Ironman Inventing

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Intellectual Property Business Strategies For The Independent and Small Business Innovator (Part I)

We have all heard or said -- "Hey. What (they) should do is ..!" Or better yet: "What they should have done is ..!"

At the moment "they" becomes "I", the seed of intellectual property creation is planted in the mind of the inventor, author, artist or musician. The new inventor charges off to create the "better mousetrap", sets his eyes on that pot of gold, and pursues the ubiquitous patent.

Depending on which source you believe, the percentage of unsuccessfully commercialized patents ranges between 93-98%. That means that even on a good day, no more than 2-7% of the patents ever return a "profit" to the inventor. It's incomprehensible then, that mankind would not come to realize that this poor success rate -- which has repeated itself year after year for a century or more -- is the result of perpetuating the "wrong formula" (even though we are considered to be the Planet's most intelligent creatures).

Almost true. The "formula" is simply "too much at the expense of too little". There is too much information published regarding "How To Get Your Idea Patented", and "How To Make A Million From Your Idea", at the expense of what is published on "How To Understand The Intellectual Property Valuation Process and Capitalize On It".

Or is even this true? In fact, the cold reality is that mankind is ever-looking for an easy way to get rich quick, and it is easier to self-justify spending money on those who will stroke your ego, and lead you to believe that your idea is the greatest, and that "You too can make a million dollars from your idea" than it is to come to terms with the trials and tribulations of how difficult it is to create the wealth that is normally associated with the well-known, successful innovators.

Those who discover the formula go down in the history books -- Frisbee, Velcro, Gortex, Erte, Men In Black, and James Michner. Those who wish for the "world to make a beaten path" to their door -- simply because they have an idea -- will not see success. End of philosophy lesson.

The Deed

Your claim to intellectual property is formalized in a legal "deed" much the same as your house deed describes the bounds of ownership of your real property. The "four corners" of your deed clearly describe your ownership. When you receive a patent, your "claim" is staked out and clearly defines what the property is to which you have monopolistic rights.

But what if your real estate deed says that your property line extends one foot beyond the fence between you and your neighbor. You would assume that you own the entire fence, plus the first foot on the other side. Don't let the neighbor put his Sears storage shed next to the fence on *your* one foot of property!

But your neighbor has a deed for his property saying that *his* property line extends one foot to *your* side of the fence ... AND he sends you a letter telling you to remove *your* Sears shed to 18 inches away from *his* fence.

Both are right, and both are wrong. To prove who has absolute rights, both will spend a small fortune in litigation -- and one will invariably lose his position.

Patents Are Much the Same!

Just because you spend every cent getting your patent, whether on the "cheap", through high priced legal counsel or somewhere in between (although the attorney will most often warn you about specific instances in which your patent would not survive challenge), your claim could infringe on another's written claim of patent for a small piece of the same property! You could spend all of your future profits in litigation today.

You should first re-familiarize yourself with "intellectual property" before you start off on the *quest for the holy patent*.

Now that you understand the basic definition of Intellectual Property, and overlay the above scenario to temper your zeal, you can begin to lay down a real-world, non-emotional, capitalistic approach to making money from your idea. This is the beginning of Intellectual Property strategy. You won't develop the strategic insight of Karpov, the chess champion, overnight but you will be open to learning how the pros make a successful business trading Intellectual Property.

You Have To Let Go If You Want To Make Money

Did you get that last sentence? Making a business of "trading" their property! "Keeping" it does not make money -- trading it away does. If you are simply going to pat yourself on the back because you have a patent ... well, so what? I'd almost *give* you one of my patents if you really want one.

But I would charge an arm and a leg for my successful ones. Therein lies the difference. My later patents were developed because I better understood the future value of them before I started development, and more importantly, I identified how I might get the value out of them in the future.

To capitalize on your idea:

1. You can sell a license to your patent -- if you can find an interested company who concurs that you have a profitable idea,

2. You can sell your patented product -- if you can find customers who value your product, or

3. You can sell your company which manufactures and successfully sells a product which is produced under your patent -- if you can find investors who concur that the asset value of your "property" equals or exceeds the selling price.

The common denominator in each of these strategies is that the intellectual property must deliver value to the *buyer* --- not to *you*!

In the 1967 movie "The Graduate", the most memorable line was "the future is plastics". Today, I can confidently say that the "the future is marketing". Too much technology (intellectual property) sits valueless on the shelves -- while the Ginsu Knife continues to hit respectable sales decade after decade. Because of technology? Nope, *marketing*.

The most fundamental profit strategy underlying your association with intellectual property must be founded in marketing -- not technology or design. Understanding your customer (who is global by today's definition) is crucial to the process. After you have the basic idea defined -- but before you start spending money to develop or commercialize it -- identify your potential buyers, their motivations, and your method of approach.

Now let's take a quick look at these three strategies. (We'll come back to them later in this series in more detail.)

Sell A License To Your Patent

Note: After you figure all of the items below, use a probability of success factor of 10-20% -- that beats the 2-7% we spoke of earlier, although many factors can influence this number.

The "value" in this strategy lies in what a licensee company feels your product is worth if *they* take the risk to prove its marketability. You should:

1. Identify those companies which you think would pay you money for your idea (rights to your patent, since most will not pay for ideas),

2. Identify those companies' customers -- who is buying their products and why. Do the products satisfy wants, needs or desires ("needs" command a higher price and profit -- but also higher competition).

