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About the Invention Process

Written by **Gene Quinn**
Patent Attorney & IPWatchdog Founder
Editor of the **IPWatchdog.com Blog**
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So you have an idea and want to get a patent? There are a number of things that you need to know about the invention and patent process that can help you focus your efforts and know what obstacles lay in front of you.

The first thing to know is that you cannot **patent an idea**. Many people will have great ideas, but will not be able to put that idea into a package appropriate for a patent because there is no invention, only a concept. To be sure, the idea is the all critical first step in the invention process. After you come up with the idea or concept you now need to put together a game plan on how to carry that idea through. The idea and game plan together form what the law calls conception. Conception is an important concept in patent law because in the United States it is the first person to invent that will ultimately receive the exclusive rights on an invention. That being said, it is critical that once you conceive (idea + game plan) you will need to be diligent and not let any grass grow under your feet as you move forward toward defining and experimenting with your invention. Generally speaking, conception without diligence can cause the first person who invents to lose the right to the invention assuming someone else invents after you but files their patent application first. So, the moral of the story is once you have your idea and the game plan move swiftly. The law realizes that so-called "garage inventors" cannot quit their day job, but the law will also require proof that you are consistently moving forward and not shelving the invention for periods of time in favor of other endeavors.

This leads to another important consideration, which is documentation and proof. In some cases it is necessary to for an inventor to be able to prove they were working on their invention in a diligent fashion. It is important for you to understand that the law will not accept the word of the inventor alone. An inventor's testimony is considered inherently unreliable. If, however, you have corroborating evidence to support your testimony, the picture painted will be strong and courts will listen. So what you want to do is document your work on your invention. This is critical for many reasons, not only to demonstrate diligence if necessary. It is important to know, however, that simply saying that you took days off from your job to work on the invention is not enough. You could have just as easily gone to the movies. If you purchase things from Radio Shack or Home Depot, keep your receipts. Also try and keep a regular schedule. If everyone you know can testify that you worked in your workshop for an hour or two every night after dinner, that could be

helpful.

Perhaps the most important thing you can do is to **keep an invention notebook**! The invention notebook should be like a diary of what you did and tried and when and how it went and what you are thinking about doing and trying and why. Be as complete and specific as you can be. One thing that we know and the law accepts is that inventors will usually document everything they do and try. This is because there is no way to reliably remember everything you did, so most who are inventors will write things down so they can keep things straight in their head and can know what they tried and what happened, etc. This invention notebook is very important, and can be the proof you need, as well as be tremendously useful to keep your thoughts in order.

Now, many idea submission companies and idea promotion companies will tell you that you should mail your invention description to yourself or friends. For more information see **Truth About Invention Submission Companies** and **Avoiding Invention Scams**. It is important to know that mailing things to yourself will provide absolutely no protection whatsoever. Assuming that you do not open the envelope and it is appropriately post marked, all that this will do is prove that as of that date you wrote what is represented on the pages included. Is this a bad idea? Well, it could be a piece of evidence if you ever need to prove you invented first, but it is not the most important piece of evidence. The most important evidence is going to be when you came up with the concept (idea + game plan) and whether you were diligent. Mailing something to yourself is not necessary at all. If you really have an invention notebook you should easily be able to prove diligence. Lets face it, if you were to sit down and write a notebook all in one day it would be obvious. In an invention notebook one expects to see wear and tear, the use of different pens and pencils, detailed notes, etc. If you have something that is legitimate it should be fairly obvious, particularly if people can testify that you write everything down in your invention notebook. Don't skimp on the invention notebook. Composition books are only $1 each, so fill them up and keep good records. You may find that in those records there are more than one invention, and at the very least a ton of information that will be useful in the future.

At this point in the process you now have come up with your idea and game plan, and are moving forward trying to finalize your invention. This process is trying to accomplish what the law calls a reduction to practice. You do not need to have a prototype built in order to get a patent, but you will need to be able to describe your invention with enough specificity so that someone who is technically skilled in the area of the invention can understand how to make and use the invention. Reduction to practice, therefore, can occur through the creation of a prototype or the specific definition of the invention. You will need one or the other though. If your invention is complex more explanation and definition is required. If it is relatively simply then less explanation is required. The more specificity you provide, however, the easier it will be for you and/or your patent attorney to write a patent application. If you hire an attorney you likely want to provide as much as is possible so that the attorney does not need to spend a lot of time weeding through invention notebooks to define the invention. The more you do and the more organized you are the less fees you will likely have to pay, at least at the beginning.

