

Inventors

APRIL 2019 Volume 35 Issue 04

DIGEST

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Future of Inventing? We Should Think 'Big'

If you want to start a fun discussion, ask a group of people about their favorite iconic movie scene.

Chances are, someone will mention the "hill of beans" speech by Humphrey Bogart to Ingrid Bergman in "Casablanca." Maybe someone will bring up the quiet prayer by George Bailey (Jimmy Stewart) at Martini's Bar in "It's a Wonderful Life."

I've got an underrated one that would have to be in my top five. It's the department store scene in the 1988 movie "Big," in which a prematurely grown 12-year-old played by Tom Hanks dances on a lifesize floor piano to play a child's song with his boss (Robert Loggia).

The scene by director Penny Marshall is possibly her signature stroke of genius, a gleeful but poignant reminder of the magic of unfettered childhood joy. Hanks's character amuses, befuddles and frustrates adults around him with his rapid ascent in the business world, which happens simply because he is not jaded and sees none of the limitations that adults do.

We need to keep our future inventors dancing. In many ways, they were made for it.

Because children are so creative, they're naturally more inventive. Their views of the world have not been fully formed, so they naturally want to explore more than adults. Their egos are not as threatened by failure. And they don't care what people think about their ideas—especially adults.

A study conducted several years ago by Darya Zabelina and Michael Robinson of North Dakota State University discusses the importance of remaining naïve, and why physiological and social factors get in the way.

They noted that the brain's frontal cortex, the part responsible for rule-based behavior, isn't fully formed until our teen years. This facilitates uninhibited thought. The other factor is adults' fault: Too many current educational programs either don't promote creativity or discourage it altogether.

This month's *Inventors Digest* celebrates the naivete and open-mindedness of children. It doesn't matter whether their ideas are practical or can ever come to market. What matters is that they and the rest of us keep dancing.

—Reid
(reid.creager@inventorsdigest.com)

American innovation needs to hit the gym



Weakened patent protections have reduced the value of American inventions. To strengthen American innovation, support the STRONGER Patents Act—legislation designed to restore strong Constitutional patent rights, limit unfair patent challenges, and end the diversion of USPTO fees.

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CORRESPONDENCE

Letters and emails in reaction to new and older **Inventors Digest** stories you read in print or online (responses may be edited for clarity and brevity):

"Seeking a Licensee? Think Trade Shows"
(March 2017):



Great and very helpful article. However, could you expound a bit more on the dos and don'ts of approaching potential licensees at a trade show? For example, what's the best initial approach, and when/how do you present your product?

Do you mention competition? Do you keep a poker face, or be very vocal about how much you want to license your product? Last but not least, from a person (woman) who is not in the business world, what attire is best? Professional or business casual?

—STACEY ROBERTS

From the story's author, Jack Lander: The best initial approach is to walk into the booth, ask for the director of marketing, and introduce yourself. If the DM is not there, you will probably be talking to one of his/her subordinates.

Let your sell-sheet do the talking for you. Hand the representative your sell-sheet, and let him or her ask questions. You are probably good at answering questions but not so good at making a cold pitch, so don't make the mistake of trying to verbally sell your idea as a first step.

If you get a reasonably friendly reception, give the person two or three more sell-sheets so that he/she can pass them on to advisers upon returning to the office.

If you don't get to see the DM, ask his/her name so that you have a specific contact for later. Be respectful that this person isn't there to listen to inventors but to make new contacts for marketing.

Get a business card and write your comments on its back ("very interested," "only lukewarm," etc.). A couple of days after the close of the show, phone the DM. State that you met at the show, and you'd like to know what more you can do to interest his/her company in your product. (It's a product, not an invention.)

"Glass Backboards: A Smashing Success"
(November 2018):

DD was the best –
Chocolate Thunder!!

—CHRIS MCGRORY



Editor's note: "DD" refers to the Philadelphia 76ers' Darryl Dawkins, who in 1979 shattered two glass backboards in three weeks with slam dunks—leading to the innovation of breakaway rims. And though we strive for objectivity, when it came to the art of the monster jam there was no rival.

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THE CURSE OF FITZMAGIC?

Minkah Fitzpatrick had a mostly successful rookie season as a safety for the Miami Dolphins, but 2019 did not begin well for him.

On New Year's Day, the United States Patent and Trademark Office denied Fitzpatrick's September trademark filing for the term "FitzMagic," saying that it was too often associated with an NFL player for another Florida team.

When Tampa Bay Buccaneers quarterback Ryan Fitzpatrick in September became the first quarterback in NFL history to throw for more than 400 yards in three consecutive games, the term "FitzMagic" was often used by the media. However, the quarterback did not attempt to trademark it.

Figuring the term was fair game—and seeking to use it in connection with sales of footwear, hats and other apparel—the Dolphins player sought to capitalize on his early-season success (though he was later benched at one point).

The social media fallout that followed was shocking to the young star. For anyone remotely familiar with Twitter, the fury of angry tweets should have been no surprise.

Fitzpatrick said that some of the tweets insulted his mother, who is protective of him. "I don't really want her to be involved in anything that is directed toward me," he told ESPN.

It is not known whether Fitzpatrick plans to appeal the USPTO's decision. Working in his favor is the fact that the other Fitzpatrick—36 years old and having led the Bucs to a poor 2-5 record as their quarterback last year—may not be associated with more FitzMagic any time soon.

BRIGHT IDEAS



The Warbler

FITNESS CORK ROLLER

42birds.com

Designed to help your fitness and stretching regimen, the Warbler features custom ridges to promote health and wellness. Cork is antimicrobial, with 98.6 percent of bacteria killed upon impact.

The device has extra firm density for better results. Placing the Warbler under your back while you are lying on the floor is meant to achieve the following benefits: ease sore muscles; build core muscles and improve balance; add flexibility and mobility; relieve stress; calm and perfectly stretch muscles; boost your immune system; improve sleep; eliminate chronic pain, and correct muscle imbalances.

The Warbler, which will retail for \$60, is due to ship to crowdfunding Rewards backers this month.

Aerospring

VERTICAL GARDEN

aerospringgardens.com

A compact, vertical, aeroponic gardening system, Aerospring helps you grow up to 27 edible plants at a time using only 10 square feet of space. It uses 90 percent less water than growing with soil.

Among the foods you can grow: arugula, basil, capsicum, chilies, chives, cucumbers, kale, medicinal plants, lettuce, parsley, passion fruit, spring onion, strawberries and tomatoes.

The garden comes in three different packages and sizes. The Standard Starter garden will retail for \$430, the Indoor Garden for \$1,200, and the Grower's Garden for \$1,300. All are set to ship to Rewards backers in July.



Meridian

CONVERTIBLE BAG

discoverhillside.com

Meridian allows you to convert from backpack to messenger bag, without taking off the bag. Just drop a shoulder strap or sling another on.

Four bags in one—backpack, over-the-shoulder bag, cross-body bag and briefcase—Meridian is lightweight with multiple compartment storage. No extra straps or connections are needed. It has accessory rings for linking bags together or clipping items on.

With a suggested retail price of \$175 in nylon and \$275 in leather, Meridian is due to ship to Rewards backers in June.



"I didn't have a fellow at the time, so I had to do it all myself. I had to ... appreciate that as a woman, I was strong, complete, adequate."

—BETTE NESMITH GRAHAM, INVENTOR OF LIQUID PAPER

Clone Pillow

BODY PILLOW

producthype.co/clonepillow/

An advanced, contoured body pillow, Clone uses cooling gel and memory foam to keep your body comfortable and relaxed throughout the night.

The pillow is designed to fully support those who sleep on their side or in the fetal position, gently balancing pressure throughout the body. Clone is also meant to relieve chronic back, hip or knee pain, as well as improve spine, hip and shoulder alignment; reduce snoring; promote air and blood circulation; and help pregnant women relieve pressure.

The pillow will retail for \$149. It is scheduled to ship to Rewards backers in June.



Part 2 of 2

Death by Inventing



THE MYSTERY OF FLIGHT HAS PROVEN TO BE A DEADLY CURIOSITY THROUGHOUT THE AGES **BY REID CREAGER**

LEAPING from a roof while wearing two wooden wings is the definition of crazy, but that shows how determined humans were to conquer the mystery of flight.

One of the earliest documented attempts was made by Abu Nasr Isma'il ibn Hammad al-Jawhari, a Turkic lexicographer and theologian who is best known as the author of an influential Arab dictionary in the 10th century. Its title, translated, was "The Crown of Language and the Correct Arabic."

He jumped from the roof of the Nisabur Mosque. None of his dictionary's 40,000 entries can adequately describe the result.

In Part 2 of our series on Death by Inventing, we focus on accomplished and would-be innovators who were unable to achieve what Orville and Wilbur Wright eventually mastered.

Wan Hu, approximately 1500

In the 1900s, the story of this legendary Chinese emperor's attempt at rocket-propelled flight resulted in his being called the world's first astronaut. But many are skeptical that the experiment took place.

The first known version of Wan Hu's implausible effort appeared in the October 2, 1909, issue of *Scientific American*. Wan Hu (also called Wan Hoo and Wang Tu) reportedly assembled a "spacecraft/flying machine" from 47 fireworks rockets, two large kites, and a wicker armchair. The rockets were double-tiered to provide more power.

The story goes that on the emperor's command, attendants carrying torches simultaneously lit the fireworks. Wan's chair rocketed into the sky, only to explode in a ball of flame. The emperor disappeared forever.

By the mid-1900s, many authorities on flight were debunking the incredible tale. In 2004, the TV show "Mythbusters" tried to re-create Wan Hu's flight,

using materials that would have been available to him at the time. The result: The chair exploded on the launch pad, the crash test dummy showing what would have been critical burns.

It is possible that Wan Hu had access to rockets; their use in China had been reported as far back as the 1200s. Regardless, the legend endures amid skepticism. A statue of Wan Hu stands at the Yionang Satellite Center in mainland China, and the Soviets named a lunar crater for him in 1966.

Max Valier, 1930

Valier was also fascinated by rockets and their potential. He had experimented with off-the-shelf powder rockets on items ranging from sleds to race cars when he helped found the German Verein für Raumschiffahrt (Spaceflight Society), a kind of amateur rocket association. Members performed important developmental work on liquid-fueled rockets.

Valier tested his first liquid propulsion-based rocket car in January 1930. According to *Popular Science*, Valier's setup "centered around a standard combustion chamber, a steel tube with an upward-facing exhaust nozzle on one end and a propellant injector in the other. Liquid oxygen was fed into the chamber by small bores, its flow rate managed by a resistance disk that disrupted the flow. Fuel was introduced into the combustion chamber in the face of the stream of oxygen by opening a valve attached to its container."

Here's where the danger began: "Once the fuel and oxidizer mixed, they were lit with a blowtorch. The flame roared upwards, exerting a downward force that corresponded to thrust."

Fuel and oxygen were introduced to the chamber by opening valves by hand, a risky endeavor at best. Pressure built as the valves were opened more. Valier typically sat directly in front of the combustion chamber with no protection.

On May 17, 1930, Valier—assisted by Walter Riedel and Arthur Rudolph—conducted a series of tests, using kerosene mixed with water in conduction with liquid oxygen. An explosion ended the third test, as well as Valier's life. A piece of shrapnel had pierced his pulmonary artery. He was 35.

Franz Reichelt, 1912

Nobody told Reichelt to go take a flying leap. It was his idea.

A French tailor and inventor who should have stuck with the former, Reichelt designed a “vêtement-parachute” (clothes-parachute) and jumped off the Eiffel Tower on Feb. 4, 1912.

How could anyone else allow this to happen? A 1912 article in a French publication said Reichelt got permission for his stunt from the Parisian Police—although they thought he would use a dummy. And when Reichelt arrived on the scene for his stunt that morning and donned his 20-lb. suit, the two friends accompanying him begged him to reconsider.

