by Don Lancaster

Busting a $650 Patent

I recently received some email from a proud individual who had just gotten his very own $650 patent. All by himself. His reasoning was that all he needed to pay for this patent was a trifling $1300 in sales.

He was assuming a 50% net profit margin.

Well, first off, his analysis overlooked the crucial point that *your costs of getting a patent end up utterly negligible compared to your costs of defending a patent.* A patent is simply a piece of paper that purportedly gives you the right to sue someone in a court of law.

Yes, typical court costs of two challenges and an appeal can sometimes be held down to $240,000.00. But they are usually *much* higher. These days, even the patent litigation insurance *premiums* start off at $65,000.00.

The sad fact of the matter is this: The odds tell us *there is no conceivable amount of net sales which could ever even remotely hope to begin to pay for a $650 patent.*

The reason? *There is not one patent in a thousand that cannot be busted by a diligent enough search for prior art done in obscure enough places.* But most $650 patents are notoriously *easier* to bust. Trivial even. Making the odds of success all that much more dismal.

The bottom line: *You will be permitted to keep your $650 patent only until such time as you try to enforce it.*

A $650 patent is almost certainly a ludicrously "weak" patent. One that does not have a snowball's chance in hell of withstanding any even remotely serious challenge.

I very strongly feel those "patent it yourself" books are a big disservice to most individuals and small scale startups. Because they encourage wasting your time and money only to get a totally useless result.

Should you send someone a "you are violating my $650 patent" nastygram, your immediately *guaranteed* result is that you will instantly convert what should have been your best customer into a big time enemy who will now dedicate their life to doing you in.

Your new lifelong enemy will then decide to (a) ignore your letter, (b) bust your patent outright, or (c) improve their product while rendering your patent moot.

That unthinkably bizarre urban lore fantasy of "paying royalties" *never* even enters their mind.

Not for an instant.

There is, however, one anecdotal use for $650 patents. If you frame one of these and place it on your wall, they do seem to prevent walrus attacks.

Let's take a look at a few of the main approaches that are routinely used to bust a weak patent...

Show prior art—To be patentable, a concept has to be *new*. So many people seem to have so much trouble over such a simple word. Well, "new" means that nobody, *but nobody*, has *ever* thought of this idea before. There must be *nothing* written about anything similar *anywhere* in the world. In *any* form. However obscure.

Anytime, ever.

At least 95% of your quest for prior art should take place *outside* of the patent system! In the industry trade journals, product catalogs, shows, newsletters, seminars, and stores. Since less than one well researched and well funded patent in two hundred ever creates a net positive cash flow, we have this set of rules...

winners appear in the marketplace
losers appear in a patent repository

Because so many people are thinking about so many things in so many ways, *synchronicity* virtually guarantees that your concept is not new. In fact, your "new" concept probably has been thought about and trashed over decades ago. One possible exception is when you are truly and genuinely beyond the bleeding edge of technology in any rapidly emerging field. And have committed yourself on a total lifestyle basis.

Show the failure to disclose—Any and all previous patents even remotely related to your claims absolutely must be clearly identified in your application.

Failure to disclose trashes your patent.

Until recently, competent and thorough patent searches were a real bear to do. But thanks to that free IBM patent repository up at *patent.womplex.ibm.com*, you can instantly search everything back to 1971. Full text, figures, and even forward referrals.

I selected two patents nearly at random from this great service. And ended up two for two in fine candidates for my patent horror story collection.

In one case, a "new" patent was fully described in a 1937 issue of *Radio News*. And was a mainstay of the electronics books of the 1940's. They also did not pick up on the fact that their old circuit was now *illegal* because of how badly it trashed the ac power line.

In the other case, I had personally published their *exact* circuit waveforms fifteen years earlier in a major technical publication. At the time, my specific intent was to put this concept in the public domain.

Where it remains to this day.

Show obviousness to a practitioner–Simply being new will not hack it. Your idea also has to be *non-obvious* to any practitioner in the field. If what you are up to does not appear as a really big deal to an insider, then it flat out is not patentable.

I recently got a call from somebody who was trying to patent a display device that used ordinary lamps, plain old optic fibers and a rechargable battery. Seemed completely obvious to me. And also to *American Science & Surplus* or *Edmund Scientific*. Who have both sold catalog variations on these for many years.

Yes, the roles of expert witnesses are being called more and more into question these days. Amazingly, the term "obvious" can permit lots of different interpretations for different people. But the fact remains that *if it is obvious, it cannot be patented.*

Obviousness is an especially dangerous trap for industry outsiders. If you are not the sort of person who aggressively subscribes to those relevant trade journals and thoroughly understands how products are created, advertised, and sold in your target industry, then your odds are overwhelming that you are working on an unpatentable non-solution to a non-problem. Nearly every time.

Like all of those "miracle carburetor" enthuasiasts on the web. Who have not yet picked up on the news that nobody uses carburetors any more.

Show technical errors–An amazing number of patents flat out *do not work*. Which is probably one of the reasons that their working models never made it through beta test.

In one recent sad example, a patentee noticed that if you take two light dimmers and put a 110 volt bulb on one and a 32 volt bulb on the other, a cheap voltmeter might show three times the current and three times the voltage on the 110 volt bulb. For *equal* brightness. They then apparently concluded that three times voltage and three times current "had" to be nine times power, and claimed a 90% efficiency improvement. For a home lighting revolution.

Uh, they obviously did not bother touching their 32 volt bulb, since it would have to be quite *cold to the touch* to justify such an efficiency claim. Uh, there'd also be a few minor problems with black body radiator physics.

In their patent claims, they clearly and obviously stated a maximum possible "cheap voltmeter" error of 10%. When in fact, their actual rms-to-average error was 300% and completely accounted for the erreneous effect they thought they were seeing.

