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WHAT IS A PATENT?

Many people are under the impression that a patent is an easy road to getting rich. A commercial is running on TV right now depicting poor inventors who missed out on lots of money because although they thought of the greatest invention, they didn't patent it. This commercial is for a company known in the trade as an "Invention Mill." I will not name the company or any other company for that matter, but I am sure that you are familiar with them. The problem with these companies is they imply that they can take you through every step necessary to make money off an invention. In general, this is a "too good to be true" offer. The best way to obtain protection for your intellectual property (IP) is to seek help from either a patent attorney or a patent agent.

The difference between a patent attorney and a patent agent is that a patent attorney is a member of at least one state bar as well as the patent bar and is therefore an attorney, where a patent agent is a member of the patent bar only and is not an attorney. In my opinion although I am a patent attorney, either one is really just as good to help you file a patent application. Of course if you need some help incorporating your business or you need to stop an infringer, you need an attorney. To finance your invention, you need investors or bankers or family members etc. To build your invention, you need to find a good manufacturer for your product.

Unfortunately, although it would be great if there really was a company that could put this all together, in my experience it doesn't really exist. This is not to say that there are not associations and chambers of commerce, etc. that can't help you make contacts and network. I encourage all inventors to join such associations. They are a really good resource, but they will require you to get out there and do the footwork. The companies that promise you lots of money by just submitting your idea to them just isn't true for 99.9 % of the inventors. I have seen the testimonials of a few individuals who claim that some company did that for them, but it is hard to verify and in general, if you are going to make money off your invention, you have to get out there and be a promoter. There is no magic company that can provide everything. In this issue of the Patwrite IP Newsletter, I will begin the first of a series of articles on the basics of patents. You can consider this Patent 101. I will start out with some basic definitions and give you an idea of just what a patent is and is not.

First, a patent is not a "gift" from the government to make you rich. When the founders of our nation met to draft a constitution, a leading American intellectual by the name of Benjamin Franklin was very impressed with the role that science plays in advancing a nation. Many of the founders were a product of the scientific revolution that had begun in Europe and was especially evident in the French Revolution. The idea of how best to promote the advance of science and technology was debated. However, as a nation they were also acutely aware of the monopolistic hold that both the "crown" and the trade guilds had on society in Europe. We as a people wanted freedom and the founders took a dim view on monopolies. As our nation has grown and matured, we still have a deep seated distrust of monopolies and Microsoft has most recently experienced the result of our effort to ensure free competition in the market place. In the past the phone company was broken up into all the baby bells, etc. So in the context of competition, what about a

patent? It epitomizes the opposite result. It gives the inventor a virtual monopoly on his or her invention.

Why would our government grant a patent given our strong distrust of anything monopolistic? The founders of our nation decided that the best way to encourage the national intellectual growth and prosperity was to promote the "Arts and Sciences" by allowing inventors to profit from their inventions while requiring them to disclose as much as possible about their invention. That is the basic purpose of a patent; to increase the knowledge base of the nation. It is not because Uncle Sam wants to be nice to inventors, it is because our founders felt that inventors needed to be encouraged to bring their inventions to market and the grant of a limited monopoly was the tradeoff. Knowing the basic purpose of the patent helps you as an inventor to realize what a patent is. It is first and foremost a document that tells the world how to best make your invention. Second it also allows you a limited amount of time to control your invention. In the United States you have twenty years from the date you first file your patent application to exclusively control the making and selling of your invention.

In the next article, I will discuss the patenting process in the United States and give you an idea of what to expect in the typical patent application.

Mark David Torche

Patwrite (866) 42-IPLAW (866-424-7529)

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