“I want to try the experiment myself and without trickery, as I intend to prove the worth of my invention,” he announced.

As members of the press watched from below, Reichelt balanced, shakily, on a

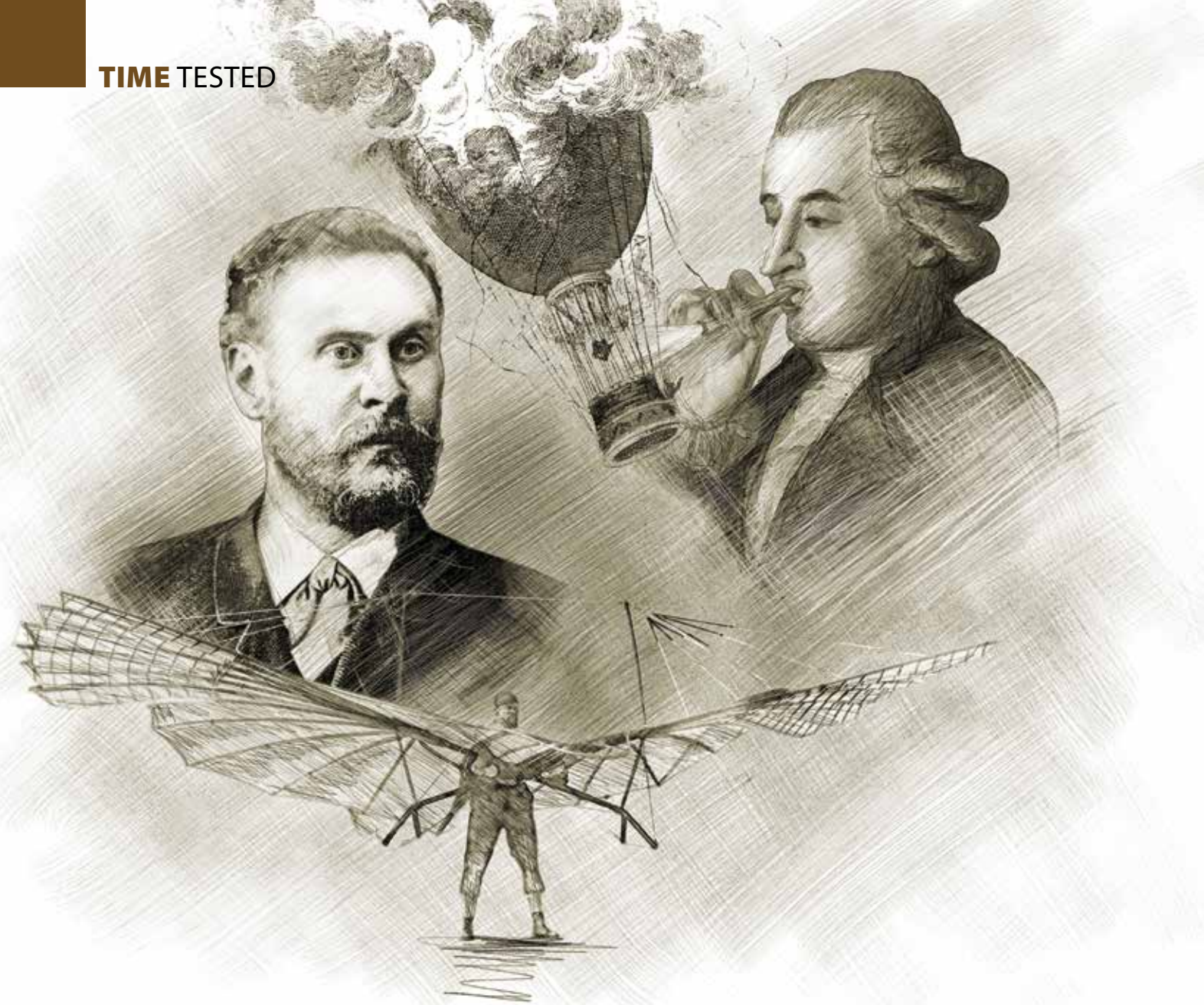
stool placed on a table top for about 40 seconds, then leapt from the first stage of the tower. Video footage shows that the parachute was no match for the hurtling downward weight and was never a factor. He was killed instantly.

Ironically, two days earlier, American Frederick R. Law successfully parachuted from the torch of the Statue of Liberty.

Nobody told Franz Reichelt to go take a flying leap. It was his idea.

Clockwise, from left: Franz Reichelt's clothes-parachute, which he wore when he jumped from the Eiffel Tower, was a deadly failure. Max Valier, who performed the first test drive of a rocket car with liquid propulsion, died when a lab experiment literally blew up in his face. The alleged rocket flight of Chinese emperor Wan Hu would have made him the first astronaut.





Otto Lilienthal “hung motionless in midair ... and plummeted to the ground from a height of 50 feet.”

Jean-François Pilâtre de Rozier, 1785

Pride wenteth before a deadly fall for this Frenchman, who was not satisfied with the international fame of making the first manned free balloon flight with François Laurent d'Arlandes on Nov. 21, 1783. In fact, he volunteered for that flight because he said he was determined not to let that honor go to an artisan.

Before long, however, Pilâtre de Rozier felt he was being upstaged: One man became the first to fly in a hydrogen balloon, and in 1784 two others became the first to cross the English Channel from Britain to France via balloon. Pilâtre de Rozier had to top them.

He set out to be the first to cross the English Channel via balloon from the opposite direction,

France to Britain. But prevailing winds that went south were a persistent obstacle.

Pilâtre de Rozier wasn't going to be patient. According to The Ultimate History Project, he created a new type of double balloon, with a hot air balloon under a hydrogen balloon. He theorized that the extra lift would boost his altitude to a more favorable position.

He and his partner, artist Pierre Romain, set out in the pioneering contraption for what proved an ill-fated trip. Details are unclear, but speculation is that a spark from the heat source keeping the air hot in the lower balloon may have traveled up and ignited

Above, from left: Otto Lilienthal, who had at least 2,000 successful glider flights, crashed during a test flight take-off and was reported to utter these last words: “Sacrifices must be made.” Jean-François Pilâtre de Rozier, who made the first manned balloon flight, crashed and was killed in his double balloon attempt.

the hydrogen in the upper balloon. The two men fell to the earth and died on June 15, 1785.

Unwittingly, the disaster possibly caused another death. Pilâtre de Rozier was engaged to a young Englishwoman, Susan Dyer, who was devastated by the tragedy. Some accounts say she committed suicide; others say she died of grief.

Otto Lilienthal, 1896

Lilienthal's repeated and successful gliding flights—reportedly more than 2,000—inspired the Wright Brothers and earned him the nickname “The Flying Man.” He constructed 18 types of gliders and was apparently the only person in the world who was flying often and reliably during the time the Wrights began their research.

On Aug. 9, 1896, Lilienthal attempted a test flight takeoff from a hilly location about 50 miles northwest of Berlin. According to The Smithsonian, “he took off, flew briefly, then hung motionless in midair ... and plummeted to the ground from a height of 50 feet.” A doctor determined that Lilienthal was paralyzed from the waist down but in no danger of dying. However, he died the next day; modern physicians presume it was due to a brain injury.

In 1930, his brother, Gustav, wrote a book in which Lilienthal's last words were chronicled. “His last intelligible words are said to have been: ‘Sacrifices must be made.’”

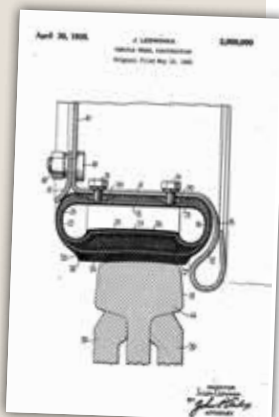
That phrase, which embodies the spirit of inventing, is carved in stone over Lilienthal's grave. 🏛️

INVENTOR ARCHIVES: APRIL

April 30, 1935: U.S. Patent No. 2,000,000 was issued to **Joseph Ledwinka**, for vehicle wheel construction. This came 24 years after Francis H. Holton received the one millionth U.S. patent, for an improvement in vehicle tires.

It was another 26 years after 1935 that the next millionth patent milestone was reached. Kenneth Eldredge received Patent No. 3,000,000 for an automatic reading system that converts human language into machine-readable language.

This was the only millionth patent milestone that took more years to achieve than the previous one. The 4 millionth patent, to Robert Mendenhall for a “process for recycling asphalt-aggregate compositions, was awarded 15 years later in 1976; the 5 millionth was issued another 15 years later.



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Digital Marketing Resources

OUR TOP CHOICES FOR INVENTORS WANTING TO PROMOTE THEIR PRODUCT **BY ELIZABETH BREEDLOVE**

SAY YOU'VE SPENT most of your life inventing new products, but you've hit the jackpot with your most recent idea and you're ready to take it to market.

You're putting together your online marketing strategy. You've built a small website, set up social media profiles and read some articles about marketing, but you're ready for the next step to ensure you're able to effectively promote your product, launch your business and grow your company.

If this is you, you're likely looking to learn all you can about marketing a product online so that you can rapidly grow your new business. Here are a number of resources for learning more about digital marketing—including social media marketing, content marketing, email marketing, and website design and development.

Alison

alison.com/courses/marketing

Alison offers free online courses taught by experts, with a focus on topics related to professional development. For example, you'll find classes about social media marketing, public relations, digital marketing and much more. This is a great place for inventors to start learning more about marketing their inventions.

Canva

designschool.canva.com/courses/

If you want to improve your graphic design skills, consider Canva's Design School! An online graphic design platform, Canva offers a handful of classes designed to help users learn how to make the most out of their software as well as become better, more creative graphic designers. These short, free courses are a great place to begin improving your design skills.

Codecademy

codecademy.com

This is a great place to start if your marketing strategy for your invention involves any coding or web development. The platform is free, though paid options are available, and it is designed to give you plenty of hands-on experience writing real, working code and then testing it to ensure you are on the right track. From basic HTML and CSS to Python and SQL, Codecademy is where to begin if you want to learn to code.

Constant Contact's Social Media Quickstarter

blogs.constantcontact.com/social-media-quickstarter/

If you're just beginning to build out your invention's social media presence, don't overlook this resource. It contains detailed, step-by-step instructions, with examples, for how to best use each of the major social networks. Essentially, this is your one-stop social media cheat sheet. If you want your invention to have success on social media, this is where you should start.

Coursera

coursera.org

Coursera provides access to courses from the world's top universities and organizations. Many courses cost less than \$100, and it is possible to earn a Master's degree from an accredited university through Coursera. Here, you'll find courses with titles such as Social Media Marketing, Marketing Strategy for Entrepreneurs, and much more.



These resources include social media marketing, content marketing, email marketing, website design and development, and more.

edX

edx.org/learn/marketing

edX is a platform founded by MIT and Harvard University that offers free and paid courses in a variety of subjects—including marketing—from some of the world's best universities. This platform offers courses on nearly every marketing topic available. Some courses are self-paced and last just a few weeks; others follow a schedule for an entire semester. Regardless, you're sure to learn something new that will help you launch your product when you enroll in an edX course.

HubSpot Academy

academy.hubspot.com

An inbound marketing software, HubSpot has its own "academy" full of courses and training videos to help people become better, more effective marketers. What sets HubSpot Academy apart from many

of the other platforms on this list is that it also offers certifications in subjects such as social media, email marketing, content marketing and more! These free certifications are well worth your time if you want to ensure that you are able to successfully launch your invention.

LinkedIn Learning

linkedin.com/learning/

Formerly Lynda.com, LinkedIn Learning is a paid subscription service that offers professional and career-development courses from instructors with real-world experience. From "Writing a Press Release" to "Creating and Managing a YouTube Channel," you'll find the courses you need to make your marketing efforts a success. Bonus: If your LinkedIn profile is up-to-date, the platform will suggest relevant courses to you, making it even easier to find the content you need.



