The Case Against Patents

Let's start off with a seemingly simple quiz – Which of the following is the most likely to cause you no end of grief?

(A) Dealing noontime crack on the front stairs of the Salt Lake City police station.

(B) Shooting a sequence of kiddy porno videos in the basement of your favorite church.

(C) Calling yourself an inventor and behaving like you were one.

A trick question, of course. Given the normal franchise prepayments and when handled as a class act, (A) and (B) will both have considerable upside potential and a rather well defined risk-to-reward ratio. But (C) is *certain* to be an absolute and total loss.

Over the years, "they" have defined any inventor as a mark to be conned. As a sheep to get shorn, gang raped, flayed alive, and finally nailed to the nearest shed.

Now, it is fine to be an industrial product developer, run a prototyping house, or be a concept consultant or an evaluation specialist. All of these are acceptable roles in society for which, at least occasionally, you may end up being quite well rewarded. These are also the sorts of things that you, as a Midnight Engineer may want to be striving towards. Upward and onward.

But don't *ever* refer to yourself as an inventor or act like one, for you are certain to end up done in very badly. Do not ever let anyone even suspect that you are capable of inventing anything.

All those invention marketing services with their tiny classified ads are not really the main problem. These folks are basically selling dreams and wish fulfillment in much the same way as a vanity publisher or, for that matter, an X rated movie rental. Because the use of any invention marketing firm is the guaranteed kiss of death for any new product, these also do serve a useful purpose in helping keep abysmal junk out of the marketplace.

The patent process itself is by far the worst offender in inventor bashing. If a Las Vegas casino operator had the gross effontery to offer the same odds the patent office does, they would be tarred, feathered, and run out of town on a rail. If it were not a government bureaucracy, the patent office would long ago have been shut down under the RICO racketeering act.

Now, the patent system may or may not still retain some marginal utility in a Fortune 500 enterprise. But, as a Midnight Engineer or other small scale startup, nearly any involvement whatsoever with the patent system in any way, shape, or form, is virtually guaranteed to cause you a monumental long term loss of time, money, and sanity. I d guess the main problem is the mythology that has built up around the patent process over all the years. A mythology which no longer applies to the Midnight Engineer or to a small scale startup. Let's try and replace the myths with some cold hard facts–

Fact – Your patent does not in any manner prevent others from stealing or using your ideas.

Should you go patent something, anyone is totally free to market your product, rip off all your ideas, or tell others about your work. And there is nothing immediate you can do to stop this from happening.

All a patent does is give you the right to sue someone in a civil action. At some future date in a ridiculously costly, extremely drawn out and easily circumvented legal process. Nobody has ever "won" any patent litigation. The main purpose of patent fights are to cause more grief and harm to the opposition than you are causing yourself. Almost always, this purpose fails miserably.

Fact – Not one patent in one hundred will ever show any positive cash flow.

There have been several patent productivity studies done. While most of these cite ratios of several hundred to one or higher, 100:1 seems a useful and very generous working figure. Thus, your state's lottery is usually a vastly better investment than a patent.

Fact – There is not one patent in one thousand which cannot be invalidated or severely minimized by a diligent enough search for obscure enough prior art.

Very simply, there are zillions of people world wide who are inventing things. And they all have pretty much the same tools and technology at their disposal. So, almost certainly, you are not first with your idea. All it takes is some provable prior art anywhere, and your patent is patently useless.

Fact – Prior art is not needed to bust any patent.

All you really have to do is show that the claims would have been reasonably obvious to any "practitioner in the field." That's all it takes.

As is often the case, a patent search gets made without actually looking at any of the *non-patent* history of the field in the way of key papers, seminars and trade journals.

All you have to do is find someone somewhere that says it sure would have been obvious to them.

When (not if) your patent ends up busted, you will also run the risk of a *frivolous litigation* countersuit. Thus, if you have the temerity to try and defend your patent, you could end up being fined thousands of dollars.

Fact – Ideas are usually worthless.

At one time, way back in the golden age of inventing, ideas were worth as much as a dime a dozen. These days, they are worth less than a dime a bale in ten bale lots.

