

# Patents Pending?

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Ah, the American dream, to be an inventor, bringing new ideas, products and technology to the world. Since 1790, the United States Patent Office has granted more than 6 million patents. Many have changed our lives completely. We would still be living in the dark ages without the mass of new ideas brought about by the scientists and inventors of the world.

Before jumping into the invention arena though, it is a very good idea to educate yourself on the steps and hurdles that you may face. It can be a challenging. There are several items that should be considered including patent protection, financing, and marketing. I will try to touch briefly on each of these items, but first let me throw out a caution. There are many Invention Development Organizations out there that are not very scrupulous. They offer “free” inventor’s kits, invention evaluations, reports, patenting and marketing. Most of the time, they bleed you dry with fees and do very little. Contact

my office for guidance on using one of these services.

Patents provide legal protection “from others practicing the invention without permission.” The patentee gains the right to sue for infringement. Patent protection must be filed for within one year of describing the invention in a printed publication, using the invention publicly or placing the invention up for sale.

The inventor is able to file for a provisional patent during this first year. The provisional patent establishes an official date to confirm “first to invent”, but expires after the 12 month period, requiring another filing for long-term protection.

Any new and useful process, machine, manufacture, composition of matter or improvements may be patented. Laws of nature, physical phenomena and abstract ideas are not patentable. Only the inventor may apply for a patent, with certain exceptions.

There are three types of patents, design, utility and

plant. The utility patent protects the way an article is used and works, while a design patent protects the way an article looks. The plant patent applies only to horticulture. Both design and utility patents may, and should, be obtained on many items. Generally speaking the design patent is much cheaper to file for especially when using a patent attorney, which is highly recommended.

Unfortunately, changing the design requires filing a new patent.



You may find a wealth of information about patents at the U.S. Patent & Trademark Office’s website:

<http://uspto.gov/> . Before

filing for a patent, it is important to do a patent search so that a cross-reference to related applications can be included in the filing. You may also find that your idea has already been patented.

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As a final alternative, not filing a patent is an option and just maintaining a trade secret may actually provide more protection. Trade secrets work very well when it is the process or recipe that makes the product unique. Coca-Cola and KFC maintain trade secrets on their products. This may not provide protection if it can be reverse-engineered.

Some inventions are simple both in idea and in design. For these items it is fairly easy to find a manufacturer and go straight into production. Other products require a lot of testing and prototyping before they can be taken to the market.

Either way, money is an issue that needs to be addressed. Before paying a lot of money to file the patent, put a lot of effort into identifying the costs to develop and take your item to market, it can cost millions!

There are some grants available for research and development, but they are very restrictive. Research SBIR grants (<http://www.sba.gov/abouts/ba/sbaprograms/sbir/index.html>) for more information or

contact my office. Most money comes from the inventor or through investors who have been sold on the item. Many of these investors want you to be beyond the idea stage, ready to go to market or already in the market.



We have a nice list of angel investors and venture capitalists in the Rocky Mountain region available. Most are interested in emerging and high technology such as hardware, software, web, biotech, health care, energy and light manufacturing.

One popular option is to license the patent out to another firm to manufacture and take to market. Many big companies like 3M are

very open to reviewing your patent and proposal. Be warned once again, it may not work the way you would like.

Having the money is step one; step two is getting it to the buying public. If you are not licensing your product to someone else, this step falls to you and your business. There are many markets and hopefully, you have identified your prime ones before going through the patenting and developing process. It may be the government, it may be a manufacturer or it may be the general public. You should understand what demand exists. Is it going to be pulled by the customer, meaning does demand already exist? Or will you have to push it out to the customer, educate and inform to create demand? You will have to know what your price point is. How much will the public be willing to spend? You will need to understand the life cycle of the product. Will it be a fad item or become a life staple? You may need to buy shelf space in retail stores or present at trade

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shows. You will need to advertise and sell, sell, sell. You might have to look at selling into foreign markets. The list goes on and on.

Being an inventor is enjoyable and can be very rewarding. I hope this article has also given you an idea of the business side of making an invention a success. I know it has just touched on the surface of those topics. Please contact my office or look for other resources to help you see the total picture.

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