MIT OpenCourseWare

ocw.mit.edu/index.htm

MIT publishes nearly all of its course content on this platform, which means you have free access to more than 2,300 courses! You'll find courses that include business, marketing and communication. This is another place to find college-level information on the marketing topics you are most interested in learning more about to launch your invention.

SEO Learning Center by Moz

moz.com/learn/seo

Moz is an SEO (search engine optimization) software company that many say is the world's top SEO thought leader. If you want to learn more about SEO and how to make sure your invention's website shows up at the top of the search engine's search results, Moz's SEO Learning Center is a great place to begin.

Udemy

udemy.com/courses/marketing/digital-marketing/

Udemy is a community that connects students with instructors in a wide variety of subjects. Within the marketing category, you'll find courses covering topics ranging from Google Ads to the basics of LinkedIn to Facebook Messenger chatbots and everything in between. If you want to learn about many different subjects, Udemy may be the best place to start. Note that course prices vary, and some courses are free.

Wordstream's PPC University

wordstream.com/learn

Wordstream is a company that offers software to make all kinds of pay-per-click advertising easier. Its PPC university includes PPC 101, PPC 102, Advanced PPC and Social Ads 101, along with a large variety of webinars, whitepapers, tools and resources. If you're hoping to use online advertising to grow your business, this free online course is a great place to start.

YouTube

Youtube.com

You may have to do a little digging to find what you need, but YouTube can help you learn something new without paying for a course. Just search "how to [topic]" or "[topic] course" and see what you can find. 📌

Elizabeth Breedlove is content marketing manager at Eventys Partners, a product development, crowdfunding and inbound marketing agency. She has helped start-ups and small businesses launch new products and inventions via social media, blogging, email marketing and more.





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Marketing in the Goldilocks Zone

HOW TO LOOK FOR THAT SWEET SPOT OF OPPORTUNITY AGAINST COMPETITION **BY JACK LANDER**

ONCE UPON A TIME, I had a publisher interested in a non-fiction book I had written. Fortunately, I didn't put a down payment on a new car based on my anticipated royalties.

The publisher outlined the conditions I must meet before signing a contract. The most important was that I visit three bookstores, search for similar books, and write a brief synopsis of each.

My heart sank when I discovered a total of 17 such books. I was sure that level of competition was more than enough to kill the book contract. I was right, of course.

Ted Nicholas, the publisher, let me down politely. He said that if there had been about five competitors—not zero competitors—he would have withdrawn the conditional offer to publish.

The five sounded OK. I felt my book was good enough to compete with that many. But zero? I was very surprised.

My first thought was that the absence of competition would be ideal. But Ted explained that the lack of a competitor's book meant bookstores had no shelf space dedicated to the category in which my book would be placed. It also would have meant that there was so little demand for the subject of my book that no publisher had yet gambled on publishing such a subject.

4 takeaways

So, there are lessons to be learned from that experience:

1. If no one has yet produced a product that seems to fill the need you have discovered, your venture is high risk. To launch it successfully will require lots of publicity and expensive advertising in order to get the market started. Pioneering a product is not for typical inventors. Leave the introduction of a truly novel product to the well-funded entrepreneur.
2. If many producers are already in the market, you will probably be overwhelmed by the competition. Ready for a shock? Better sit down.

Suppose you invented a squirrel-proof bird feeder. That's a need that bird lovers haven't fully solved. And you came up with a great invention that prevents squirrels from poaching the bird-feed you put out every morning. (Don't count on it; those bushy-tailed rodents are just waiting for a new challenge.)

You'll sell it on Amazon.com, right? Except that when you search for "squirrel-proof bird feeder" on Amazon, you are shocked to find several pages, each with 48 entries—95 percent of which are claimed to be squirrel proof. I stopped counting at 200.

Your dream of licensing your novel design, or producing it yourself, is shattered. Well, if not shattered, you're certainly in for a lot of work and expense invested against the odds.

The companies that are already in the business, and perhaps producing several models, can afford to add another if they choose. The more product entries they have on Amazon, the better chance they have of selling. But for you and me, our lone entry is lost in the maze.

3. Invent a product that fits the market's Goldilocks zone. Not too hot; not too cold; just right—a market that has enough competition that you know buyers are searching it but not so much that you'll be lost in the crowd.
4. You may be able to find a niche within a highly competitive market, if that's where your invention insists on going.

My book was on writing a great resume and getting hired. It appealed to a general audience. Everyone who works has a potential need for such book, which is why it had 17 competitors. Therein lies the opportunity.

Suppose I had pitched the book to the blue-collar worker. That would seem to be a good niche, because blue-collar workers were not using resumes years ago when I wrote my book. Mainly, they were searching want ads or using employment agencies.



Invent a product that fits the market's Goldilocks zone. Not too hot; not too cold; just right.

Thus, the person who mailed his or her resume to a company would have stood out. As a former employer, I know I would have kept an attractive resume on hand even if I didn't have a job opening at the time. So, I would have had a "unique selling proposition" for my approach to publishers.

One thing I didn't mention. I met Ted Nicholas at the American Booksellers Association annual convention in Chicago. I was surprised to see him standing alone in his Enterprise Publishing Co. booth.

At that time, he was having great success in publishing his own book, "How to Form Your Own Corporation Without a Lawyer for Under \$50." (The lifetime sales of that book are said to exceed 1 million.) I had modeled my long title after his: "How to Get Hired Faster, For More Money, Whether You Are Presently Working or Not." He was impressed, and we had a relaxed and friendly conversation.

Two weeks after the convention, he phoned me and proposed that he republish my book. The rest is

covered above. However, several weeks after I turned in my synopsis and Nicholas had declined to republish my getting hired book, he extended a contract to write another book. The title is "Make Money by Moonlighting." It has been republished and is still selling on Amazon.com.

So, I can add a fifth point to the four above. Pursuing an idea doesn't always lead to the intended goal; it may take us off onto another path.

But don't make my mistake. Do your market research before investing—whether your invention is a squirrel-proof bird feeder, a book, or the great invention you came up with before breakfast this morning. 🐿

Jack Lander, a near legend in the inventing community, has been writing for *Inventors Digest* for 23 years. His latest book is *Marketing Your Invention—A Complete Guide to Licensing, Producing and Selling Your Invention*. You can reach him at jack@inventor-mentor.com.



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The Name Game

IT'S NOT EASY, BUT IT'S POSSIBLE TO TRADEMARK YOUR WAY TO A DEAL **BY HOWIE BUSCH**

WHEN INVENTORS tell me about their product, they always focus on the patent. Don't you? There's the patent search, the PPA (provisional patent application), utility patent or design patent. You're excited to share that you've received a patent or are patent pending. And that is all really important.

Patents should be a primary focus—but what if your product just isn't patentable? Should you just throw in the towel and move on to your next product?

I don't think so, because you have another option. Have you ever thought about applying for and licensing a trademark?

Most inventors don't realize that you can, in fact, license an idea based on a trademark. I've done it. Twice.

The 5 key steps

Remember, when companies talk about IP (intellectual property) rights and protection, that includes both patents and trademarks. After all, it isn't just the U.S. patent office, is it? It's the U.S. Patent and Trademark Office.

I'm not telling you it's easy to do; I'm just telling you that it's doable, another possible add to your inventor toolbelt.

Let me share how to do it, and how you can earn a royalty for it. Because getting a trademark and getting someone to pay you for the right to use it are two different things.

So much of it is perception. You have to look like you've done enough work to warrant someone paying you a royalty.

A big part of it is being a professional. Here is how I've licensed products based on trademarks only (with no patent-pending status whatsoever).

- Perform a trademark search (you can use the USPTO site)
- Do a domain search, and secure the domain (you can use a site like Go Daddy)

- File for the trademark
- Put together a great sell-sheet
- Include a sample or prototype if possible

By doing all of the above, you look like you've invested a great deal of time and energy into the product. And in fact, you probably have. It will look and feel very much like a patent-pending product, which is what makes someone feel like you deserve a royalty.

How I did it

Let me share a couple of examples of how I've secured licensing deals using that exact formula.

The first product I ever brought to market unintentionally ended up being a trademark play because the product was clearly not patentable. I wanted to create a line of good-luck products for your favorite sports teams, in team colors. After all, what sports fan doesn't want to bring his or her team good luck?

We came up with the name "Whole Lotta Luck" for the brand/product line. The actual products weren't as important as the overall concept.

So for the first product in the line, we wanted something simple. Because fox tails are considered lucky, we came up with a plush fox tail in team colors. Picture an extra-large rabbit's foot, in team colors, to be waved around at sports stadiums and arenas.

I did a trademark search and secured the domain luckytailz.com. Then I filed for the trademark for Lucky Tailz, put together a great sell-sheet/marketing deck and created some prototypes.

It looked like a finished product that I had put a ton of time and energy into, which actually was true. It was my first product, and I had no idea what I was doing.

But at my very first meeting with my first licensee, I licensed that product to a company that already had the sports team licenses in the plush category. Of course the company could have done it itself, but I had done enough work to show the company what



So much of it is perception. You have to look like you've done enough work to warrant someone paying you a royalty.

it would look like as a finished product and secured a pretty cool name. So it was easier for the company to use my version and pay me a royalty.

Success No. 2, and some tips

The second time I licensed a trademark, I followed the same game plan.

At the time, ugly Christmas sweaters were everywhere and selling incredibly well. I came up with the idea to do ugly Christmas blankets.

Following the bulleted items above, I did the trademark search; secured the domain; filed for the trademark; made some prototypes (I simply went on Fiverr and paid someone \$100 to create some ugly Christmas designs. I then ordered them as blankets on zazzle and had some prototypes.); and I put together a good sell-sheet.

And I got a license deal.

Again, it is not easy. It's not easy to license anything. It takes hard work.

But it's possible, so don't throw away that unpatentable idea yet. Come up with a great name and see if the trademark route is an option.

You may get that licensing deal anyway ... just not the way you thought.

Pro Tip No. 1: One of the key elements in getting a trademark issued is actually using it in commerce. There is something called an ITU or Intent To Use trademark.

Without getting too deep into the legal aspects of trademark filing, you can file an ITU trademark application—but before it becomes fully issued, you will have to show that it is actually being used in commerce.

In other words, your trademark won't register until you, or your licensee, has the goods made—with labels, packaging, etc., and starts to sell it. You should consult a trademark attorney or the USPTO about this. The USPTO is free and is a tremendous resource.

Pro Tip No. 2: Keep in mind, the royalty for a trademarked item may be slightly less than for a patented product. That's not always the case—in fact, it wasn't for me—but it is possible. 📦

Howie Busch is an inventor, entrepreneur and attorney who helps people get products to market through licensing, manufacturing or crowdfunding. Possibly the world's least handy inventor, he has licensed many products, run a successful Kickstarter campaign and appeared on "Shark Tank."



A New Kind of Well Heeled

BUSINESSWOMAN'S PRODUCT REDUCES DREADED 'SLIP FACTOR'

BY EDITH G. TOLCHIN

I'LL ADMIT IT: I've had a shoe fetish since I was a little girl, when I made shoe and fashion accessories for my dolls. I later studied fashion design but only involving garments, because my school did not offer shoe design courses many years ago.

I always begged my mother for pumps. She would always decline my request because she wisely knew that they frequently slip off little girls' feet, causing many skinned knees. But nowadays, pump styles for women now can have added safety, comfort and style features thanks to Michelle Johnson, inventor of Kickstands™.

Born and raised in Minnesota, Johnson attended a private liberal arts college and has worked as a Minneapolis-based corporate consultant for more than 15 years. "I believe there's nothing more powerful in this world than a confident woman who's comfortable in her own skin—and in her fashion," she says.

Kickstands are reversible high heel straps that also add fashion to footwear.

