

Inventors

DIGEST

Turn! Turn! Turn!

THE MUSIC BOX'S ORIGINS
AND TIMELESS CHARM

No Patent. Now What?

SPARKING INTEREST IN
PRODUCING YOUR PRODUCT

LIGHTS, CAMERA, ACTION

JONATHAN TAPLIN FIGHTS FOR IP RIGHTS

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April 26, 2022: Save the date!

World Intellectual Property Day

IP and Youth: Innovating for a Better Future

Across the globe, young people are stepping up to innovation challenges, using their energy and ingenuity, curiosity, and creativity to steer a course towards a better future.

Join the U.S. Patent and Trademark Office (USPTO) for World Intellectual Property (IP) Day on April 26, as we celebrate these young inventors.

About World IP Day

Every April 26, the USPTO celebrates World IP Day. World IP Day was established by the World Intellectual Property Organization (WIPO) in 2000 to raise awareness of how patents, copyrights, trademarks, trade secrets, and designs impact daily life, and to celebrate creativity and the contributions made by creators and innovators.

This year's World IP Day theme celebrates young innovators and their work towards creating a better future.



www.uspto.gov/about-us/events/world-ip-day

UNITED STATES
PATENT AND TRADEMARK OFFICE



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April 2022 Volume 38 Issue 4



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Photo by
Maggie Smith



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Give no quarter to Patent Pirates.

Or they'll take every
last penny.

Our ideas and innovations are precious. Yet Big Tech and other large corporations keep infringing on our patents, acting as Patent Pirates. As inventors, we need to protect each other. It's why we support the STRONGER Patents Act. Tell Congress and lawmakers to protect American inventors.



SaveTheInventor.com

Defend Your Patent

Gathering strongest prior art is key in an AIA trial proceeding

YOUR ISSUED patent may mean more to you than adding tangible and intangible value for your invention, or as a source of great pride. It may be crucial for your financial livelihood.

So if you find an entity is challenging your patent's claims before the Patent Trial and Appeal Board (PTAB), you need as strong a defense as possible. These challenges occur in American Invents Act (AIA) trial proceedings when an entity challenges your patent's claims as anticipated or obvious in light of prior art (i.e., earlier patents or other publicly available written references describing inventions or products).

One key to surviving an AIA trial—a process that begins before the patent even issues—involves gathering the strongest relevant prior art so you draft claims with an understanding of the point(s) of novelty of your invention: the improvement(s) in your invention distinguishing it over prior art.

You can conduct a prior art search using the USPTO's Patent Public Search tool or an internet search engine. Additionally, you may visit the USPTO public search facility in Alexandria, Virginia, or access search terminals available at the USPTO regional offices in Detroit; Denver; Dallas; and San Jose, California. Similarly, you may leverage the USPTO search terminals at various Patent and Trademark Resource Centers across the country. Facility access or hours may be modified because of the pandemic, so we

encourage you to determine ahead of time if the office you want to visit is open.

After conducting an independent search, consider working with a patent agent or attorney to help identify your invention's point(s) of novelty and draft your claims.

Claims drafted to focus on your invention's point(s) of novelty may be harder to challenge as anticipated or obvious in light of the prior art.

Your patent is only as strong as its broadest challenged claim at the institution stage, because it only takes one reasonably likely unpatentable claim for a trial to be instituted. As a result, it is important to draft strong claims.

You should also consider drafting claims of varying scope to focus on different aspects and combinations of aspects of your invention. During an AIA trial proceeding, the PTAB considers each claim individually and may determine that a challenger has proven that some challenged claims are patentable while others have not been proven unpatentable.

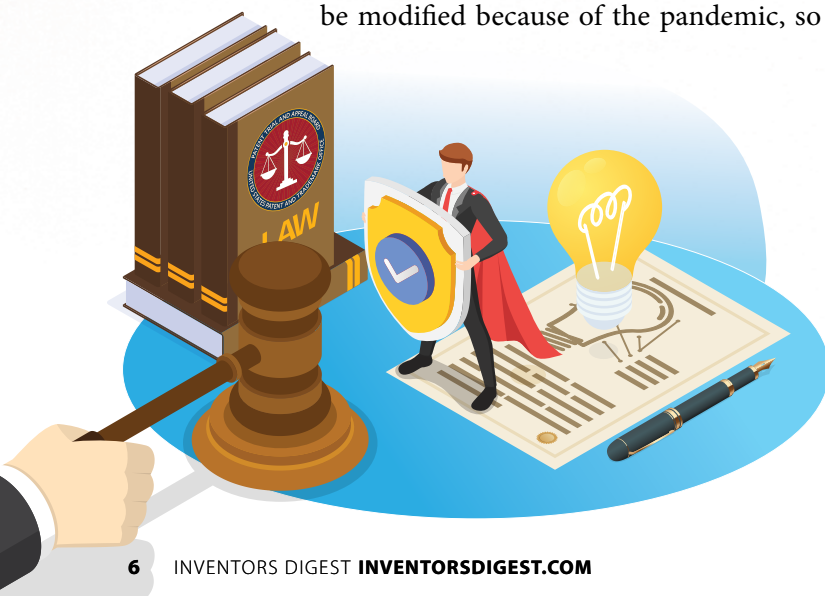
Your prior art search also helps draft a strong patent application that describes not only your invention but the state of the prior art. In the background section of your patent application, consider describing close prior art and then distinguishing your invention from the prior invention.

