The Basics on Patent Procurement and Related Issues for Technology Development

presented by:

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Types of Intellectual Property

- A patent protects certain improvements in technology
- A trade secret keeps an improvement in technology secret
- A trademark/trade dress right protects the public from confusion as to the source or origin of goods sold in commerce
- A copyright protects an original work of authorship
A Patent Gives the Right to Exclude Others

- NOT an ABSOLUTE right to PRACTICE your invention
- The right to EXCLUDE others from MAKING, USING, SELLING, OFFERING FOR SALE OR IMPORTING your invention to the U.S.
- Others MUST obtain PERMISSION from the patentee
### Examples of Successful Protection of Patent Rights:

- **Polaroid v. Kodak**
  - ($900 million in damages Awarded & Injunction Issued)

- **Lubrizol v. Exxon Corp.**
  - (Exxon paid $86 million to settle)

- **Honeywell v. Minolta**
  - (Minolta paid $127 million to settle)
Understand and Accept the Commercial Reality

- Look at what your competitors are doing to maximize their return on investment in research and development of their technology.
- If they are applying for patents, then maybe you should too.
Goals of a Patent Strategy

● Sell products that are superior to those lawfully sold by competitors
● Earn revenues from the sale of technology and/or licensing of rights
● To obtain useful negotiating chips
The Basics of Patent Procurement
The Upsides of Patent Protection

- **Exclusivity right**
  - A legal right that can effectively deter others from entering into a market

- **$$$**
  - Attract investment or venture capital
  - Make money by selling or licensing
The Downsides of Patent Protection

- Costs - expensive
- Disclosure - “quid pro quo”
- Timing - the day after may be too late
Objectives for a Patent Program

- Why do companies have patent programs
  - Obtain and maintain an economic or commercial advantage in the marketplace
  - Set up a “picket fence” around your company’s valuable technology
  - Implement offensive & defensive tactics in view of your competitors
A Road Map

- What is a patent
- What can be patented
- Conditions for obtaining a patent and the government’s (U.S.P.T.O.) review
- Factors to consider before filing a patent application
- Pitfalls in obtaining patent protection
- Key elements of a patent protection program
- Patent Searching and Technology Development
Types of Patents

- **Utility patents**
  - This is the most common type of patent.

- **Design patents**
  - Less common. Covers ornate designs.

- **Plant patents**
  - Covers asexually reproduced plants
How Long Does it Last?

- If filed and granted before June 8, 1995
  - 17 years from issue date

- If filed before, but granted after, June 8, 1995
  - 17 years from issue date or 20 years from first filing date

- If filed and granted after June 8, 1995
  - 20 years from first relied upon filing date
What Can be Patented?

- Compositions of matter
- Machine
- Articles of manufacture
- Processes
What Cannot be Patented?

- Mere ideas, concepts, or abstractions
- Scientific formulae
- Mathematical formulae or algorithms
- Natural products as they occur in nature
Anatomy of a Patent Document

[Image of a patent document]

United States Patent

US 6,368,227 B1

4 Claims, 5 Drawing Sheets

4 Claims, 5 Drawing Sheets

1. A method of constructing a bridge, comprising the steps of:

(a) positioning a plurality of support columns on a foundation so as to form a support structure for the bridge;

(b) attaching a number of longitudinal beams to the support columns to form a deck structure for the bridge;

(c) attaching a number of transverse beams to the longitudinal beams to form a truss structure for the bridge;

(d) attaching a number of diagonal beams to the transverse beams to form a tension structure for the bridge;

(e) attaching a number of horizontal beams to the diagonal beams to form a compression structure for the bridge;

(f) attaching a number of vertical beams to the horizontal beams to form a shear structure for the bridge;

(g) attaching a number of auxiliary beams to the vertical beams to form a stability structure for the bridge;

(h) attaching a number of bracing beams to the auxiliary beams to form a bracing structure for the bridge;

(i) attaching a number of lighting beams to the bracing beams to form a lighting structure for the bridge;

(j) attaching a number of cable beams to the lighting beams to form a cable structure for the bridge;

(k) attaching a number of guard beams to the cable beams to form a guard structure for the bridge;

(l) attaching a number of warning beams to the guard beams to form a warning structure for the bridge;