Edith G. Tolchin (EGT): Where did the idea for Kickstands come from?

Michelle Johnson (MJ): Kickstands was born from my personal struggle of loving heels but battling the "slip factor" while presenting in boardrooms and racing to make connections at airports across North America. I've logged over a million airline miles, and throughout my travels, the heel slip was a frequent source of frustration.

But I wasn't willing to give up on pumps, either. Like many women, I love to hate them, but I can't live without them. And so, after searching unsuccessfully for a solution, I decided to create one myself. Five years and countless prototypes later, I had developed Kickstands: reversible high heel straps that add fashion to footwear while preventing the dreaded heel slip. From the office, to the theater, to the airport and all

points in-between, Kickstands are changing the rules of engagement for footwear.

I love that I can change up my look within seconds, just by adding Kickstands to a basic pair of pumps. I typically pack just one pair of black pumps during my travels, along with several pair of Kickstands to produce multiple different looks during the course of the week. Kickstands add instant glamour to any outfit, and our website offers a variety of patterns and styles—from bright florals to vintage-inspired dots. Every pair of Kickstands is reversible, featuring a stylish pattern on one side and a solid color on the opposite, for maximum versatility. The durable elastic conforms to virtually any heel, making it appear more like a part of the shoe itself rather than a separate add-on accessory.

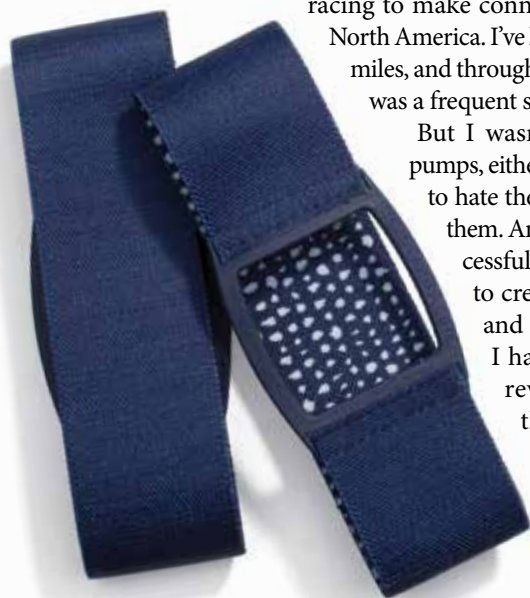
My goal in developing this product was to create one important accessory to give women the strength and confidence to tackle whatever life throws at us—and along the way, to provide a little extra balance in an unstable world so women can effortlessly find their stride. This proves to all that "the bold and fearless never miss a step."

EGT: How are Kickstands different from other shoe accessories?

MJ: Kickstands are a first-of-its-kind product, adding both style and stability to virtually any high heel and giving women the confidence boost they need to put their best foot forward.

Kickstands are much more than a footwear accessory. This is about empowering women everywhere to feel more confident in their stride and to be comfortable knowing we don't have to compromise comfort for great fashion.

In recent years, women have begun to abandon high heels, opting instead for wedges or flats that provide more comfort and stability. I wasn't ready to say goodbye to the pumps I love, because for me and many other women, wearing pumps gives us the strength and confidence we need to feel both





“I wasn’t ready to say goodbye to the pumps I love ... wearing pumps gives us the strength and confidence we need to feel both powerful and feminine at the same time.”

—MICHELLE JOHNSON, INVENTOR OF KICKSTANDS

powerful and feminine at the same time. That’s where Kickstands comes in. With Kickstands, it’s “high heels, low maintenance.”

EGT: What are Kickstands made from? How are they packaged?

MJ: Kickstands are made from durable, high-quality elastic and rubber, are packaged in premium, soft-touch boxes with peekaboo pattern windows, and are shipped to customers from my home state of Minnesota. The minimal, portable design goes from purse to pumps in seconds.

EGT: Have you ever invented anything before?

MJ: I’m never short on ideas, but to date Kickstands is the only invention I have brought to market.

EGT: Where is the product manufactured?

MJ: Kickstands are made in the United States, using products and services from Minnesota and California. We have explored the possibility of manufacturing overseas but remain committed to domestic manufacturing so long as it continues to meet our production needs and quality expectations.

EGT: Please tell us about your experience with safety standards and regulations for Kickstands, since they are worn by the consumer. As a China sourcing professional, I’d be concerned about potential safety issues if the straps come loose.

MJ: Kickstands are strong and durable and designed for sustained, long-term use. However, as with every product, the potential for breakage exists. Our testing indicates the occurrence is rare, and safety issues for consumers are extremely limited. They are less problematic than a shoelace coming untied.

EGT: Please share your patent experience.

MJ: A visit with a patent attorney was first on my list when exploring the possibility of bringing this idea to market. I partnered with law firms in Minneapolis for patent/IP and trademark services. We have filed applications for both utility and design patents and have secured several trademarks.

EGT: What about product development?

MJ: Developing a product can be tricky for even the most experienced inventors, but it's often overwhelming for beginners. I encountered new challenges and issues at every turn. That said, I have also found that entrepreneurs and small business owners are among the most generous with their time and expertise, and so many people helped me navigate the ins and outs of the process involved in getting to market. I hope to have an opportunity to pay it forward someday.

EGT: Where are you selling now?

MJ: Kickstands are available at kickstands.com. We are currently exploring partnerships and distribution at major retailers. Wholesale pricing is also available for boutique owners who wish to carry Kickstands in their stores.

EGT: What is the retail pricing?

MJ: Kickstands retail for \$24. There are 13 styles across two collections—"Classic Collection" and "Limited Edition Collection"—and each pair features a reversible design with a solid color on one side and a complementary pattern on the other.

EGT: Any other inventions you might be adding?

MJ: Designer carry pouches are currently in development and will be available later this year. The Kickstands brand is all about adding style and comfort at every step, and my focus for future products will remain true to this commitment. Other foot-related solutions and accessories are possibilities for the future. Stay tuned!

EGT: Can you share any wisdom for novice inventors?

MJ: I cannot stress enough the importance of relying on experts in the areas of brand development, social media, web development, legal and related fields. If you're going to do something like this, you have to do it right. That takes deep pockets, a lot of patience, and nerves of steel. ☎

Details: info@kickstands.com

Books by **Edie Tolchin** (egt@edietolchin.com) include "Fanny on Fire" (fannyonfire.com) and "Secrets of Successful Inventing." She has written for *Inventors Digest* since 2000. Edie has owned EGT Global Trading since 1997, assisting inventors with product safety issues and China manufacturing.



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Precious Peace of Mind

INTELLIGENT BABY MONITOR CAN PROMOTE BETTER SLEEP FOR NEW PARENTS **BY JEREMY LOSAW**

The Smartbeat is an intelligent baby monitor that can accurately tell when a sleeping child is breathing via a video analyzing algorithm, even if the child is under a blanket or being swaddled. If it senses that the child is not breathing, it sounds an alarm.

IT'S CHALLENGING enough to get a newborn baby to sleep through the night. But when you are the parent of a child born prematurely—thus carrying the increased risk for Sudden Infant Death Syndrome—that challenge grows for sleep-starved parents as well.

Such was the situation faced by Nate Ruben and his wife, Sarah, with their first child who was born four weeks early in 2012. She was up multiple times a night to confirm their child was still breathing, and her overall wellness was suffering.

Their worries led to a new product called the Smartbeat, which can keep a trained eye on infants while they sleep to make sure parents can rest easily.

The Smartbeat is an intelligent baby monitor that can accurately tell when a sleeping child is breathing via a video analyzing algorithm, even if the child is

under a blanket or being swaddled. If it senses that the child is not breathing, it sounds an alarm.

The camera has pan, tilt and zoom control that is accessible through the mobile app, and has continuous video stream and two-way audio. The device can measure breathing rate, and based on the cadence of the breathing can even detect if a child is going to be sick.

Promise and processes

Ruben was an electrical engineering student at Utah State University when his first child was born and was inspired by some research he came across.

“I read an article from MIT where they used cameras to measure heart rate. ... My inclination was, ‘I’ll make a baby monitor that uses this technique to get heart rate, because that would for sure help parents to sleep better.’”

This line of research eventually became the subject of his Master's thesis in which he researched the methodology. This greatly improved upon the technology from the original MIT article.

An investor got wind of his research and approached him about investing in the technology. This led Ruben to form his company, Ruben Digital, and to start working toward bringing the product to market in earnest.

The first prototypes of the Smartbeat were overly complicated. Ruben used developer boards to create his own circuit with a camera system to analyze the video. He took this prototype to factories in China and realized how challenging it was going to be to create custom hardware.

"We made a transition from that point," he says. "We think this camera is very unique and special, but honestly all it is is the software that is running in it."

His team realized it could source a suitable camera and modify it just enough to allow it to run his breathing algorithms. The team found a reputable factory with a good camera platform and got to work building a new set of prototypes.

The next step was to get testing hours on the new product. Because the algorithm was based on machine learning, the more data that could be collected and analyzed, the smarter the device would become.

For nearly a year, the team deployed prototypes into different homes with many different children. This was great for refining the breathing algorithm but also produced valuable feedback about the product as a whole.

"There are millions of tiny details that go into it. Eighty percent of the product is the breathing monitor, but 90 percent of it is the details surrounding it," Ruben says.

The company found that users wanted features such as the ability to pan and tilt the camera, as well as having a standard video feed to be able to check in with their own eyes. Users did not seem to care about the resolution of the video or the audio; they just wanted the peace of mind that their child was sleeping peacefully.

Nate Ruben and his wife, Sarah, were up multiple times a night to confirm their child was still breathing.

IP's crucial role

Multiple patents were filed for the technology behind the Smartbeat, as there are novel techniques used to extract the heart data from the video stream.

Ruben notes that the intellectual property has been an important part of the corporate strategy, as well as for discussions with investors. However, the real value behind the product is all of the data that have been used to tune the algorithms that drive it.

Smartbeat was soft-launched on the company website at the end of 2018. The first goal was to sell some units and gain consumer enthusiasm, and the first production run sold out in a few months. The product was also exhibited at January's Consumer Electronics Show, to rave reviews.

The team continues to refine its marketing message and build up inventory. It is also looking to the future, specifically into developing new products to give parents tools to achieve precious peace of mind. 🧘

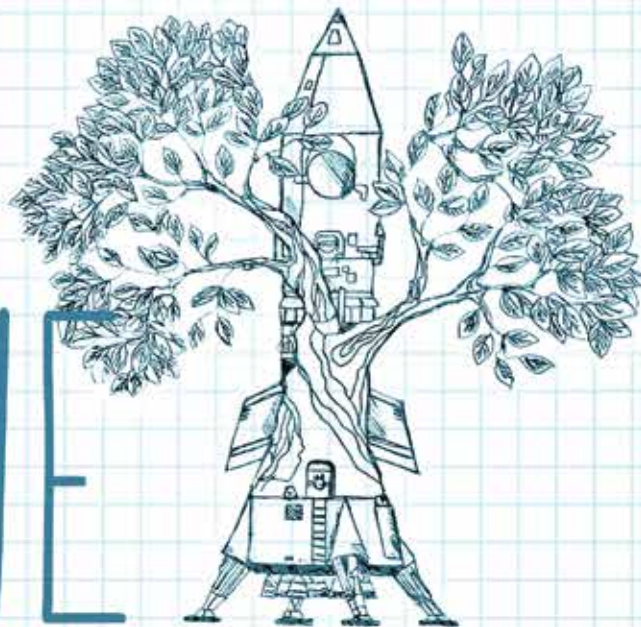
Details: mysmartbeat.com

Jeremy Losaw is a freelance writer and engineering manager for Enventys. He was the 1994 Searles Middle School Geography Bee Champion. He blogs at blog.edisonnation.com/category/prototyping/.





