

Introduction

Patents are serious—an inescapable business reality. Many view them as obscure, hyper-technical legal documents.

Tony likes to tell the story from early in his career about a meeting where his boss asked, “Why do you care about patents? They’re legal things.”

Yes, they are “legal things.” However, because patents affect so many people involved in product development—from R&D to marketing and sales, from packaging designers to manufacturing engineers—they can no longer be brushed aside. A primary objective of this book, therefore, is to make patents and the patent process easier to understand by explaining the basics, starting with “Why learn about patents?”

Why Learn About Patents?

This question has a simple answer: Not understanding the basics of patent law—and, more importantly, ignoring them when developing new products—can have serious consequences. Many months or years of R&D, testing and marketing strategies can be lost. Even worse, you could face a patent infringement lawsuit.

Litigation is costly, and not only in terms of attorneys’ fees. Ongoing litigation disrupts operations. Once litigation is over, an unfavorable ruling could have consequences far beyond stopping you from selling product. Under US law, court-ordered damages can include having to pay the injured patent owner up to three times his lost profits.

Given the significant expenditures associated with a product launch, there should be some high degree of assurance that the product to be marketed will not be pulled from the shelves forcibly and unwillingly because of the threat of a patent infringement lawsuit. A cornerstone of *Patent Peace of Mind*, therefore, is the “right to market.” Also referred to as “freedom to operate,” this “right” can best be determined by conducting a diligent patent search early in the product development lifecycle.

Why File for and Obtain a Patent?

Patents confer exclusivity. Patent protection lasts for almost two decades, and patented ideas cannot be used or copied—at least not without permission. By contrast, non-patented ideas *can* be used and copied. Moreover, non-patented ideas can be patented, perhaps unfairly, by someone else.

Patents also secure and increase market share. To compete in an increasingly global marketplace—one with more sophisticated and demanding consumers—finished goods companies are under constant pressure to introduce, not only new products, but products backed by science which can be understood and valued by consumers. Marketing must be able to tell a story about why the company’s latest product is better than previous versions and superior to the competition. Patents help to accomplish this. The terms “patented” and “patent pending” on packaging and in advertisements influence how the consumer views the product. They are associated with “new,” “unique,” “improved” and “better.”

These terms are also the key concepts underlying patent law: Patents are awarded for novel, non-obvious ideas. Patent law rewards those who meet a long-felt but unmet need.

Finally, securing and maintaining patents adds directly to the bottom line. Patent rights can be sold or licensed. Patent positions can also lead to cooperative R&D efforts. Moreover, there have been, and will continue to be, mergers and acquisitions in our industry. A significant determinant of the value to be paid for a company is its intellectual property portfolio, which consists largely of patents. As part of the due diligence process in any corporate transaction,

investors or potential purchasers will ask several questions about current products and products in development. Does freedom to operate exist? Is patent protection in place? If so, how strong is that protection? Can the patents be easily circumvented? Can the claims be easily challenged (i.e., argued to be invalid)? Can the protection be expanded? In short, how good is the company's patent health?

How Can You Achieve Patent Peace of Mind?

Product development requires teamwork between professionals from many disciplines—marketing, R&D, testing labs (for safety and efficacy) and legal. Legal departments and attorneys can be a very important part of the process. An attorney can work to ensure that you obtain Patent Peace of Mind by helping to obtain a patent or ensuring that a patent claiming your product doesn't already exist. Unfortunately, relationships with attorneys often start somewhat uncomfortably. People frequently go to attorneys for unpleasant reasons—contract disputes, divorces, probate matters and the like. A first step in building a strong attorney relationship is to encourage everyone involved in the product development process to work with attorneys throughout the process—before trouble arises.

Successful relationships are built on the ability to effectively communicate. For this to happen, everyone must learn and be conversant in the basic vocabulary of patent law and science. *Patent Peace of Mind* provides that learning tool.

Conversely, patent lawyers must be more than conversant with the language of science. In fact, as a prerequisite for taking the Patent Bar—the separate, specialized examination that qualifies an attorney to represent clients before the US Patent and Trademark Office—the attorney must have taken a specified number of college and/or graduate school courses in science or engineering.

Facilitating effective communication between chemist and patent attorney must begin by giving the chemist the basic vocabulary of the patent law. In *Patent Peace of Mind*, we start from the most fundamental aspects by defining “patent” and “inventor.” Next, we define what is “patentable.” This, in turn, requires an understanding of how the law defines “novelty” and “non-obviousness.” Once

these concepts are taught, we examine what is meant by “patent infringement.”

After reviewing the patenting process—known as “patent prosecution—we examine how patent disputes are resolved—through administrative proceedings brought in the US Patent and Trademark Office and litigation brought in federal court.

Learning can and should be enjoyable. In our courses, and in this book, we illustrate many of the key concepts of patent law by using examples based on popular film characters—Dr. Evil and My Cousin Vinny. We further illustrate the concepts by using real-world case studies from our industry. Also, to give you some interesting and fun things to think about, we’ve sprinkled the book with sidebars that contain facts about patents throughout history.

Working to obtain clear and regular communication is a bit like going to the dentist for regular cleanings. It may require a bit more work, but it helps to prevent drilling or, even worse, a root canal. The consequence of ignoring communication is unpleasant. To understand just how unpleasant, imagine being the patient of the masochistic, drill-happy dentist played by Steve Martin in *Little Shop of Horrors*. Smile.