(m) attaching a number of lock beams to the warning beams to form a locking structure for the bridge;

(n) attaching a number of control beams to the lock beams to form a control structure for the bridge;

(o) attaching a number of power beams to the control beams to form a power structure for the bridge;

(p) attaching a number of communication beams to the power beams to form a communication structure for the bridge;

(q) attaching a number of data beams to the communication beams to form a data structure for the bridge;

(r) attaching a number of human beams to the data beams to form a human structure for the bridge;

(s) attaching a number of animal beams to the human beams to form an animal structure for the bridge;

(t) attaching a number of plant beams to the animal beams to form a plant structure for the bridge;

(u) attaching a number of mineral beams to the plant beams to form a mineral structure for the bridge;

(v) attaching a number of energy beams to the mineral beams to form an energy structure for the bridge;

(w) attaching a number of transport beams to the energy beams to form a transport structure for the bridge;

(x) attaching a number of communication beams to the transport beams to form a communication structure for the bridge;

(y) attaching a number of data beams to the communication beams to form a data structure for the bridge;

(z) attaching a number of human beams to the data beams to form a human structure for the bridge;

(aa) attaching a number of animal beams to the human beams to form an animal structure for the bridge;

(bb) attaching a number of plant beams to the animal beams to form a plant structure for the bridge;

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(dd) attaching a number of energy beams to the mineral beams to form an energy structure for the bridge;

(ee) attaching a number of transport beams to the energy beams to form a transport structure for the bridge;

(ff) attaching a number of communication beams to the transport beams to form a communication structure for the bridge;

(gg) attaching a number of data beams to the communication beams to form a data structure for the bridge;

(hh) attaching a number of human beams to the data beams to form a human structure for the bridge;

(ii) attaching a number of animal beams to the human beams to form an animal structure for the bridge;

(jj) attaching a number of plant beams to the animal beams to form a plant structure for the bridge;

(kk) attaching a number of mineral beams to the plant beams to form a mineral structure for the bridge;

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Anatomy of a Patent Document

- Specification
  - Written description
  - Drawings
  - Claims
  - Abstract of the disclosure
Anatomy of a Patent Document

- Specification
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- Abstract of the disclosure

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**US 6,386,227 B1**

**ARTICLE OF SWINGING ON A SWING**

**TECHNICAL FIELD**

The present invention relates to a method of swinging on a swing.

**BACKGROUND OF THE INVENTION**

A few types of swinging have been around for generations. Perhaps the most common is one that involves a puck suspended between two ropes or strings that hang from a tree branch or other support. To begin swinging, one would hold onto the ropes or strings and let go. The pendulum effect then causes the puck to swing back and forth. Other types of swings are possible, such as those that are attached to a tree branch, or those that are attached to a pole or other structure. In these cases, the puck is typically suspended from the ropes or strings and allowed to swing freely.

**SUMMARY OF THE INVENTION**

An improved method of swinging on a swing is provided. The swing comprises a seat for supporting a user that is suspended between two chains that are being formed from a substantial portion of the branch. The method comprises the steps of:

1. The user steps on one of the chains or ropes attached to the swing and begins to swing.
2. The user continues to swing while holding onto the chains or ropes.
3. The user releases the chains or ropes and continues to swing.

**DESCRIPTION OF THE DRAWINGS**

Fig. 1 is a schematic view of the swinging seat or chair, showing the ropes or chains attached to the swing and the user seated on the seat.

**DESCRIPTION OF THE INVENTION**

The present invention has been described in terms of a method of swinging, which can be accomplished by physically connecting the seat or chair to a tree branch, or by physically connecting the seat or chair to a pole or other structure. The seat or chair can be attached to the tree branch or pole by using ropes or chains, or by using straps or other means of suspension.

The seat or chair can be made of any suitable material, such as wood, plastic, metal, or a combination of these materials. The seat or chair can be designed to support the user in any position, such as sitting, standing, or lying down.

**CONCLUSION**

The present invention provides a new and improved method of swinging that is easy to use and provides a high degree of comfort and enjoyment.

