

Generating Wealth Through Patents

by David E. Rogers

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Once the United States was a manufacturing powerhouse, but much of its industry has now moved overseas or south of the border to low-cost countries such as China, India and Mexico. The vast majority of the US economy is now service-based. But, the United States still has by far the world's largest GDP.

How does the United States maintain its economic edge? One way is through patents - a primary mechanism for protecting and monetizing inventions. The United States grants more patents than any other country and an estimated 75 percent of the value of publicly-traded US businesses is now in intangible assets. According to the United States Patent and Trademark Office (USPTO), intellectual property-based businesses and entrepreneurs drive more economic growth in the United States than any other sector.

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In most industries it is no longer important to be a manufacturing source because manufacturing is a commodity input provided at a commodity price. Instead, it is important to be the source of, and control, inventions. By controlling the invention you can control the product pipeline, from manufacturing to distribution to sales. This is the new business model for nations with mature economies.

Controlling inventions through patents is critical for businesses that cannot realistically compete, or that do not wish to compete, in commodity manufacturing.

HOW PATENTS GENERATE WEALTH

A patent owner can exclude others from making, using, selling, offering to sell or importing the items covered by the patent regardless of whether the patent owner ever provides them. That is the power of a patent — its mere existence monopolizes a product segment. You need not provide products or services, or deal with vendors, customers, governmental regulations or employees.

A patent creates a legal barrier preventing entry into the product segment it defines. The patent owner has the right to operate exclusively within that segment and to stop any trespass (called an infringement) into the segment.

A patent's barrier to entry provides many benefits:

1. Without patent protection there is no legal barrier to entry and others are free to copy your invention.
2. If you choose to manufacture the invention, or have it manufactured, the patent gives you time to establish manufacturing and marketing channels.
3. You can potentially charge premium prices within the product segment protected by the patent.
4. A patent is an asset to attract business partners, investors and potential buyers.
5. You can license or sell the patent, and hence your barrier to entry, to another rather than making the patented invention yourself.

PROPER PREPARATION AND PROSECUTION IS CRITICAL TO PATENT VALUE

A patent is a document that uses words, usually accompanied by drawings, to define a piece of “intellectual property.” Like a parcel of land, the value of this intellectual property is based largely on its “location” and “size.” A patent’s “location” is the inherent value of the concept protected by the patent. For example, a new broom handle may not have the same inherent value as an integrated circuit that enables computers to run faster.

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A patent’s “size” is often referred to as its “scope.” Patent scope is ultimately determined by the words used to prepare and prosecute the application that matures into the patent. Thus, a patent’s scope depends as much as the skill of the attorney charged with preparation and prosecution of the patent application as on the inherent value of the invention. The inclusion or exclusion of just a few words in a patent application or communication with the USPTO can sometimes mean the difference between a patent worth millions and a meaningless piece of paper.

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Broad patent scope is particularly important for small or medium-sized businesses. Because they have constrained resources and relatively few patents, they must depend on broad patent scope for meaningful patent protection and value. Large businesses, in contrast, often have large budgets and obtain hundreds or thousands of patents annually covering incremental technological improvements. They capture broad patent scope through the sheer number of patents obtained, and the scope of any single patent may not be as important as the overall breadth of the entire patent portfolio.

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Patent scope is sometimes too narrow because inventors and patent attorneys focus on only the single example of the invention conceived by the inventor, rather than brainstorming to determine and then patent the entire inventive concept. If your patent fails to capture the entire inventive concept, competitors will be free to practice, and potentially even patent, the scope not protected. The results for the original inventor is a significant loss in patent value, and perhaps lost sales, profits, and investors.

CONCLUSION

The generation of wealth through patents requires an inherently valuable invention and a properly prosecuted patent that captures the entire inventive concept. Assume that without meaningful patent protection, competitors can and will copy every valuable aspect of your product or service. Not only will profit opportunities be lost, but so will the ability to attract investors and buyers.



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