Let's return to the game plan for a minute. The game plan is what connects your idea with the reduction to practice. What you need is the knowledge and understanding of how you can take your idea and move forward toward a reduction to practice. Your game plan does not need to be flawless. It can and frequently will be modified over time as you begin conducting research or otherwise working on your invention. The game plan, however, is frequently where many inventors, particularly first time inventors, encounter significant problems. Remember, simply coming up with an idea is not enough. From time to time I will hear from people who say: "I have this great idea and I want to get a patent. I just need to find someone who can figure out how to make the product, but if someone could figure out how to make it I know I could make money." What we have here is someone with an idea but no game plan. You cannot protect an idea. You should also remember that if you tell someone your idea and you do not have a promise from them to not take it they can indeed take it for themselves. Be careful. Having said this, there is absolutely nothing wrong with more than one person working on an invention and being what is called joint inventors. A patent will need to be applied for in the name of all joint inventors, and absent an agreement each joint inventor will have equal rights to the patent if one issues.

To review, the law recognizes that with many, if not most, inventions there will be three steps to the invention process. The idea comes first, followed by the game plan, followed by the reduction to practice. When dealing with some inventions the idea, game plan and reduction happen rapidly. With other inventions there is some time between these steps.

Now you should ask yourself why it is that you want a patent. Obtaining a patent can be the best decision, and may even be the best business move you could make. Nevertheless, what you need to understand is that most patents do not make inventors money. Furthermore, based on what is coming out of the Patent Office these days, the question should not be whether you can get a patent, but rather whether any patent you are able to obtain is worth the investment. In other words, is the scope of protection meaningful? Are you going to actually be able to prevent competitors from making, using, selling and importing your invention? Is there a market for your invention? These and other questions should be considered.

When you are considering whether to get a patent you absolutely must know what rights a patent will give you. A patent will give you the right to exclude others from making, using, selling and importing a product or process that is covered by your patent. Many will tell you that a patent is a monopoly, or a patent provides a monopoly. This is simply not true. The loose application of the pejorative term "monopoly" to the property right of exclusion represented by a patent is misleading. What the patent can do is allow you to prevent others from entering your market. This requires a strong patent, not just any old patent that you can get through the Patent Office. Likewise, you need to have a product or process that others want to pay for. It is a simple truth that a monopoly can only exist if there is or will be an existing market. To characterize a patent as a monopoly without first questioning whether there is a market for the patent is to put the cart before the horse. Those patents that are litigated are litigated because there is money at stake and, therefore, a likely market does exist for these patent that we so frequently hear about in the popular press. Nevertheless, there are undoubtedly a large number of patents that could never possibly have any market and could never be considered to yield a monopoly. If you doubt this take a look at the **Museum of Obscure Patents**. It does no good to perpetuate the myth that all patents are monopolies. It is simply not true.

What a patent can do, however, is provide you the opportunity to obtain what economists would call monopoly profits. If you have two things you can turn your patent into a highly lucrative piece of property. First, you need a patent that adequately covers your product and will prevent similar, substitute products. Second, you need to have an invention that others will pay for. If you have these two things then you will have a customer base who must come to you for the product. That is the holy grail of patent law. It can be exceedingly difficult to know if these two ingredients are present, and sometimes you will be wrong and sometimes risk is inevitable. Nevertheless, these two things must be considered.

I am frequently asked where does an inventor start on the journey to protect an invention. Normally the first step is either to conduct a **patent search** or to file a **provisional patent application**. Some choose the patent search first in order to make sure their invention is patentable, others move right to the provisional patent application, and some do the two simultaneously. The reason some skip a patent search initially is because the cost of filing a provisional patent application is just a few hundred dollars more than having a patent search done, so frankly some people do not want to know initially, opting rather to file a provisional application and getting a patent pending. This is because if you do know you are not entitled to a patent you cannot file without violating Patent Office rules. So what some will do is file a provisional application and then prior to filing a non-provisional application they will have a search done. This can make sense because filing a non-provisional application is a longer term process that is more involved and more expensive.

If you want to learn more about what can be patented and about the process as it plays out in the Patent Office I encourage you to get the book **Patents And How To Get One**. This book is available through Amazon.com and costs about $5.00. It was originally published by the Department of Commerce.

Another book you may want to consider purchasing is **The Complete Idiot's Guide to Cashing in On Your Inventions** talks about the invention process and marketing your invention. This book has received some rave reviews from Amazon.com customers. As a rule, The Complete Idiot's Guides and the Dummies Series do a great job of explaining complicated topics in easy to understand language. This book is probably not for those who have been through the process before, but if you are starting out for the first time it is hard to imagine a more economical way to understand the fundamentals. The book sells for about $14, which certainly makes it a reasonable acquisition.

If you feel you need the assistance of a patent attorney **IPWatchdog can help**. I have been helping independent inventors and start-up companies since 1998. I have also developed a unique process called the **Invent & Patent System**, which efficiently and effectively creates provisional patent applications with the cooperation of the inventor. This process reduces costs and creates a better product because rather than doing all the drafting I work together with the inventor to create the patent application. This process uncovers many additional aspects of the invention that can be protected and results in a far more detailed patent application than is typical.

Good luck!

Software Patent Attorney
Gene Quinn, US Patent Attorney

US Patent Law Basics
Everything You Need to Know to Get Started

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