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Anatomy of a Patent Document (cont’d)

- **Written description**
  - Describes the invention and why it is an improvement
  - Teaches how to make and use the “claimed” invention
  - Typically contains working examples
Anatomy of a Patent Document

- **Specification**
  - Written description
- **Drawings**
- **Claims**
- **Abstract of the disclosure**
Anatomy of a Patent Document

- **Specification**
  - Written description
  - Drawings
  - Claims
  - Abstract of the disclosure

- The “Claims”
  - Describe the boundaries of protection

1. A method of swinging on a swing, the method comprising the steps of:
   a) suspending a seat for supporting a user between only two chains that are hung from a tree branch;
   b) positioning a user on the seat so that the user is facing a direction perpendicular to the tree branch;
   c) having the user pull alternately on one chain to induce movement of the user and the swing toward one side, and then on the other chain to induce movement of the user and the swing toward the other side; and
   d) repeating step c) to create side-to-side swinging motion, relative to the user, that is parallel to the tree branch.
Anatomy of a Patent Document

- **Specification**
  - Written description
  - Drawings
  - Claims
  - Abstract of the disclosure

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(57)    ABSTRACT

A method of swing on a swing is disclosed, in which a user positioned on a standard swing suspended by two chains from a substantially horizontal tree branch induces side to side motion by pulling alternately on one chain and then the other.
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What are the Requirements?

- Utility
- Written description and enablement
- Best mode
- Novelty
- Non-obviousness

- Virtually any invention “made by man” is qualified to be patented in the United States
- An invention must be a new and useful process, machine, article of manufacture or composition of matter, or any new and useful improvement of known processes, etc.
- Generally speaking, claims directed to essentially mathematical algorithms, printed matter, or scientific principles fail to satisfy the utility requirement
Utility - 35 U.S.C. § 101 (cont’d)

- How the subject matter of a claim is interpreted by the USPTO depends on how the claim is drafted.
- An invention cannot have insufficient utility, the claimed invention either has some utility or beneficial function, or it does not.
- An invention does not lack utility even if the embodiment disclosed in the specification is not perfect or performs crudely. A commercially successful product is not necessary.
Written Description and Enablement - 35 U.S.C. § 112

- Enablement - An invention must be described in the specification in such full, clear and concise terms as to enable a person “skilled in the art” to which the invention most closely pertains to practice the invention, without undue experimentation.

- Written Description
  - The claimed subject matter must be fully supported by the specification as originally filed.
  - Claims, as amended during the prosecution of the application, may not introduce “new matter” into the application.
The relevant time period for determining if the “enablement” requirement is satisfied is the date of filing the application - later occurring developments are of no significance regarding what one of skill in the art would understand as of the filing date.

Better to err on the side of including additional information/embodiments in the original specification - such additional information/embodiments may be utilized to overcome prior art unknown to applicant as of the filing date.
Best Mode - 35 U.S.C. § 112

- Must disclose not only how to practice the invention, but also the “best mode” or preferred way of practicing the invention
- Quid Pro Quo - Patentee receives patent grant in exchange for disclosing the best way of practicing the invention
- Only concerned with the inventor’s state of mind - if he/she believed or knew there was a “best” mode of practicing the invention
- The preferred mode at the time of filing the application
Best Mode - 35 U.S.C. § 112 (cont’d)

- Need not have a best mode in the application if there is no best mode at the time of filing.
- However, failure to disclose best mode can result in loss of patent rights.
Novelty - 35 U.S.C. § 102

- U.S. not a ‘first-to-file” system
  - What does this mean?

- § 102(a)
  - if the claimed invention was either known or used by others in the U.S. or patented or described in a printed publication anywhere in the world prior to the invention by the applicant, then no patent can issue

- § 102(b)
  - if the invention is described in a printed publication or patent in the U.S. or foreign country more than one year prior to the filing date in the U.S., then absolute bar
  - “on sale” or “public use” bar limited to actions taken in U.S.
Novelty - 35 U.S.C. § 102 (cont’d)

- § 102(d)
  - precludes issuance of a patent if application was first filed in a non-U.S. country more than 12 months prior to the U.S. filing and the non-U.S. based application issued prior to the U.S. filing date
Non-Obviousness - 35 U.S.C. § 103