JUST IMAGINE



CHILDREN'S INNOVATIVE CREATIONS WOULD IDEALLY
SOLVE A GALAXY OF PROBLEMS **BY REID CREAGER**

WHAT ARE THE CHANCES that the 11 millionth U.S. patent will be issued to a child?

C'mon, let your imagination run wild. Aided by—and being weaned on—high-tech gadgets, kids have never had more potential to innovate. Their pristine, innocently hopeful imaginations are not cluttered with practical constraints, their inventing goals seldom with self-centered intent.

A 9-year-old girl from the United Kingdom is creating with senior citizens in mind. Laura (last name withheld for privacy reasons) conceived a benevolent robot that cares for elderly people and caters to their every need.

Cody the Carer has “eyes that tell us if the person is getting ill, hands that are waterproof and can do dishes, and a mouth that talks to the old person and stops them from being lonely.”

The UK Domain, which helps businesses and individuals achieve more online, asked a group of children between ages 6 and 11 what they would invent to make the world a better place. An illustrator then interpreted the children's drawings to help bring them to life.

“It's fascinating to see the creative and often thoughtful way that children see the world,” says Helen

Tomes, director of marketing at The UK Domain. “We wanted to give the founders of tomorrow a platform to show us what they think of the world today.”

Some of the children's creations would seemingly be an impossibility in real life. But remember how we rolled our eyes at some of the outlandish contraptions presented in the 1985 blockbuster movie “Back to the Future”? Among those that are now available for purchase: video phones; biometric devices; hands-free gaming consoles; smart clothing and wearable tech; personal drones.

You go, kids. Here are other possible planet-changing innovations, from a top 10 list available for view at theukdomain.uk/future-founders/.

The Tree Rocket

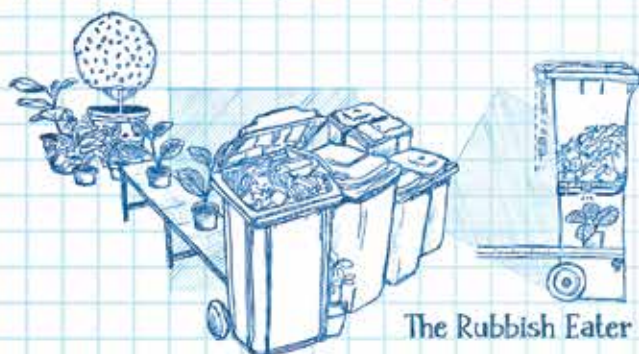
How could a 6-year-old from the UK imagine that his idea would become the impetus for this month's *Inventors Digest* cover art?

Tyler says The Tree Rocket is capable of transporting its passengers from England to Australia in 1 second. Windows in the top of the tree allow for cool views during travel, and the door in the trunk provides easy access for travelers.



Olly the Ocean Organizer

Olly is a machine that scours the ocean for rubbish and captures it in a giant net. Daisy, a 9-year-old from the UK, writes that the machine would have solar-powered propellers and “eyes to see if there is any fish not to hurt them.”



The Rubbish Eater

From the project's youngest future inventor, 5-year-old Hannah from Australia, this eco-friendly solution single-handedly solves the world's rubbish and deforestation problems by turning trash into fully formed trees.



The Frogainpet

Six-year-old Luke from the UK devised a machine that mixes hearts and very hot water to create love, a special steam released into the air. Because love is not to be wasted, hearts not turned into steam are boxed up, moved along the conveyor belt and shipped out all around the world for people to enjoy.



We had to ask Luke how he came up with this. He said he was inspired by the 2005 musical fantasy comedy film “Charlie and the Chocolate Factory”—but that his machine would make love instead of chocolate. Luke likes building things with LEGO, which helps his idea building.

“We wanted to give the founders of tomorrow a platform to show us what they think of the world today.” —HELEN TOMES, DIRECTOR OF MARKETING AT THE UK DOMAIN



The Gun Sucker

Another 6-year-old, Harry from Australia, imagines a vacuum-like device that sucks up all the guns in the world and destroys them in its dynamic body. The wheels at the bottom facilitate speedy transportation for where this powerful Sucker is most needed.



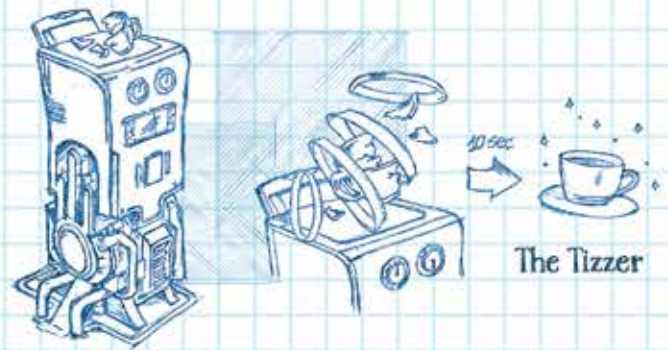
The Spawner

A magic, microwave-like machine, the Spawner conjures up any food you want. Ten-year-old Mia from Australia says you just type in the name of the food you want, and the Spawner uses its antenna on top to search for recipes and generate your dream snack.



The Tizzer

Nine-year-old Lily from the UK imagines a world where no repair tools are necessary. The Tizzer can fix anything in a minute. Just point it at the thing you want to fix, turn the white button, and wait 10 seconds for the high-tech laser to start up and begin using its special fixing rays.



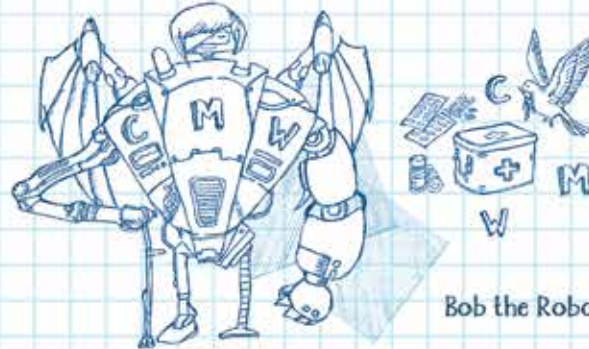
The Tizzer

“I wanted to invent something to help the environment,” Lily told us. “Inventing is fun and I enjoy it, and we always have to try new things for the future.”

Bob the Robot

Apparently Bob is a war veteran of the noblest kind. Eight-year-old Lexie from the UK says that although he’s been in the wars himself, Bob is “perfect at helping other people.”

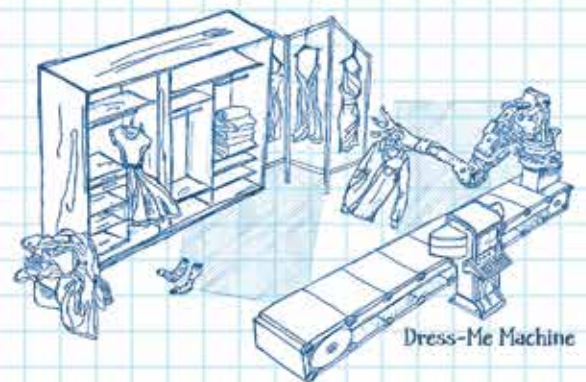
Equipped with wings and the kindest brain in the world, Bob can cure cancer, medical issues and encourage world peace. Bob reminds everyone that not all disabilities are visible.



Bob the Robot

The Dress-Me Machine

The machine helps its operator get ready in the morning. Six-year-old Sam from Australia imagines that once your dream outfit is put together with the handy selector screen, the giant mechanical dressing arm pops your clothes on as you glide comfortably along the conveyor belt. 🌀



Dress-Me Machine

THE CHALLENGE TO GROW MORE YOUNG INVENTORS

It’s exciting to see the minds of possible future inventors at work. The challenge is to keep that momentum building throughout childhood and into young adulthood—and statistical indicators are that this challenge is massive.

Recent research from the Equality of Opportunity Project examined patents, tax records and test scores to determine which U.S. kids do and don’t grow up to become inventors. They found that socioeconomic and racial factors are a reliable predictor of a child’s inventing future.

Strong science and math test scores by children would seemingly portend a future in inventing, right? But usually not. According to the study, even top-scoring students are not much more likely to become inventors unless they are boys from white, upper-class backgrounds.

Children from the top 1 percent of household incomes are 10 times as likely to become inventors as their middle- and low-income peers.

Such an economic, gender and cultural disparity underscores the importance of STEM programs in schools and the role-model impact of hands-on instructors. The study also discusses the importance of an environment that is conducive to invention, including exposure to inventors and patent holders.



What is CES Really Like?

IF YOU CAN GET IN, HERE'S AN IDEA OF WHAT AWAITS AT THIS MASSIVE TRADE SHOW **BY JEREMY LOSAW**

IF YOU are fortunate enough to get into the Consumer Electronics Show—the world's largest consumer technology show—it is never too early to plan.

Next year's gala is January 7-10, and it is well worth the wait and preparation. Allow yourself enough time to apply and know that CES is a trade-only event for people 18 or older and affiliated with the consumer technology industry. It is not open to the general public.

With about 4,500 exhibiting companies this past January and exhibit space of more than 2.7 million net square feet, the show is big-league all the way. The technology is amazing. The exhibits are over the top, and all of the industry pros are there.

But it is a lot of work attending and exhibiting at CES. It is an exhausting week of travel, meetings and pitching your product (or yourself). This is what it is really like to attend this blockbuster show. Pack your bags; we are headed to Vegas.

Sunday

The show starts at the airport. From the east coast, it is about 5-6 hours depending on the route. If you are exhibiting, you will have some mix of very valuable prototypes and/or accessories for the booth, which can be nerve-racking. (Two years ago, I checked a full-size range stove, which received a few odd looks and queries from airline staff.)

Day 1 is where you refine your pitch. You learn quickly how to refine your product or your whole career into just a couple of sentences.

Once you land, two things are a must. First, you need to check in at the CES table at the airport and get your badge, as you need this all week to get into the exhibit halls. Second, and most important, get your driver to drop you off at In-N-Out Burger for a double-double with animal fries. Yummy. You may regret this a few hours later, but don't let that stop you.

Monday

Exhibit halls are closed to show-goers on Monday, but it is prime time for exhibitors to set up their booths.

Depending on the size and complexity of the booth, this can take all day and is not without its troubles. 2019 was the first year for Eventys Partners as an exhibitor, and our name tag was spelled wrong. Fortunately, the CES show staff had a new one printed for us on the quick.



Oops: The Eventys Partners name was spelled wrong the day before this year's show.



Monday is also media day, with conference speakers. If you have a media pass (as I did), you can go to a variety of press release events for many of the large companies that exhibit at the show. If you have paid the extra bit of money for the conference track, you can go to the panel discussions with industry experts.

I went to a couple of panels about augmented reality that were very informative. Then it is off to bed early to be fresh for opening day.

Tuesday

The first day of the show is a whirlwind. The show opens at 10, but exhibitors are allowed in a couple of hours early to tidy up their booths and make sure their prototypes are working properly.

The lobby is buzzing in the minutes before the doors open, with an audible cheer that goes up once security allows the first attendees through.

Day 1 is also where you refine your pitch. Whether exhibitor or attendee, the day is a wall of conversation; you learn quickly how to refine your

product or your whole career into just a couple of sentences. Everyone has business cards and/or flyers about his or her product in addition to the other swag such as pencils and stickers. It is important to pick up a free tote bag from whichever exhibitor has them on offer to hold onto the flyers you want to keep.

This first day is the most attended, so you need to make the most of it. Lunch is quickly taken at the food court in the exhibit hall or standing up while manning the booth.

If you exhibit, you may not leave the booth for whole day. The time is just too valuable. If you have done your job well, you should have a hamburger-sized stack of business cards to bring back to the hotel at the end of the night.

A crowd waits outside the Eureka Park exhibit hall before it opened. Yes, Jeremy Losaw got a free Arduino.



