

Why Inventions Fail

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I. Introduction.

U.S. and worldwide patent filings are at all-time highs. About 620 thousand patent applications were filed in the United States in 2016, and about 2.9 million patent applications were filed worldwide in 2015 (the last year for which complete statistics are available).

It is estimated, however, that 90% or more of patented inventions are never commercialized, licensed or sold. There are three major reasons why inventions fail: (1) the invention has little or no inherent value; (2) the inventor or company lacks the ability to get the invention to market; and/or (3) intellectual property protection for the invention is narrow and others can simply circumvent it.

II. An Invention Must be Inherently Valuable.

If an invention has no inherent value, nothing can salvage it. Inherently valuable inventions are usually developed by people continuously working with existing products and problems. The idea for a new invention comes from, for example, a desire to do something faster, better, or to solve a previously unsolved or unrecognized problem.

III. You Must Get the Invention to Market.

Many good inventions never see the light of day because inventors never get them to market. This is usually due to a lack of contacts or resources. There are generally two ways to get an invention to market: (1) manufacture and sell the product yourself; or (2) sell/license your invention to a larger business with the resources to manufacture and sell it.

Start-up companies without the resources to manufacture and sell an invention sometimes spend years unsuccessfully trying to access key decision makers at large companies. If you plan to license or sell your invention to a large company, ask yourself these questions:

- (1) Does your team have former C-Suite personnel with contacts at the C-Suites of large companies that could make and sell your invention?
- (2) Does your team have a history of success in taking an invention from conception to selling it to larger companies?
- (3) Is your team experienced pitching new inventions to C-Suite executives of large companies? In a 10-15 minute presentation, you should be able to convincingly explain the drawbacks of existing products, benefits of the invention and why people will buy it, and the metrics (e.g., costs, sales, market size, profits) associated with the invention.

If your team lacks these attributes, and your goal is to sell/license inventions to large companies, it may be well worth contracting with a knowledgeable business consultant with access to C-Suite decision makers.

IV. Meaningful Patent Protection Is Key.

A. Prepare and Prosecute Patents with Broad Claim Scope.

The importance of broad patent scope to carve out a large technology sector in which you have exclusive rights cannot be stressed enough. Do not leave patent scope (i.e., the scope of your exclusive technology sector) on the table for others to practice and circumvent your patent(s). This often happens when (1) patent scope is initially limited to a specific embodiment of the invention, rather than expanding the scope to encompass as much of the inventive concept as possible, or (2) the scope is narrowed during prosecution to push an application – regardless of scope or value – through the USPTO. By initially preparing narrow claims, or unnecessarily narrowing claims during prosecution, you create design-around opportunities for competitors, or potential customers, who can simply circumvent the patent and take the invention.

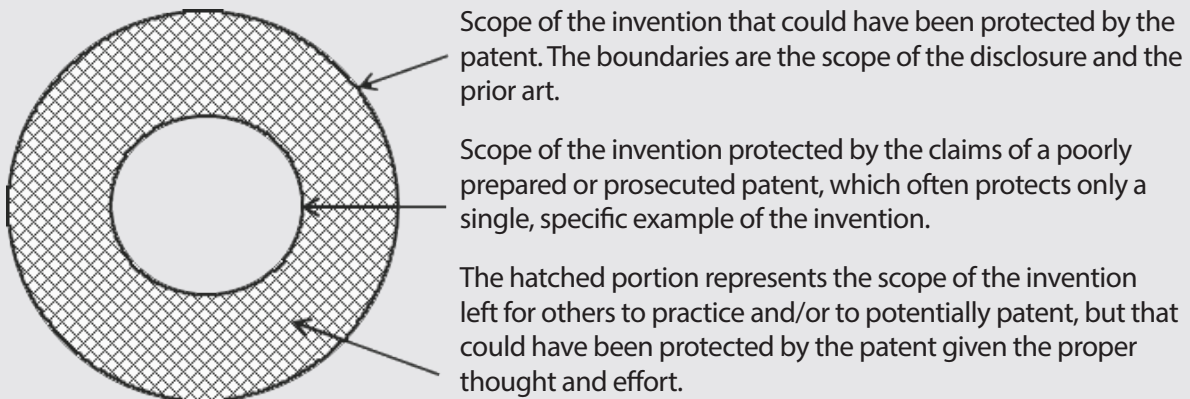
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B. Shortsighted Thinking Can Lead to Worthless Patents.

A patent defines a piece of intellectual property. As with a parcel of land, the patent’s owner can legally prevent any trespass (called an infringement) on the patent. Accordingly, analogous to the size of a parcel of land, the size of a patent (usually referred to as its scope) is critical in determining its value. In the context of patents, where even slight mistakes, omissions or carelessness can mean the difference between a patent worth millions and a worthless piece of paper, patents prepared and/or prosecuted with little forethought about the end game, which is selling or licensing the invention, often have no value.

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Example: Patent Application With Narrow Claims



V. Conclusion.

There are three major reasons inventions fail: (1) the invention lacks inherent value; (2) the inventor or company lacks the ability to get the invention to market; or (3) inadequate intellectual property protection allows others to copy the invention. Early in the process, get people on board – such as consultants – who know the market for your product and can introduce you to C-Suite decision makers. Have a short, focused presentation that quickly summarizes the advantages of the invention and the market opportunity. Finally, obtain meaningful patent protection. Without it, any sophisticated company will design around the patent and take the benefit of the invention.



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Dave Rogers is a registered patent attorney with over 20 years of experience. He practices patent, trademark, trade secret and unfair competition law, including: litigation and arbitration; trademark oppositions, cancellations and domain name disputes; preparing manufacturing and technology contracts; and patent and trademark preparation and prosecution.