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How to Stop Others From Stealing Your Inventions: The Three-Step Invention Protection Plan

Many inventors who come to me have a great new idea but know that they need some help to make it a reality. Few inventors have the resources to manufacture, market, distribute, and sell their invention by themselves. They may need to bring investors on board to supply capital, hire manufacturing or programming experts to implement their idea, or partner with a big company with an established marketing and distribution network for that type of product.

Naturally, these inventors are concerned about exposing their ideas in their search for the help they need. What if, seeking a partnership, they tell a big established company about their idea and find themselves rebuffed, only to discover later that the company has started making their invention independently? Having an idea stolen is one of an inventor's worst fears.

The Three-Step Invention Protection Plan

I always recommend a three-step, three-layer protection plan to allow inventors to market and develop their ideas without having to worry about their idea being stolen.

1. Apply for a patent covering your invention
2. Use non-disclosure agreements
3. Disclose only as much as necessary

Each of these steps provides its own layer of protection with different advantages and disadvantages.

Step 1. Apply for patent protection

If your invention can be protected by a patent, applying for this protection should be your first step before discussing it with anyone else except a patent attorney. If you are approaching a patent attorney as a prospective client, the attorney is bound by a duty of confidentiality and by a fiduciary duty to you and it is safe to explain your invention to him or her.

Initial Patent Search and Filing

I generally recommend doing a patentability search before filing an application to make sure you are not wasting your time and money on an invention someone else came up with before you (and for other reasons). Your patent attorney can give you advice on this issue that is specific to your circumstances. Once you have either done that or decided against it, you should get a patent application on file with the Patent and Trademark Office.

The Value of "Patent Pending" Notice

Then, describe your invention as "patent pending" in all of your documentation and in your sales pitch. This puts others, particularly established businesses, on notice that you have applied for patent protection. Businesses are much less likely to steal someone's idea and spend millions developing, marketing, and distributing it when they know your patent could issue at any time and wipe out their investment.

Filing a patent application also has the added benefit of making it much easier to find investors. Most investors will want to see that your intellectual property is protected before they will invest their capital into a project, particularly if your invention is something a larger company could easily reverse-engineer and copy.

Consider a Provisional Application

If you are still developing your invention or would rather wait to invest in a nonprovisional application until you have attracted investors, you can start out with a provisional application. Provisional applications are less expensive and give you a year to file a full nonprovisional application that gets the same early date as your provisional.

Step 2. Prepare a non-disclosure agreement (and get it signed)

Also referred to as an NDA or confidential disclosure agreement, a non-disclosure agreement is a standard business practice when one person or entity must disclose confidential information to another. Do not let anyone make you feel bad for having them sign an NDA. Because I deal with confidential information, I require people that I work with to sign NDAs all the time. Search experts, translators, I require them all to sign NDAs. Make everyone you talk to sign one before you tell them any confidential information.

What is a non-disclosure agreement?

A non-disclosure agreement specifies how another entity must handle your confidential information and what they can and cannot do with it. Typically, the other party will be required to

maintain the confidentiality of the information provided to them, restricting access to those with a specific need for the information. The other party also usually agrees not to disclose or make commercial use of the information for a certain period of time, for example five years.

What to do to ensure the effectiveness of your NDA

Any documentation related to your invention should be marked "confidential," particularly if you are sending it to another party under the terms of an NDA. Anything you say orally should be summarized in writing, marked confidential, and sent shortly after your conversation. That way the other party will be certain to understand that you consider that information to fall under the terms of the agreement.

Typically, you can and should get the NDA prepared by the same patent attorney who prepared your patent application. Although non-disclosure agreements are common business contracts, patent lawyers deal with NDAs all the time and know the appropriate clauses to include for patent issues.

Once you get one NDA, you can usually swap out the name and address of the receiving party and reuse it for all your future discussions of the same confidential subject matter.

Benefits

An NDA gives you an extra layer of protection in case you divulge information not contained in your pending patent application or in case your application never issues as a patent.

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Step 3) Disclose only as much as necessary

Even with a patent application on file and a signed NDA, you should still take one extra precaution. Do not say more than you need to, even if the details are exciting and you want to share them.

Why patent applications and NDAs alone are not enough

Non-disclosure agreements and patents only act as a deterrent to those who would take your invention from you. They give you legal remedies in case they are breached or infringed upon, but they cannot proactively stop someone from taking your idea. If they want to, they can. They just are likely to end up owing you a lot of money. But, you might only collect that money years later, after a drawn-out court battle.

Consider the case that inspired the movie "Flash of Genius." The big automobile companies stole an inventor's new designs for improved windshield wipers after he went to them to work out a partnership, even though the inventor had patents covering the new designs. Only after a decade-long court battle was the inventor able to recover. The inventor received tens of millions of dollars in damages, but the long court battle cost him his health and disrupted his family.

Of course those events took place years ago. Nowadays it is a little easier to enforce your patents by arranging to sell your patent to a firm that specializes in patent infringmenet litigation, or by working out a contingency fee arrangement. Nevertheless, collecting damages in court is never a fast, easy, or certain process. Much better to make it impossible for a company to steal your invention by never disclosing the details at all!

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How much information should you provide?

Do not disclose anything unless you have a reason to. At first, disclose your general idea. If the party shows genuine interest and has legitimate questions, you can answer them with further appropriate disclosure under an NDA. Substantial disclosure is always going to be necessary to seal a deal, and you should not be afraid to do so with the first two safeguards in place. But do not send anyone all the details of your invention without a good reason.

Conclusion

Most inventors do not have the luxury of going it alone. They need to work together with others to bring their inventions to life and to the market. By following the three-step invention protection plan, you can market your invention appropriately and bring in the people you need without having to fear that your idea will be taken by somebody you approach. Utilizing three layers of protection: patent applications, non disclosure agreements, and limited disclosure, the plan protects your ideas against those who would take advantage of you and frees you to begin development of your invention.