Wednesday

In the months leading to the show, a flood of emails go out to show registrants. Being part of the media, I get hundreds of requests for meetings and interviews from all sorts of companies. Exhibitors also get flooded with requests for meetings with vendors, media and potential partners.

Wednesday is a great day to schedule these types of meetings. If you have a booth, people will often come to you, so you don't miss any valuable time meeting with other show-goers. If the meeting is sensitive in nature, private meeting rooms on the show floor are available to talk through the details of a deal.

CES is all about the after-parties, and Wednesday night is prime time. Groups such as Hardware Massive and other tech companies will have either invite-only or first-come after parties at venues on the strip.

This photo of our intrepid author, with Yurly Pryadko, was taken with the Fish Ball 360-degree camera lens.



I attended a French Tech meet-and-greet in Caesar's Palace and was treated to some free beer while I futilely attempted to network with French entrepreneurs. The show floor is chaotic, but these after-hours events give you the chance to make some deeper connections with other show-goers.

Thursday

It's Day 5, and the past two days have been spent on your feet. Coffee (or tea in my case) is a necessary pick-me-up as you lumber back to the exhibit halls for another day. Your voice is likely at least a little bit hoarse, but you have to push through.

Most of the important meetings are behind you, so there is time to explore the other exhibit halls. You can head over to see all of the 8K TVs, VR headsets and other whiz-bang tech. It is a perfect time (if you are a Sony shooter) to drop off your camera at the pro-services booth for a free checkup and sensor cleaning.

Friday

On the last day of the show, the atmosphere is much more relaxed. Many of the show-goers (especially the overseas crowd) start to head home.

Exhibit halls are far less congested; you can see the droopy eyes on people who have remained.

You finally have time to meet your exhibit hall neighbors and see how their show is going. With fewer people in the halls, it is easier to get some good photos, too. A sit-down lunch may be an option.

At the end of the day, it is celebration time. People grab a beer from the food court to toast to a job well done. Booths are emptied.

It has been a long but fruitful week, and there is plenty of promise in the stack of business cards you have collected. An investor, contract manufacturer, mentor or new friend may be buried in that stack. Unfortunately, the real work starts when you get home next week. You have an awful lot of emails to write. 📧



Getting Help but Keeping Control

IN PARTNERSHIPS, THIS 11-STEP CHECKLIST CAN PROTECT YOU AND MINIMIZE BAD SURPRISES

BY DON DEBELAK

GETTING a new product on the market requires many disparate skills, so inventors often benefit from teaming with someone with complementary skills. But for a partnership to work you should outline your expectations in an agreement—even if it is a checklist—that you share with prospective members of your team.

Here are some items you and your partner should discuss and document.

1. **Responsibilities.** Explain clearly what each party is responsible for doing and what each party is financially committing to the project.
2. **Decision making.** You should state that the final decision is yours but that you will discuss each major decision with the parties and consider their input.
3. **Ownership of the idea, or partnership arrangement.** It may be too early to form a company, but you should state how much of the idea is owned by each member of the team. Include a statement here that each party's ownership may change if additional members or investors are added.
4. **Patent ownership.** The simplest way of doing this is starting a company or LLC, then assigning the patent to the company with each team member owning the percentage discussed in item No. 3. All members of the team should agree to assign the patent to the company.
5. **Profit/revenue sharing.** This should be along the lines of percentage of ownership. But you should also discuss taking money out. You may need to take money out of the company, while your partners might want to completely reinvest any profits.
6. **Adjustment procedures.** Agree that the percentage of ownership can change if a team member's participation changes from the original agreement.
7. **Commitment levels.** Be clear in what commitment level, in time and money, each member can expect from the other members.
8. **Product review.** The team should meet every quarter to review the project status and discuss how

it will move forward in the next three months.

9. **Expected business model after the product is launched.**

In many cases you might just license the idea, in which case the ownership percentage will stay the same. Other times, you might expect to go into business. If that is what happens, be sure to discuss that people will be paid a salary, agreed to by the partners, based upon the time commitment to the company.

10. **Derivative products.** You should state that the team is for just the one product and its product improvements, and any derivative products that might come out of the project belong to you. (Or, derivative products could belong to the team.)

11. **Dispute resolution.** You might want a clause that any disputes will be settled with arbitration. Most areas will have services that offer low-cost arbitration or dispute resolution.

This might seem like a lot of items to discuss before starting on a team partnership. But my experience is that airing out the possibilities before starting keeps everyone's expectations in line and helps focus the members on their responsibilities and commitments—and the team's eventual success. 📦

Profit/revenue sharing should be along the lines of percentage of ownership. But you should also discuss taking money out.



Don Debelak is the founder of One Stop Invention Shop, which offers marketing and patenting assistance to inventors. He is also the author of several marketing books, including Entrepreneur magazine's Bringing Your Product to Market. Debelak can be reached at (612) 414-4118 or dondebelak34@msn.com.



Patenting and Justified Paranoia

IT CAN OFTEN BE A DELICATE DANCE TO GET A SIGNED CONFIDENTIALITY AGREEMENT **BY GENE QUINN**

MOST INVENTORS understand that a certain amount of paranoia goes a long way when dealing with an idea or invention.

Ideas cannot be patented, but every invention starts with an idea. When you have an idea that has been sufficiently formulated and described in a provisional patent application, you may even be able to license that invention idea without having received a patent. This all falls apart if you tell others about your invention or otherwise disclose your invention before a patent application is filed.

Worse, if you tell someone your idea without a confidentiality agreement, that person is free to use the idea without paying you anything. It can feel like the Wild West sometimes for inventors seeking to become entrepreneurs—whether their dreams are to license inventions, build a company to sell a product, or offer a service representing the invention.

Keep it confidential

Once your idea crosses the idea-invention boundary you can receive a patent—provided, of course, that it is new and non-obvious. But if you start telling others about your invention, they could make and use your invention without paying you. That is bad enough, but the mere act of someone else moving forward with your idea could forever prevent you from obtaining a patent.

First, inventors should assume that countries around the world (i.e., outside the United States) require absolute novelty in order to obtain a patent. This is an exaggeration—but not by much—and is the safest rule to follow.

Following this rule, which is an accurate description in many countries, will prevent you from many mistakes that would have negative consequences anywhere. What absolute novelty means is that, before filing a patent application, you cannot disclose your invention to anyone without a confidentiality agreement.

With patent agents and patent attorneys, the law immediately imposes a confidentiality agreement, so disclosing your invention to a patent practitioner without a written agreement is perfectly fine. With everyone else, you need a confidentiality agreement. Absolute novelty also requires that you not sell, offer for sale, or publicly use or demonstrate the invention before filing a patent application.

Remember the rules

In the United States, on March 16, 2013, the law changed from “first to invent” to “first inventor to file.” There are exceptions, but extraordinarily narrow exceptions. So narrow are the exceptions to first-inventor-to-file that they are hardly worth mentioning.

So, inventors must consider the law as being black and white—file first before doing anything public, offering anything for sale, or disclosing the invention to anyone.

Unlike many foreign jurisdictions, however, if you did make a mistake and made some disclosure, public use or demonstration, or sale, in the United States, there is still a chance you can obtain a patent if the application is filed within 12 months of the earliest such disclosure, public use or offer for sale. So, if you are reading this and realize you made a disclosure before you filed at least a provisional patent application, the safest thing to do would be to immediately consult a patent practitioner.

Of course, the advice about filing first—which everyone should follow—begs the question: “Exactly how much paranoia is too much paranoia?”

After all, many inventors are going to need assistance from someone in order to bring their invention into being. And although inventors are very good at the invention part of the idea, they tend to need a great deal more help with the business aspects—simply because their acumen lies on the technical side of the spectrum.



Inventors need to know who can be trusted with their invention. The short answer: not many people.

Know who to trust

First, inventors need to know who can be trusted with their invention. The short answer: not many people.

This prompts many to attempt to secure a signed confidentiality agreement before disclosing their invention. By all means, try to obtain a confidentiality agreement whenever possible; IPWatchdog.com has free sample confidentiality agreements that you can use at your discretion.

However, don't be surprised if the other party does not want to sign. This is because before the signing of the confidentiality agreement, no liability exists for the party receiving the information. After the signing of the agreement, liability exists and there is no guarantee that anything of real value will be conveyed in exchange—but liability has still been created.

For example, Sam invents a new and improved fly swatter.

The fly swatter is virtually idiot proof, and anyone can use it to kill flies no matter how uncoordinated. Sam wants to talk to Bob about possibly investing or partnering in the endeavor, and before Sam tells Bob anything, he wants a signed confidentiality agreement.

Bob has no idea what he is about to learn from Sam; maybe it's good, maybe it's bad, maybe he already knows the information. If Bob signs a confidentiality agreement, he is immediately opening himself to liability because he has promised to keep Sam's information secret. If Bob already knew about Sam's improvement to the fly swatter, the confidentiality agreement he signed will almost certainly say he doesn't have to treat Sam's disclosure as confidential.

For example, in the standard confidentiality agreement available on IPWatchdog.com there is a clause that reads:

"This Agreement imposes no obligation upon Recipient with respect to any Confidential Information (a) that was in Recipient's possession before receipt from Discloser..."

This is a fairly typical clause for a confidentiality agreement.

But if you were Sam, what would you think if six months later Bob starts selling a fly swatter that looks remarkably like yours? Sam will undoubtedly think Bob stole the idea and invention from him, and litigation could ensue.

You need to be wary

The above story is one very typical example of what can, and frequently does, happen. Inventors often think what they have is so unique that no one else could have ever come up with the invention without stealing it, but that is not as common as inventors think.

That is not to say that taking an invention or idea never happens, but there are plenty of creative people who can and do come up with nearly identical inventions. Just hire a professional to do a patent search on your invention and that will become clear.

Having said this, it is important to make a distinction. Many in the inventing community are well



Just because getting a confidentiality agreement is difficult doesn't mean that you shouldn't try.

aware that there are some unscrupulous copycats knocking off products and inventions. They troll places such as Kickstarter and have standing policies that if anyone raises a certain amount of money, they will immediately start working on the same thing in order to beat the start-up to market.

These unscrupulous actors exist, and inventors need to be wary of them. That is why filing a patent application first is so important. And if your product has a unique visual appearance, filing for design patent protection can be essential. Although weaker than utility patents, design patents can and do provide great protection against copycat knock-offs.

Returning to our example: If Bob is an investor, he has likely been pitched by many inventors. So it stands to reason that eventually, two inventors will have at least plausibly similar inventions. Thus, getting an investor like Bob to sign a confidentiality agreement can be quite difficult.

Shady operators

Sadly, one of the ploys used to gain inventors' confidence is the promise to sign a confidentiality agreement. But those who operate in the shadows of the industry aren't interested in taking your invention; rather, they plan on taking your money by selling you high-priced services for an invention that might not be patentable or is only capable of receiving extremely narrow patent coverage.

Their play is not to steal your invention but rather to make you think it is the best thing since sliced bread. So you hire this person or company to do a variety of work for a fee. These actors sometimes recommend design patents—which unfortunately have received a bad reputation in the inventor community as a result—and charge outrageous prices for their services.

From start to finish, a design patent with all attorneys' and United States Patent and Trademark Office fees should generally cost \$2,500 to \$3,000. (Some of the shady operators are known to charge \$10,000 to \$15,000, or even \$20,000 for a single design patent. That is outrageous. Run!)

Just because getting a confidentiality agreement is difficult doesn't mean that you shouldn't try.

There are those out there who are used to signing confidentiality agreements, such as manufacturers and engineers who you might need to work with to create engineering drawings or a prototype. Whenever you are showing your invention to someone within your industry or to those who would have the technical knowledge and ability to move forward with your invention without you, a confidentiality agreement is both essential and more likely to be obtained.