- Purpose of § 103 is to prevent the grant of patents on inventions that represent an insignificant advance over that which is already known
- Test for obviousness
  - determine scope and content of prior art
  - determine differences between prior art and present invention
  - would variations be obvious choices to those of “skill in the art”
Non-Obviousness - 35 U.S.C. § 103 (cont’d)

- Prior art does not include information communicated between members of a research team or employees of the same company, if at the time of the invention, both parties are employed by the company and under a duty to assign the invention to the same company.
Road Map for Obtaining Patent Protection

- Identify the invention - is the solution valuable?
- Obtain a patentability search and opinion
- Devise an offensive or defensive strategy for protecting the invention
- Prepare and file a patent application
- Prosecute the patent application
- Pay issuance fee
- Pay maintenance fees
Some Pitfalls Along the Way

- Prior public disclosure, sale or use
- Identifying incorrect inventors
- Non-enabling written description
- Failure to disclose best mode
- Inequitable conduct before the patent office
- Inadequate record keeping
- Time delays
Inventorship

- Must be someone who made a substantive contribution to at least one of the claims of the application
- Typically, for joint-inventorship, there must be at least some communication, direct or indirect, between inventors - two persons totally unaware of the other’s work, no joint inventorship
- Two stages of the inventive process: 1) conception and 2) reduction to practice - joint inventors can be any combination of the two
Inventorship (cont’d)

- Mere supervision of someone who “conceives” or “reduces” the invention to practice does not make supervisor an inventor
- Contributions of joint inventors do not have to be equal
Provisional Patent Application

- Establishes your right of invention in the U.S. and the world
  - How So?
- A utility patent application and foreign patent application must be filed within one year of the filing date
- The application may be an “informal” document, such as an invention disclosure
- The degree of patent protection depends upon the degree of disclosure
- Reasonable costs as fees and services may be less than $500.00
Prior Art Searches

- Internet search
- Computer database search
- Professional search
  - Manual search at the U.S. Patent Office
Patentability Searches

• Why Perform a Patent Search?

• The reasons for performing a patent search are many. The most obvious is to determine whether or not you can get a patent or if your invention has already been patented. Other reasons include:

  • getting a general idea of how an application and patent is structured to help in the preparation or your own application
  • learning more about a new field
  • for market information
  • competitor tracking
  • technology tracking
Patentability Searches

- If I have an idea, how do I search the prior art?

Welcome to the official website of the United States Patent and Trademark Office. 

Reminders: Claims and Continuations Rules Effective Nov. 1

On November 1, 2007, the new claims and continuations rules will go into effect. These new rules were two years in the making and are based on extensive research, outreach to thousands of applicants, and comments from over 300 patent stakeholders in response to the original Notices of Proposed Rule Making which were published in the Federal Register in January 2005.

The USPTO is certain that these rules will make the patent process more effective and efficient and appreciate your cooperation. To ensure a smooth transition on November 1st, USPTO is clarifying certain provisions of the rules and making some procedural adjustments. An Official Gazette notice describing these changes is available at the following link: http://www.uspto.gov/web/offices/pac/opapp/og/nov2007/20071101.html and will be published in the official Gazette on November 6, 2007.

November 8: Conference Marks 25 Years of Tripartite Cooperation

For the past quarter of a century, well over one-half of all patent applications in the world have
Patentability Searches

http://www.uspto.gov/patft/index.html
Patentability Searches

• STEP 1 - Understand your Invention
  • What does the invention do?
  • What problem does it solve?
  • What is the end result?
  • How does it work?
  • What is it made of?
  • What is it used for?
Patentability Searches

• STEP 2 – Classify your invention
  
  • The USPTO classifies inventions by subject matter. Examiner’s typically perform searches within the assigned class and related classes.

  • Provides an idea what kind of prior art may be applicable to your invention.
Patentability Searches

• STEP 2 – Classify your invention and Search by Classification and Keywords
  
  • Example

  1. **Occupancy Sensor to sense the presence of people**
  2. Liquid measurement sensor for bar management
  3. Internet data aggregator and search engine
Patentability Searches

[Image of a computer screen showing a website for patent searches]

Go to the classification index
Patentability Searches

Search for the appropriate classification OR....
Patentability Searches

• Because the USPTO Classification System tends to be very confusing, it is recommended to conduct a keyword search first. After you find relevant patents, look through the patents assigned to each classification of the relevant patents.