An idea becomes useful only when and if it can get converted into some marketable product that in fact ends up solving end user needs. A concept known as the *idea mortality curve* clearly shows the many and costly steps needed to get from raw idea to value.

If you cannot demonstrate end users getting off on your idea, it has no value. It ain't creative unless it sells.

Fact – Big industry does NOT buy ideas or patents.

Change of any kind is anathema to any large Fortune 500 corporation. The only reason a new or improved product is ever released is in response to the clear threat of losing market share. Even then (as was obviously the case with minicomputer manufacturers), a larger corporation may choose to drop the ball completely, rather than adapting to any sorely needed change.

Consistently, it is all those garage startups and other smaller companies that introduce innovation and change to the marketplace. Only if the changes are overwhelmingly superior does big business pay attention.

Typical larger corporations have a policy of flat out rejecting any outside invention submission. The reason for this is simple: Several millions of dollars of in-house ongoing research and development could be lost should some outside epsilon minus and his attorney scream "You stole my idea!"

The NIH (Not Invented Here) syndrome is alive and well in most larger firms. It looks bad when the R&D staff gets blown out of the water by some kid in a garage somewhere. So even if you have an absolutely outstanding new idea with rock solid patents behind it, most of industry simply could not care less.

Fact – Nobody voluntarily pays any patent royalties.

Nearly any company would much prefer to give their legal department $100,000 to bust your patent before they would ever stoop to paying you $10,000 in royalties. Outside patents are something to be ignored, avoided, worked around, or outright busted in court.

But never to be honored.

Fact – You WILL get ripped off.

The odds are very much stacked against the Midnight Engineer startup from day one. If you are a creative type that designs things, the chances are you got that way in the first place through ignoring people and legal details. So, you will have your ideas stolen. You will be lied to. You will be misled. Fer sure.

The trick here is to recognize the inevitability of this ripoff process and not get too upset when it happens.

Ripoffs come with the territory. So, factor them in ahead of time and it won't be nearly as rude a surprise when it surely happens to you.

Some Better Alternatives

So, if you are a Midnight Engineer, just what are the alternative methods for successfully marketing your ideas and concepts? Based on many years of personal experience and several cubic yards of overflowing third-party patent victim files, here's what I'd suggest...

First, totally avoid any and all contact with anything even remotely patent related. In any way, shape or form.

Do so religiously.

Second, don't even bother creating anything in any field in which you are not eventually *certain* to become an expert. An expert that is thoroughly familiar with the technical literature, the history of the field, the marketing realities, the insider trade journals, and the mainstream tools and techniques in use. There is no point whatsoever in writing forest fire simulation software if you have never sharpened a Pulaski. Nor (as sadly happened to yet another victim just this morning) in patenting a "new scheme to replace inductors" without having read and understood *Sallen and Key* in their 1955 classic paper.

Third, publish all your key secrets and ideas in a major magazine, leaving out no detail, and omitting no insider secrets. This immediately can generate positive cash flow for you and safely tucks all your ideas away in the public domain, preventing most others from attempting to patent them. This also will expose your new ideas to the widest possible audience.

Fourth, try to set up some royalty arrangement with a smaller to medium firm in some position to market and distribute your invention. The normal royalty payment is typically in the five percent range. Now for the tricky part: They must come to you, and *never* vice versa. That is why it is super important to publish your ideas and creations and expose them as widely as possible.

You normally have one and only one defense against getting ripped off in any royalty setup: The expectation that you will be delivering newer and better stuff in the future. And that is all.

Fifth, employ the shotgun technique. There is no way that one single idea or product will hack it. To survive in this game, you'll need hundreds or even thousands of new ideas and concepts working for you on a total lifetime and total lifestyle basis. Chances are that one or two genuine winners will pay for all the others lost or stolen.

Finally, be realistic. You don't create things to get filthy rich. You create things because you like to create things and have some compelling desire or need to do so. As long as there are enough nickels to keep going, that is all that should really matter. ❖

Microcomputer pioneer and guru Don Lancaster is the author of 35 books and countless articles. Don maintains a US technical helpline you'll find at (520) 428-4073, besides offering all his own books, reprints and consulting services.

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