Just don't expect investors or potential licensees to be all that interested in signing a confidentiality agreement—at least at first. However, if they like what they hear, it is not unheard of that at some point they might be willing to sign. So there is a delicate dance involved where one must reveal a little to entice the reluctant signer of the confidentiality agreement. ☞

Gene Quinn is a patent attorney, founder of IPWatchdog.com and a principal lecturer in the top patent bar review course in the nation. Strategic patent consulting, patent application drafting and patent prosecution are his specialties. Quinn also works with independent inventors and start-up businesses in the technology field.





Amazon Admits to Fraud Risk

COUNTERFEITING WOES AFFECT SHAREHOLDERS, BRAND OWNERS AND CONSUMERS **BY STEVE BRACHMANN**

AMAZON.COM, INC. recently filed a Form 10-K annual report with the U.S. Securities and Exchange Commission in which it officially acknowledged to shareholders that the company's online sales platforms face the risk of being found liable for fraudulent or unlawful activities of sellers on those platforms.

The filing, which include Amazon's year-end earnings for the 2018 fiscal year, include the company's first concession that Amazon may be unable to prevent sellers trafficking counterfeit and pirated goods.

"The law relating to the liability of online service providers is currently unsettled," Amazon's February 1 filing reads.

Along with the specter of counterfeit sales, Amazon noted that its seller programs may render the company unable to stop sellers from collecting payments when buyers never receive products they ordered, or when products received by buyers are materially different than the sellers' description of those products at the point of purchase.

Although information regarding a corporation's potential risk of liability is a regular feature of SEC filings, news reports indicate that this is the first time Amazon used the word "counterfeit" in an annual report.

Recent background

The counterfeiting activities are old news for large and small brand owners.

In recent years, Elevation Lab, Daimler AG and Williams-Sonoma are a few companies that have publicly called out Amazon for its unwillingness to deal with counterfeit products—the latter two companies having filed trademark infringement suits based on those allegations. Even Apple has claimed that 90 percent of Apple-branded products sold on Amazon are counterfeits.

Last June, counterfeit watchdog group The Counterfeit Report detailed official communications with an Amazon representative responding on behalf of CEO Jeff Bezos, which indicated that Bezos is complicit in the sale of counterfeit items on Amazon's e-commerce platform.

The law surrounding online service provider liability may be unsettled, but Amazon's role in enabling the sale of counterfeit goods seems very clear.

3-tier system

According to Eric Perrott, trademark and copyright attorney with Gerben Law Firm, Amazon's susceptibility to the counterfeit problem has a lot to do with how

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the company has structured its e-commerce services.

Many consumers visit Amazon.com through their web browsers and expect that they're visiting a single cohesive e-commerce platform but, as Perrott notes, Amazon is actually structured into three different e-commerce tiers. There's the Amazon Retail tier, where Amazon employs buyers to negotiate wholesale rates for items, which are then sold by Amazon.com LLC.

"In this tier, Amazon is the merchant in a more traditional grocery store or big-box store sense," Perrott said.

Then there's Fulfilled by Amazon, where the sellers are third parties but the goods are stored in Amazon warehouses and shipped by Amazon employees. For this service, Amazon might charge sellers up to 50 percent of the retail price of the items being sold.

Finally, there's Amazon Marketplace, which functions more like eBay or other e-commerce sites where Amazon is merely the platform and the storage and shipping is handled exclusively by the seller.

"A lot of people don't realize the difference," Perrott said. "They think that each tier is Amazon."

The most problematic tier

Perrott said that Fulfilled by Amazon is the particular e-commerce tier for which Amazon has earned the most flak regarding its counterfeit issues.

"Consumer trust is developed from the idea that when you buy from Amazon, you're getting what you

believe is a genuine product from Amazon," he said. Although Amazon's counterfeit woes have grown to the point that the company has finally disclosed the potential of liability to its shareholders, the recent suits from Daimler and Williams-Sonoma demonstrate that it's much more damaging to a brand owner than to Amazon when a consumer receives a counterfeit product.

"Sometimes people don't even know that they're getting counterfeits," Perrott said. "They have a bad experience and blame it on the brand owner."

Perrott said that he had recently represented a pair of clients dealing with counterfeit issues on Amazon's website. One was a brand owner who sold bed protectors, including those meant to prevent bed bug infestations. One counterfeit seller had photocopied labels used on the authentic product, but Perrott's client was able to identify certain packaging techniques that differed from the authentic branded article.

"For certain brands that sell these types of sensitive consumable products, Amazon does offer some brand gating that only allows resellers if they prove that they acquired the product legally," Perrott said.

In the case of the bed protector client, he said that the counterfeit seller was able to continue operating after forging multiple invoices on the bed protector products. "Amazon doesn't have the infrastructure to

WHAT IS AMAZON DOING TO HELP?

Amazon is doing what it can to reassure the public that it has the infrastructure necessary to deal with its counterfeit issue. An Amazon spokesperson offered the following statement in response to a request for comment from IPWatchdog:

"Our customers expect that when they make a purchase through Amazon's store—either directly from Amazon or from one of its millions of third-party sellers—they will receive authentic products, and we take any claims that endanger that seriously. We strictly prohibit the sale of counterfeit products and invest heavily—both funds and company energy—to ensure our policy against the sale of such products is followed. Our global team is available 24 hours a day, seven days a week to respond to and take action on reported violations and notices of potential infringement.

"In order to detect bad actors and potentially counterfeit products, we make significant investments in machine learning and automated systems. We employ dedicated teams of software engineers, research scientists, program managers, and investigators to operate and continually refine our anti-counterfeiting program.

"When a business registers to sell products through Amazon's Marketplace, Amazon's systems scan information for signals that the business might be a bad actor, and Amazon blocks identified bad actors before they can offer any products for sale. Amazon's systems also automatically and continuously scan numerous data points related to sellers, products, brands, and offers to detect activity that indicates products offered might be counterfeit. Over 99 percent of all Amazon page views by our customers landed on pages

that did not receive a notice of potential infringement.

"Customers are always protected by our A-to-Z Guarantee, whether they make a purchase from Amazon or a third-party seller. If the product doesn't arrive or isn't as advertised, customers can contact our customer support for a full refund of their order."

Logical questions

Although this certainly pays lip service to the problem, Perrott felt there is still reason to question Amazon's ability to effectively weed out counterfeits. He noted that Amazon's service reps who handle requests on taking down counterfeit items typically aren't legal professionals and follow a strict script in how they're able to respond to and pass along claims about counterfeit.

"There have been identical takedown notices sent to Amazon and one gets

“Sometimes people don’t even know that they’re getting counterfeits. They have a bad experience and blame it on the brand owner.”

—ERIC PERROTT, TRADEMARK AND COPYRIGHT ATTORNEY, GERBEN LAW FIRM



flag a seller after it has received a second fake invoice,” Perrott said.

China a main culprit

“Addressing online counterfeits is a never-ending battle for many brand owners,” said Amy Ziegler, Shareholder at Greer Burns & Crain. She said that counterfeit problems extend across all major online retail platforms, including Amazon.

In particular, she said there’s a high probability that a product is a counterfeit if it’s coming from a third-party seller based in China. Nearly 90 percent of all global counterfeit products seized by U.S. customs agents in 2017 came from China and Hong Kong.

“Not only is (the focus on China) justified, it is a matter of fact,” Ziegler said.

Although online retail platforms could always be doing more, Ziegler said they have made substantial improvements in recent years from increased

actions by brand owners and more cooperation from online retailers.

“The counterfeit problem is too large for any one stakeholder to address alone,” she said. Online retailers could put effective safeguards in place that help to better identify sellers on their platforms; such safeguards could be especially helpful in dealing with counterfeits coming from China.

“If online retailers are going to continue to make their platforms available to China-based sellers, then there should be some burden on those sellers to show that the products they’re selling are legitimate,” Ziegler said. She added that trademark owners dealing with counterfeits should be aggressive in their enforcement efforts, the most effective deterrent being filing lawsuits and forcing internet stores to pay damages for counterfeits.

(Continued on page 42)


denied but the other one gets accepted because they’ve been viewed by different service reps,” Perrott said. “If they can’t even get that right, the idea that an automated process would help seems unlikely.”

Although Amazon’s statistic on the 99 percent of customer page views seemed like a “beautifully cherry-picked” factoid, Perrott did acknowledge that it was likely true. “Even if it’s only 1 percent of page views, that’s still a major problem considering how big Amazon is,” Perrott said. “That has to be billions of page views on an annual basis.”

That 99 percent also could include a large number of pages where infringing items are being sold but a notice of infringement hasn’t yet been sent to Amazon.

Finally, it appears that Amazon’s public statement may not exactly line up with what the company is telling shareholders. The statement from Amazon’s spokesperson indicates that customers can get a full refund on counterfeit purchases through the company’s A-to-Z Guarantee program. However, in the section of Amazon’s 10-K filing

where it discusses the counterfeit problem, the company says that it “reimburse[s] buyers for payments up to certain limits.”

The use of the phrase “certain limits” doesn’t seem to contemplate a full refund in all circumstances. 





Amazon Admits to Fraud Risk (cont. from page 41)

Unauthorized sales

Counterfeiting is hardly the only problem the e-commerce giant has had with unauthorized sales. Susan Frohling, Counsel at Brinks Gilson & Lione, has represented brand owners who sell luxury goods and who have had to deal with unauthorized sales of their genuine products on Amazon.

Generally, these products are only supposed to be made available through a network of authorized dealers, but brand owners have difficulty controlling downstream access due to the first sale doctrine, which generally allows for resale of genuine products in an unchanged state.

"Somehow, the products get out of their normal distribution channel and they end up on Amazon," Frohling said. "That can be very problematic in a luxury goods context, where a brand owner will want to protect pricing and provide consumers with a specialized sales force and warranties, which they miss out on when they buy the products online."

Such unauthorized sales on Amazon can hurt a brand owner's reputation with consumers if the Amazon retail price is much lower than the retail price through authorized dealers, and it can hurt relationships with those dealers who feel the price difference is unfair.

"Frankly, it's a little easier to combat unauthorized sales on Amazon when it's not a manufacturer selling the products on Amazon," Frohling said. This is because Amazon collects material from the seller, including photographs and advertising copy, which may have been provided by the original brand owner. Once the manufacturer provides those materials, Amazon receives a sublicense to them and makes it more difficult for brand owners to address the situation from a copyright standpoint through takedown notices.

Frohling said that brand owners concerned about either counterfeits or unauthorized sales could use covert marking or watermarking techniques that are difficult for counterfeiters to replicate and can help to indicate the proper distribution channel if online sales aren't preferred. It is also important to keep careful records of copyrightable materials, such as product images or advertising materials that can be registered with the U.S. Copyright Office. 🐕

Steve Brachmann is a freelance writer located in Buffalo, N.Y., and is a consistent contributor to the intellectual property law blog IPWatchdog. He has also covered local government in the Western New York region for The Buffalo News and The Hamburg Sun.



U.S. Cannabis Inventions Grow

INCREASE ATTRIBUTED TO ROBUST LEGAL MARIJUANA MARKET **BY STEVE BRACHMANN**

THE SHIFTING STATUS of marijuana from an illegal controlled substance to regulated medicinal product to, in some jurisdictions, legalized recreational activity has created a market that promises to be incredibly valuable in the future.

An April 2018 report from Grand View Research predicted the global market for legal marijuana products to exceed \$146 billion by 2025. A 2018 cannabis report by Deloitte forecast Canada's cannabis market to reach \$7.17 billion in total sales during 2019, including \$4.34 billion in sales of legal marijuana products.

In the United States, 2017 sales of legal recreational and medicinal marijuana products resulted in revenues of up to \$6.6 billion, a fraction of the estimated \$50 billion to \$55 billion of total U.S. demand for recreational cannabis products.

Although Canada fully legalized the recreational and medicinal use of marijuana last October, marijuana legalization is occurring more slowly and piecemeal in the United States. Marijuana is still a Schedule I drug under the Controlled Substances Act, although medicinal use is legal in 33 states plus the District of Columbia. Recreational use has been legalized in 10 states and Washington, D.C.