  • This will give you an overview of the prior art patents that may be relevant to your invention.
Patentability Searches

Search by keyword both Issued Patents and Published Applications
Patentability Searches

Search by keyword both Issued Patents
Patentability Searches

337 Results by searching “occupancy sensor”!!
Patentability Searches

• Narrow keyword search according to the fundamental aspects of your invention.
  • Occupant Sensor – What are the fundamental aspects?
• Once you have identified a set of applicable patents, review all relevant patents assigned to relevant classifications.
  • Why? - Provides an indication of the technical field and the prior art available to examiners
  • How?
Patentability Searches

(54) OCCUPANCY SENSOR AND METHOD FOR HOME AUTOMATION SYSTEM

(75) Inventor: Brent Bilger, Los Altos Hills, CA (US)

(73) Assignee: Destiny Networks, Inc., Morgan Hill, CA (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 190 days.

(21) Appl. No.: 09/693,370

(22) Filed: Oct. 19, 2000

(51) Int. Cl. G05B 11/01

(52) U.S. Cl. 700/19; 700/58; 700/185; 700/187; 700/276; 700/14; 700/60; 700/63; 700/64; 700/65

(58) Field of Search 700/58; 65, 185; 700/187, 276, 14, 19
Patentability Searches

Under Advanced Search tab, input “ccl/700/19 and (occupan or person or people)
Patentability Searches

Under Advanced Search tab, input “ccl/700/19 and (occupan or person or people)"
Patentability Searches

107 Patents!
Patentability Searches

• Once you have obtained a representative set of patents, start by reviewing the specification (excluding claims) to determine whether or not your invention is disclosed by prior art.
  
  • If the aspects of your invention are not disclosed by the prior art, your invention is potentially novel.

  • If the prior art does teach certain aspects of your invention, consider what other aspects could potentially be novel.
  
  • Draft a patent application emphasizing these novel aspects to increase the chance that you will be granted a patent.
Factors to Consider

- Prospective value in the marketplace
- Need to protect products and/or processes
- Proximity of competitors’ likely research
- Your ability to keep the invention secret
- Likelihood of obsolescence within 17 or 20 years
- The cost of preparing, filing and prosecuting an application
- Your likelihood of success in the patent office
- Claims of other relevant patents
Factors to Consider

• Prospective value in the marketplace
  • Often results of a patent search is an indication of the prospective value in the marketplace
  • Does the patent search show many patents covering the same technology?
    • If so, could be an indication of lower value unless your invention addresses a problem that has not been addressed by any prior art patent.
    • If not, is your invention a fundamental invention that may revolutionize an industry?
Factors to Consider

• Need to protect products and/or processes
  • Typically a consideration for companies.
  • Especially start-ups – investors usually require some form of IP before investment.
Factors to Consider

• Proximity of competitors’ likely research

  • If your invention is very close to another company’s research, the value of your invention is potentially high. However, you run the risk that the other company invented it first.
Factors to Consider

• Your ability to keep the invention secret
  • Sometimes it is better to keep the invention as a trade secret and not disclose it to the patent office.
  • E.g., process for making Coca Cola
Factors to Consider

• Likelihood of obsolescence within 17 or 20 years
  • Some inventions are obsolete in 5 years.
  • Some inventions last through the life of the patent.
  • Some inventions are not valuable until later in the life of the patent.
Factors to Consider

- The cost of preparing, filing and prosecuting an application
  - Cost can range. $15k - $30k depending on the complexity of the invention.
  - Start ups typically seek investors to cover this cost.
  - Others pay out of their own pocket chancing that investors will provide capital once a patent issues.
Factors to Consider

• Your likelihood of success in the patent office
  • Recent change in the law and procedures may make it more difficult to obtain a patent.
  • Patent search is a good indication.
Factors to Consider

• Claims of other relevant patents
  • Remember a patent provides the right to exclude others. It does not provide the right to practice your own invention.
  • If a competitor has patents that claim a broader invention, you could be blocked from the market.
    • Company A claims A + B + C.
    • You invent A + B + C + D.
      • In order to practice your invention, you would need a license from Company A.
Questions and Answers

• Feel free to contact me at dtennant@mwe.com should you have any questions.