

The Inventor's Bargain

Jane Lambert

Governments protect intellectual assets in order to encourage investment in branding, design, technology and creative works. Essentially it bargains with entrepreneurs, innovators and other enterprising and creative people. In exchange for dedicating the fruits of their labour, ingenuity or creativity to the public, they are allowed to entrench the market advantage that their work confers on them over competitors. This is best illustrated by the bargain that the state makes with inventors. Here is a summary of those terms:

"If you can persuade us that you have invented a new, inventive and useful product or process that does not fall within a number of exceptions, if you teach everyone in the industry how to make or use it, and then pay us a lot of money we shall register a specification of your invention at our intellectual property office. Registration will give you the a monopoly of that product or process in our territory known as a "patent" and so long as you keep paying us a lot of money periodically, you can enjoy that monopoly for a up to 20 years. We can't promise that you will make any money from your invention. That's up to you and your customers. If they like it they will buy it and if they don't they won't. However, if the public do buy your product or products made from your process, you have the right to prevent others from making, importing, supplying or using your invention during the term. That should be more than enough time for you to recoup your costs and make a tidy sum on the side if your invention is any good. If anyone tries to make, import, sell or use your invention during that time, you have the right to ask our courts for "injunctions" or orders to stop them, order them to pay "damages" to compensate for any loss or damage that you may suffer or both. Of course, you must have a good case and be prepared to pay your costs of going to court and maybe the other side's if you lose. It will not be a crime to infringe your patent, so you won't be able to complain to the police as you can if someone steals your watch or handbag. You must remember that while your patent is in force there will be restrictions on what you can do with it. You may not, for instance, threaten to sue shopkeepers just because they stock a product that you think may infringe unless it turns out that it does in fact infringe. After your term is up, anyone in the world can make the product or use the process in this country. Oh, and if at any time we find that we should not have granted a patent in the first place (which we may well do when you try to enforce it in infringement proceedings) we can take away your monopoly just like that. If we do that, you won't be able to rely on any trade secret or other legal protection because the

whole point of this bargain from our perspective is that you dedicate your invention to us. If we do take away your monopoly, all your efforts and investment will have come to nought, but, hey, that's life. These are our terms, mate. Take them or leave them."

These are the terms that we the great British public make with our inventors. The deal may be better in other countries such as the USA. But probably not that much better.

Who in the right mind would be an inventor?