The PTAB will look to the patent's description of the invention during an AIA trial proceeding to help understand and determine the meaning of your claims.

Researching and understanding prior art also allows you to respond to a patent examiner's rejections during prosecution and build a record distinguishing your invention.

During an AIA trial proceeding, the PTAB may consider whether the examiner previously considered the same or substantially the same prior art or arguments.

For more specifics about conducting a prior art search, see the USPTO patent searching webpage: [uspto.gov/patents/search](https://www.uspto.gov/patents/search).



NEWS FLASH

Patent Public Searches, Simplified

New tool provides easier, remote, more robust full-text searching of U.S. patents and published applications

A **MULTIFACETED** U.S. patent searching instrument is ready for your use. And it's free.

The USPTO's new Patent Public Search function, a recently launched, cloud-based platform, is four tools in one. It combines the capabilities of these existing search tools scheduled to be retired in September 2022: Public-Examiner's Automated Search Tool (PubEAST), Public-Web-based Examiner's Search Tool (PubWEST), Patent Full-Text and Image Database (PatFT), and Patent Application Full-Text and Image Database (AppFT).

The tool provides more convenient, remote, and robust full-text searching of all U.S. patents and published patent applications.

It is based on the advanced Patents End-to-End (PE2E) search tool USPTO examiners use to identify prior art.

Especially of added value with more people staying at home, "This new platform represents a significant step forward in our broader efforts to meet stakeholders where they are," said Drew Hirshfeld, who has been performing the functions and duties of the under secretary of commerce for intellectual property and director of the USPTO.

"Knowing that our previous tools did not provide users with the convenience or similar functionality as those used by our examiners, it is incredibly gratifying to know that now more stakeholders can search for patents using the resources of four powerful search platforms in one expansive tool."

In the past, users could only access legacy search tools PubEAST and PubWEST at a USPTO facility such as the headquarters in Alexandria, Virginia; a regional office; or a Patent

and Trademark Resource Center. Now remote searching is now available to all users with internet access. Additional benefits include:

- Multiple layouts with multiple tools to view more data at once
- Multi-color highlighting that can be viewed across multiple gadgets and turned on or off
- Ability to tag documents into multiple groups that can be color coordinated
- Ability to add notes to an image with highlighting styling options
- Robust, full-text searching of U.S. patents and published applications
- Same searching syntax as PubEAST and PubWEST

In conjunction with the launch of Patent Public Search tool, the USPTO unveiled a new Patent Public Search webpage that includes FAQs, training resources, and other information to help users transition to the new tool. Upcoming public training sessions are being posted on the USPTO events webpage as they are scheduled.

For questions regarding the Patent Public Search, contact the Public Search Facility at **psf@uspto.gov** or visit the Public Search Facility and/or Patent and Trademark Resource Centers webpages. Stay current with the USPTO by subscribing to receive email updates at our Subscription Center at **uspto.gov/subscribe**.



MAGIC MOMENT

The Umbrella Pops Up

Colorful, 3,300-year world history of the bumbershoot includes its first known U.S. patent issued in 1826

"APRIL SHOWERS bring May flowers." And showers bring umbrellas.

Parasol. Bumbershoot. Whatever the name, the umbrella has a colorful history that dates back some 3,300 years before it was associated with its first known U.S. patent.

And if you see an umbrella that looks classy or even regal today, that is consistent with its origins.

The earliest bumbershoots—umbrella expert and author Marion Rankine wrote that the first ones probably appeared in China around 1500 BCE—were often used by royalty whenever rain reigned. Rankine also reported that as early as 1000 BCE, kings and dignitaries enjoyed the shade of umbrellas in ancient Egypt and Assyria.

Through the centuries, the umbrella morphed into a fashion statement that was also associated with decorum. Rankine wrote that during the Ming Dynasty (1368–1644), there was a system of umbrella etiquette at court, much like fan etiquette, with different meanings for different colors and positions.

USPTO Historian Adam

Bisno notes that in the 1700s, European and American parasols were constructed with a stick of cane or wood, with whalebone ribs, and a cloth cover of cotton, linen or wool—stretched to protect the user from sun. Umbrellas, shielding the user from rain, had the same fabrics but with an outside coating of wax.

These accessories first became popular among non-elites in France between about 1790 and 1900, when nearly 1,400 umbrella-related patent

applications were filed in that country, according to the France's intellectual property office. The French began large-scale production of umbrellas and parasols around 1800, well before the English, who did so in the 1830s.

Early 1800s inventions related to umbrellas were "gimmicky," Rankine wrote. They included "umbrellas with hollow handles for holding perfumes or writing materials" and even some with windows.

