issued patents get onto the market.

3. Only a registered Patent Attorney or Patent Agent, who has passed the Federal Patent Bar, is licensed to legally help inventors prepare, file and prosecute a patent application or to provide an Opinion of Patentability. A General Practice Attorney, or any unlicensed individual, can not legally offer patent advice or prepare an application.

4. Virtually every patent application is rejected at first by the Patent Examiner. These rejections are called Office Actions and are almost never final.

5. A prosecution strategy for dealing with an expected Office Action should be developed before filing the patent application, even all the way back to the preparation of a Provisional filing.

6. An inventor forfeits his/her patent rights if the invention is publicly known, or is offered for sale, more than a year before the filing of a patent application.

7. Patent applications are made public by the Patent Office 18 months after filing unless the application contains a “Non-Published” request. “Non-Published” requested applications won’t become public until the patent is issued.

The patent truths offered here will allow a first time inventor to get started in the right direction.

THE WHOLE NINE YARDS
How to become a successful inventor? Here’s the “whole 9-yards”:

1. Fill a need or solve a problem cost-effectively.
2. Become an invention process expert.
3. Be diligent.
4. Hire competent professionals.
5. Listen to, and sort out, criticism.
6. Coordinate legal, engineering and marketing efforts.
7. Be in charge.
8. Be persistent but don’t be stubborn.
9. Be realistic – it will cost money.

Now that you know the “whole 9-yards” of being a successful inventor, there are a few final words of caution for small-entity inventors.

Resist the urge to be your own patent attorney. An inventor should always use the services of a Patent Attorney or Agent licensed by the Patent Office for assistance. It is important to note that not all attorneys are licensed to do patent work. It is best to find a patent practitioner accustomed to working with small-entity inventors. Be involved in the patent application preparation by directing your attorney/agent to incorporate what you consider to be the best advice from your technical and marketing team. Just as an inventor should never be their own patent attorney, nor should an inventor allow an un-licensed person to prepare a patent application in order to save money. Using a licensed patent practitioner is an absolute must.
I’m Ready. Where do I start to approach Walmart?

A famous violinist was once asked: “What’s the best way to get into Carnegie Hall?” The answer was: “Practice! Practice! Practice!” Just like there is no quick and easy way to make it as a performer on the stage of the world renowned Carnegie Hall, there is no quick and easy way to get an invention on the shelves of Walmart. It takes time, hard work and a dose of good fortune.

Assuming that you’re the typical inventor, the goal is to get your invention on the shelves of Walmart, the world’s largest retailer. Saying it is one thing, but actually doing it is another thing entirely. Even if you have a good product, there are a lot of hurdles to jump over. The good thing is that Walmart has an open submission policy as well as a local test market program. Getting into Walmart for an inventor is like getting into the major leagues for a baseball player. And just like a ballplayer has to first exhibit success through the minor leagues, an inventor should try to build sales momentum with smaller retailers before approaching Walmart.

Walmart has a strictly defined submission process before there is a chance to meet face-to-face with a buyer. But even before that step, the inventor will have to have production and packaging worked out with a real product. The inventor can choose to be in charge of production themselves or join forces with an existing manufacturer. Once that decision has been made, and there is product and pricing, then in order to get involved with Walmart’s National Program go to: www.walmartstores.com/suppliers and download the online submission package. It is best to include current real-life sales data with the submission form. What’s next? You wait for the buyer to respond.

Another option with Walmart is their Local Buying Program where at least one local Store Manager must be convinced to stock your product. This program requires completion of the Local Supplier Questionnaire and approval of a District Manager. This option can be used while waiting for the national buyer to respond. On the surface, this seems like something doable but getting the face-to-face appointment to pitch the Store Manager is not so easy. So the first job is to sell the Store Manager on granting an appointment followed by selling the Manager on the salability of your invention product. This normally will take months, so it would be best to try every store manager in your area.

When you get your appointment either with a local store manager or with a national buyer, you will have one shot so be ready. Here are 10 items to have ready to present with a business-like approach when the time redefining the cellular telephone

**Local Vendor Program**

Walmart’s Best Kept Secret

The Local Supplier Questionnaire may be obtained from your local Store Manager/Food Merchandiser after he/she reviews your product and if he/she wants to sell your item(s) in their store. Two signatures required after the Supplier fills out the questionnaire completely (all blanks filled in). The store manager, and/or the District Manager’s (general merchandise) or Food Merchandiser’s (food items) should sign the questionnaire and list the Store numbers (by District) requesting the product. Supplier will submit completed Local Supplier Questionnaire directly to Local Purchases at the Home Office. Requirements for a Complete Packet: (address on questionnaire.)

- Dun & Bradstreet number
- UCC Membership Number -
- $2 Million Supplier Insurance
- Workers’ Compensation
- Employers’ Liability
- Minority Certification (all minority & women-owned suppliers):

Walmart Stores, Inc.
Attn: Local Purchases
702 SW 8th Street
Bentonville, AR 72716-0145
I have an invention idea that I need help with

I need help marketing my shelf-ready product

I only need patent and legal help