Which, by the way, is a gotcha that *every* circuit theory book warns you against. In bold print. A complete analysis of this fascinating fiasco can be found in MUSE112.PDF and MUSE113.PDF on my *www.tinaja.com*

Other areas where technical error comes into play is any time the first or second law of thermodynamics appears to be violated. All perpetual motion machines are specifically unpatentable. But various proponents of "overunity" or "zero point energy" devices try to weasel word themselves around this restriction.

More pseudoscience in *www.tinaja.com/pseudo01.html*

Showing technical error is often better at disallowing specific patent claims, rather than busting an entire patent. But a weak patent made weaker can sometimes be all that's needed to disallow an infringement.

Show procedural errors–There are all kinds of arcane rules and restrictions that are involved with creating patent drawings and the actual submission process. Fail to dot the tee and cross the eye in the exact manner specified, and you are open to challenge.

Common sense, of course, has nothing whatsoever to do with the rules and regulations. Inexperienced patentees are pretty near certain to make submission blunders.

Show failure of due diligence–I'm not sure I follow this potent busting tool fully, so do check this out with your patent attorney. But as I understand it, slashing away at a sudden target of opportunity is a no no.

It seems *you* have to *aggressively* police the industry for violators. You also have to show *continuous* intent to *both* license and enforce.

Apparently if there has been significant and widespread infringement of your patent in the past, and if you have done nothing about it, you cannot suddenly single out any one particular perp. Especially if they have been blatantly (love that word) doing so for a long time.

Use it or lose it.

Sorta like the rule that you can't *suddenly* foreclose on somebody's house when they've had a long history of late payments. Your acceptance of late payments in the past implies that you will accept them in the future.

Sounds kinda like catch 22 to me. Lawyers should really love this one.

More details in on due diligence appear in the May 1997 *Journal of Proprietary Rights*, page 15.

Start a paper blizzard–If all else fails, there is one ploy a patient and well-heeled patent challenger can always try. I'll call this the *paper blizzard*. In which they make your life so miserable for so long that you simply give up.

You start a paper blizzard by asking for dispositions of records the patentee either does not have or does not wish to part with. Doing so, of course, at times and places that are as inconvenient, as embarassing, as intimidating, as obnoxious, and as invasive as possible.

Using that old Parkinsonian law of *delay is the surest form of denial.*

Yeah, a paper blizzard is harrassment. Plain and simple. But hey–it works. And I know of only one proven defense against the paper blizzard. And that is to *never*, ever seek a patent in the first place. The "hit it fast and hard, then get out" patent alternative makes a lot more sense to me.

For More Help

Naturally, these guidelines can be used to bust nearly *any* patent. Not just the sloppy bargain basement ones. The important point to note is that *iffen the right one don't git ya, then the left one will.*

Your first and best place to look for prior art is in the trade journals. While *Ulrich's Periodicals Dictionary* has long been the definitive source for this sort of thing, the fine *Oxbridge Media Finder* at *www.mediafinder.com* is now a lot faster and cheaper.

One great source for really ancient prior art is *Lindsay Publications* They've got all sorts of ancient historical books on mechanical and trade secrets. You can visit them at their *www.keynet.net/~lindsay* website.

These days, it is super important to aggressively use the

MENTIONED RESOURCES

Amazon Books
Box 80387
Seattle WA 98108
(800) 201-7575

American Sci & Surp
3605 Howard St
Skokie IL 60076
(708) 982-0870

Edmund Scientific
101 E Gloucester Pike
Barrington NJ 08007
(609) 573-6250

Jnl of Proprietary Rights
1185 Americas Avenue
New York NY 10036
(800) 901-9075

Lindsay Publications
PO Box 538
Bradley IL 60915
(815) 935-5353

Oxbridge
150 5th Ave #202
New York NY 10011
(212) 741-0231

Synergetics
Box 809
Thatcher AZ 85552
(520) 428-4073

Ulrich's Dictionary
121 Chanlon Rd
New Providence NJ 07974
(908) 771-7714

RECOMMENDED WEB SITES

www.amazon.com
www.keynet.net/~lindsay
www.patent.womplex.ibm.com
www.tinaja.com/patnt01.html
www.mediafinder.com

Internet. To the point where I'll claim that *it is categorically impossible to successfully develop a product without very aggressive use of all available web resources.*

Online research tutorials now appear on the *Webmaster Library Shelf* of *www.tinaja.com/weblib01.html*

Two effective web search tools are *www.hotbot.com* and *digital.altavista.com* A great free "search all sites" site is at *www.wp.com/resch/search.html*

Yes, there still *may* be times and places where a patent *might* be appropriate. So long as you studiously ignore the urban lore and all the scams and ripoffs that are inevitable any time the word "inventor" gets mentioned or appears in print. And so long as you realize that your breakeven costs of *any* patent are *ridiculously* higher than you might first assume. Usual breakeven is $12,000,000.00 in sales.

And that patents are *strictly for insiders only*. And often are a time and sanity wasting sideshow which has *nothing whatsoever* to do with successful product development and marketing. Especially in fast changing fields.

Much more on this in WHEN2PAT.PDF and related files on the *Patent Avoidance Shelf* of *http://www.tinaja.com*. I've also got a *Case Against Patents* package plus my brand new *Infopack* research service. More on small scale tech ventures in general is in my *Incredible Secret Money Machine II* book.

Details per my nearby *Synergetics* ad. ✦

Microcomputer pioneer and guru Don Lancaster is the author of 33 books and countless articles. Don maintains a US technical helpline you'll find at (520) 428-4073, besides offering all his own books, reprints and various services.

Don has a free new catalog crammed full of his latest insider secrets waiting for you. Your best calling times are 8-5 weekdays, Mountain Standard Time.

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