3. Identify how the companies generate profits from the sale of their products -- supply and demand, must-have versus want-to-have, economically justified (i.e., the product makes their customers money , e.g., construction equipment), or impulse-buy at the checkout register (e.g., beef jerky and cheap fancy key chains) -- all relate to high-volume/low-price to low-volume/high-price pricing and profit structures.

4. Identify the companies' manufacturing technologies, and assess whether your idea will fit within their current manufacturing capabilities (plastic vs. metal, stamped vs. cast, high production vs. hand-built),

5. Determine whether the company has a history of licensing products from independent inventors (Nordic Track does, Ford Motor Company does not),

6. Complete a production cost and probable sales price analysis -- the *complete* cost of production should be no more than 25% of the ultimate retail sales price, 20% is better,

7. Complete a sales forecast of your product. It's hard to pull out the crystal ball, but try to find out how many of a similar product are being sold (talk to distributors, retail stores, etc.), then project how many of your products could be sold. Use a smaller volume projection if the price is higher, higher volume if cost is lower, although there are exceptions not within the scope of this article.

8. Develop a budget outlining how much it will cost you to get your idea to the form of a demonstrable product which can be presented to a potential buyer (prototype, engineering, tooling if any, patent filing costs, brochures, initial inventory, travel, attorneys fees to work through an agreement, midnight oil -- and another 10% of all of the above for other hidden costs). You can see that the "patent" is really a *small* part of the total costs, so don't blow your bank account on going after the patent,

9. *If* all of the above objectively suggests that your product would have value -- *and* a disinterested third party such as a distributor (who has signed a confidential disclosure agreement) confirms it for you -- *then* use the "how to patent" references to begin the patent process,

10. Use a royalty figure of 5% of the sales (companies' sales to their distributors -- not the retail sales figures), and determine whether the economics suggest that you move forward with your ideas.

Once you have "patent pending" status (other than that provided for by means of a Provisional Patent Application), you can begin laying out your contact list of the most qualified companies identified in step 1 above, develop brochures and a business plan (since companies buy profit potential

-- not ideas), and start making contacts. Your most reasonable allies are the Marketing Managers, since it is their job to create new sales and profits. Keep on until you have a license agreement.

Build and Sell Your Product

Note: After you figure all of the items below, use a probability of success factor of 30-40% -- that again beats the 2-7% we spoke of earlier and, again, many other factors can influence this number.

The "value" in this strategy lies in your ability to convince the distribution channel and their customers to buy a fixed-price, tangible, quality product. This is a much lower risk since there are many test merchandising and consignment inventory options which lessen the buyers' risk. You take more risk -- but if successful -- see higher profits. Here is how you can go about assessing this strategy:

1. Compete the assessment steps 1-4 above. These companies will be your competitors -- get to know them inside and out,

2. Identify a company which can manufacture your product under contract. You will need a non-compete and confidential disclosure agreement before you discuss your idea with these manufacturers,

3. Complete the costing steps 6-9 above, since understanding *your* costs to produce are even more important here -- you can't afford to miscalculate like a big company can. Be sure to add in advertising and sales costs which an advertising agency or distributor can assist you with.

4. Develop a contract with one of the manufacturers which outlines the details of the relationship -- will they build and you pay, or will they take a "piece of the action" to become your partner? Get a pro involved to assist (and factor *that* cost into the overall equation).

5. Cut the deal, produce and sell the product. It sounds simple, but there are many details -- well covered in a variety of sales and marketing books.

Build a Company Which Makes and Sells Your Idea

Note: After you figure all of the items below, use a probability of success factor of 60% as a target although,again, many factors can influence this number.

The "value" in this strategy is the same as that outlined in the preceding strategy -- except that here we're aiming to increase that value through "price/earnings" leverage (which we'll describe more fully later in this series).

We all know that the owners of Microsoft and AOL got rich when their companies started publicly trading stock on the market. They realized the value of their intellectual property many times over since their strategy encompassed more marketing strategy and strategic competitive positioning than focusing primarily on the technology.

Of course, technology was the initial foundation. But, today, because of their marketing strength, they can profitably deliver mid-quality products over their competitors with superior technology only because of their strategic market advantage. Market positioning was the strategy behind the introduction (and total corporate control over) their technology.

I won't go into the details of starting a company since there are many good business start-up references available. My advice would be to contact a pro who can help assess the risks, costs and potential of such a venture. Suffice to say that starting your own company should not fall outside of your Intellectual Property Strategy considerations -- especially if other companies you may have contacted in the first two strategies poured cold water on your product ideas -- yet you remain objectively convinced that your idea is a winner.

In Summary

Our Intellectual Property Strategy should include consideration of *all* avenues of potential sales -- of your product idea, the products themselves, and the stock of a company you start to build and sell the products. Not until you have clearly assessed the profit potential of *all three* choices, settled on one or more, laid a business plan, and allocated the resources to see it through, can you realistically begin to spend money pursuing the pot of gold -- that ubiquitous Patent.

But even receiving your patent is not the end -- it is just the start of building a patent inventory or portfolio. There *is* strength in numbers! It's this perspective we'll cover in Part II.

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