However, even these slow moves in the direction of full legalization have galvanized inventors filing patent applications on cannabis-related inventions with the United States Patent and Trademark Office.

Last year, Reuters reported that the USPTO issued 39 patents containing the word cannabis during 2018 through late November. The USPTO only issued 29 such patents during 2017 and 14 during 2016.

Increased research and development expenditures among major cannabis producers are another indication that marijuana's gradual legalization is spurring cannabis innovations.

In the United States, medicinal marijuana use is legal in 33 states plus the District of Columbia. Recreational use has been legalized in 10 states and Washington, D.C.



Canadian cannabis firm Canopy Growth indicated in its second-quarter earnings report for 2019's fiscal year that the corporation spent \$1.94 million CDN on research and development for the quarter, a major increase from the firm's \$494,000 in research and development expenditures during the second quarter of 2018.

Similarly, Edmonton-based Aurora Cannabis reported that it spent \$3.43 million CDN on R&D during the first quarter of 2019, up from \$107,000 CDN during Q1 2018. Aurora also identified \$2.35 million CDN in patent-related acquisitions since the end of July 2017.

Insider perspective

Legal professionals in this realm are optimistic about the prospects for cannabis inventions, especially given the early stages of development in many cannabis sectors.

Howard Cohn, chief patent attorney and managing partner at THC Legal Group, a cannabis-focused specialty division of Howard M. Cohn & Associates, said that as the market for cannabis grows, he expects the push to obtain market share through patent holdings will increase.

"My gut feeling is that inventors will spend more time developing proprietary ways to integrate cannabis extracts into existing products and far less time attempting to obtain patents on unique strains of genetically engineered cannabis."

Cohn added that the food and beverage industry "is a natural partner for the cannabis space and will likely experience an explosion of innovation vis-à-vis cannabis oils. Cannabis enthusiasts should expect to see great advances in cannabis infusions and a variety of clever engineering moves designed to maximize the potency of the end-product with the least amount of raw cannabis material," he said.

Michael Brubaker, patent attorney with Cannapattents, likened patenting activities in the cannabis industry to those occurring in blockchain technologies.

"Those are two breakout industries that have these areas where you can grab broad patents and license them to companies that will hopefully come into the market in the next few years," he said. "The broader the patent, the better the patent."

One issue that has acutely affected the world of cannabis patents is a lack of available

prior art, which has allowed some patent applicants to obtain patent claims that would otherwise be anticipated or obvious over the prior art. This is due in part to marijuana's legal status discouraging publication of cannabis-related innovations by inventors who don't want to attract the attention of federal law enforcement.

Brubaker acknowledged that prior art issues have affected the industry. "A patent examiner only has so much time to search for prior art on each patent application," he said. "They'll definitely do a search of patent and patent application databases, and may even do a quick Google search, but it's possible in the cannabis field that they may not find something that everyone else knows is pretty common in the art. If the examiner doesn't find it, then there's no rejection based on the prior art." 📌

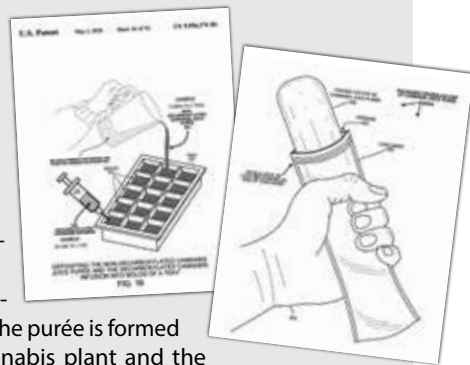
A FEW RECENT PATENTS

Patent No. 10172786, issued on January 8 of this year and assigned to AXIM Biotechnologies, claims a cannabinoid toothpaste composition made up of an abrasive agent, a binder, a humectant, a fluoridating agent, a surfactant, water, a thickener, and cannabidiol (CBD) present in an amount from 0.1 percent to 0.5 percent by weight.

U.S. Patent No. 9956174, issued last May to inventor Jeff Nordahl, claims a dietary supplement package comprising a plurality of frozen structures of cannabis juice purée. The structures include amounts of CBD, tetrahydrocannabinol (THC), cannabidiolic acid (CBDA) and tetrahydrocannabinolic acid (THCA) and where the purée is formed by blending leaves of a cannabis plant and the shredded leaves remain in the frozen structures of the purée.

U.S. Patent No. 9888703, issued in February 2018 and assigned to Imbue LLC, claims a coffee pod consisting essentially of carbon dioxide-extracted THC oil cannabis, coffee beans and maltodextrin. The invention covers methods of creating a consumable coffee drink.

U.S. Patent No. 9480647, issued in November 2016 and assigned jointly to CannTrust Inc. and Club Coffee L.P., claims the medical marijuana method of preparing a single-serve container configured for receipt in a single-serve brewing machine.



101 Crisis?

Blame the Federal Circuit

COURT MUST RETURN TO FIRST PRINCIPLES
TO DETERMINE SUBJECT-MATTER ELIGIBILITY

BY GENE QUINN



The following remarks, edited for clarity and brevity, were delivered by Gene Quinn at the Utah IP Summit on February 22.

WHEN the Supreme Court believes that the United States Court of Appeals for the Federal Circuit has made an error, they will reverse and remand with broad guidance but often are not able to determine what the proper test should be.

The Supreme Court wants, and expects, the federal circuit to determine the proper test because, after all, it is the Federal Circuit that is charged with being America's chief patent court. But the federal circuit has become myopic.

It is getting tiring to read in case after case—where real innovation is involved—the Federal Circuit saying that they are constrained, even forced by either the (landmark) *Alice* or *Mayo* decisions, to find the *very real* innovation to be declared patent ineligible. This madness has to stop!

Somewhere along the way, the federal circuit has forgotten what we all learned as first-year law students.

A *Bilski* moment

"I would urge the court to reassess Supreme Court precedent and see if it is really that restraining," United States Patent and Trademark Office Director Andrei Iancu said at "Inventing America" on February 12 in Washington, D.C. He is, of course, correct.

It is time for the CAFC (the federal circuit) to have what I will refer to as a "*Bilski* moment." You will recall in *Bilski v. Kappos*, the Supreme Court explained that at least some business method patents must be patentable for a variety of reasons, including the fact that the statute actually refers to business method patents.

It is time for the federal circuit to return to first principles. At least some discoveries, for example, must be patentable.

We learn in our first semester of law school the importance of distinguishing cases based on the facts and applying the law and statutes to those facts. Somewhere along the way, the federal circuit has forgotten what we all learned as first-year law students.

Study the statute

Let's actually look at the statute. The statute, which is all of one sentence long, specifically lists discoveries as patent eligible.

So why are discoveries being declared patent ineligible? We are repeatedly told by the federal circuit that they are mandated by Supreme Court precedent to find patent claims invalid. But why? Is that true?

Simply put, NO. To the extent decisions by the federal circuit find discoveries patent ineligible, they directly contradict both the statute and the Constitution. The federal circuit is wrong, period.

The statute says: "Whoever invents or discovers ... may obtain a patent..." Clearly, Congress wants discoveries to be patented.

And in our system of governance, Congress has supremacy over the Supreme Court with respect to setting the law unless the law is unconstitutional. 35 U.S.C. 101 (Title 35, U.S. Patent Code Section 101, which determines patent eligibility) has never been declared unconstitutional, so discoveries must be patent eligible, period.

Creating chaos

Regardless, it is time for the judges of the federal circuit to stand up and fulfill their constitutional oaths. They must interpret Supreme Court precedent—all of it—consistent with the statute and the Constitution.

The way judges of the federal circuit used to do this was to understand that the Supreme Court would address patent matters only occasionally, and they would speak in broad language about very specific facts. However, the federal circuit has in recent years increasingly read deep into Supreme Court language, well past what was actually said, in search of some meaning that simply is not present in the language itself.

The federal circuit has been reversed so often by the Supreme Court, it seems that at least some of the judges on the court have simply decided the take-away message is that the Supreme Court does not like patents. When faced with a decision about whether to find a patent valid or invalid.

Such a level of subjectivity leads to chaos and needs to change. ☞

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IoT Corner

Amazon representatives confirmed in January that 10,000 of its employees are working on its **Alexa voice assistant** product. More than 100 million Alexa devices have sold.

The Alexa-powered Echo and Echo Dot devices had a major breakout during the 2017 holiday season, with Echo Dot the No. 1-selling product on the site. The enthusiasm for the product line and Alexa has grown.

This massive development team is primarily working on the technical features of the platform, including the intelligence and usability. As more households are using multiple Alexa devices, this development is to ensure that the platform keeps pace with user demand and the growth of voice-enabled devices. —Jeremy Losaw



Wunderkinds

An innovative learning lab opened during this school year at **White-water Middle School** in Charlotte is helping to promote the next generation of inventors. Whitewater is one of six schools in the public school district that have been part of Verizon Innovative Learning since 2016. The

lab offers students a 3,000-square-foot area where they can collaborate, create, think critically and solve problems. Technology includes augmented reality and virtual reality (AR/VR), coding and circuits, 3D design and sound production.



What IS that?

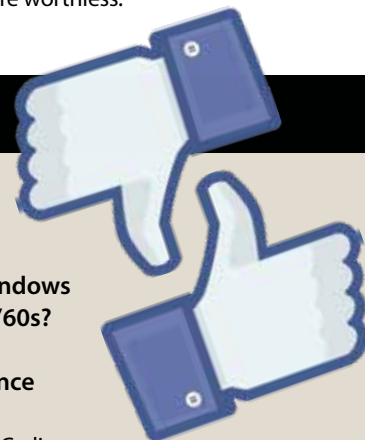
Spring is here, but warm weather is still a ways off for many of us. **Walkee Paws**, billed as the first and only dog leggings to hit the pet apparel market, are designed with durable, four-way stretch fabric and waterproof rubber soles. They also protect against germs, chemicals and allergens.

91% The ratio of **5-year-old Chinese design patents that lapse**—meaning that although China claims more patents than any country, most of them are worthless.

WHAT DO YOU KNOW?

- 1 True or false:** The New England Patriots were issued a trademark for the term “19-0,” representing a perfect season in 2007, even though they lost the Super Bowl.
- 2 Who owns the trademark to the catchphrase “That’s Hot!”?**
 - A) Richard Simmons
 - B) The Phoenix Suns
 - C) Paris Hilton
 - D) The city of Miami

- 3 True or false:** Facebook trademarked the word “face.”
- 4 In which decade were power windows introduced—the 1940s, ’50s or ’60s?**
- 5 Who said, “Creativity is intelligence having fun”?**
 - A) Albert Einstein
 - B) George Carlin
 - C) Al Gore
 - D) Hedy Lamarr



ANSWERS: 1. Too weird to be anything but true. Even more bizarre, the trademark was approved in December 2016—almost nine years after the Super Bowl loss that ruined their perfect season. 2.C. Hilton also won an infringement lawsuit against Hallmark over the catchphrase. 3. True, but it only applies to telecommunication services. 4. Packard introduced the first power windows in the 1940 Packard 180 series. 5.A.

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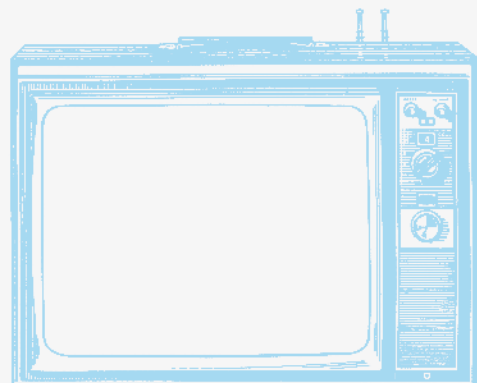
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