Bisno's research finds that the earliest known U.S. umbrella or parasol patent is No. 4,583x, for an "Umbrella & Parasol," issued on Nov. 22, 1826. It used whalebone for the ribs and was partially foldable (collapsible).

In 1839, Elisha Hale of Newburgh, New York, patented an "improvement in the mode of constructing umbrellas and parasols," U.S. Patent No. 1,449. It was collapsible to half its length and used "springs and catches" to this effect.

In 1848, Samuel Wright received U.S. Patent No. 5,500 for an umbrella and cane in one, which he said was an improvement on an English patent of similar design patented in 1838. Walking canes were already popular accessories for middle- and upper-class men.

British umbrella inventor William Sangster, who published a short book on the subject in 1855, wrote that its most important improvement "dates from the introduction of steel instead of whalebone, which took place about twelve years ago, although a few Umbrellas were occasionally made and used of this material prior to that time ..."

In 1915, Hans Haupt patented the pocket umbrella in Great Britain. In the 1920s, parasol sales slumped and then dried up in the United States as they went out of fashion. But umbrellas remained—and remain—essential apparel.

Umbrella improvements in the 20th century focused on the material and its waterproof qualities, weight, and foldability. Umbrellas became lighter, smaller, and more effective against rain.



Top: A trademark registration by A. M. & R. Davies for The Rainbow Umbrella brand Umbrellas and Parasols, 1876.

Above: A music cover shows a fashionably dressed woman holding parasol in 1868.

TRADING CARD

NO. 7

Nikola Tesla

IN ANY DISCUSSION about Nikola Tesla, the name of his rival—Thomas Edison—is likely to come up.

Beginning in the late 1880s, Tesla and Edison were locked in what is called “The Current War.” In Edison’s direct current (DC) system, the U.S. standard in the early days of electricity, current runs continually in a single direction. But direct current is not easily converted to higher or lower voltages.

Tesla’s alternating current (AC) adaptation solved this problem. AC reverses direction a certain number of times per second—60 in the United States—and can be converted to different voltages relatively easily with a transformer.

One of the most prolific and innovative inventors of all time, Tesla has been the subject of numerous books and movies. His work with alternating current is widely seen as his greatest achievement.

In 1893, the Niagara Falls Power Co. awarded George Westinghouse, who had licensed Tesla’s polyphase AC induction motor patent, the contract to generate power from Niagara Falls. On Nov. 16, 1896, Buffalo, New York, was lit up by the alternating current from Niagara Falls. General Electric decided switch to AC, too. The “Master of Lightning” had won the war.

Born in Smiljan, Croatia, in 1856, Tesla arrived in America in 1884 and was employed by the Edison Machine Works for about six months. He accumulated about 300 worldwide patents.

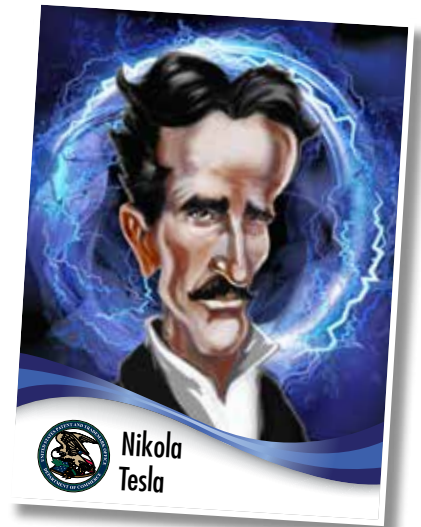
According to the Nikola Tesla Museum, Tesla “applied for his first patent, for an electric arc lamp, after his arrival in the USA on March 30, 1884—immediately after leaving Edison’s company and founding his own Tesla Electric Light and Manufacturing.”

One of the most prolific and innovative inventors of all time, Tesla has been the subject of numerous books and movies. His work with AC is widely seen as his greatest achievement, although he did not invent it. He was the first person who proposed to carry out electricity distribution within the alternating current.

Tesla’s important inventions included the Tesla Coil, Tesla Turbine, neon lamp, Shadowgraph, and induction motor. The induction motor with a rotating magnetic field made unit drives for machines feasible, making AC power transmission an economic necessity.

Tesla has even been credited with inventing radio. Guglielmo Marconi generally has that distinction by making the first transatlantic radio transmission in 1901, but some claim the idea originated with Tesla.

This year marks the 10th anniversary of the USPTO trading cards. Requests for the cards can be sent to education@uspto.gov. You can also visit them at uspto.gov/kids.



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He Left Us With the GIF That Keeps Giving

Steve Wilhite had the temerity to correct the Oxford English Dictionary. He also had the credentials to do so.

The acknowledged inventor of the GIF image file format in 1987 as the engineering lead on that project at CompuServe, Wilhite once told a newspaper that the acronym for Graphics Interchange Format is pronounced “jif”—not “gif.”

“The Oxford English Dictionary accepts both pronunciations. They are wrong,” said Wilhite, who died March 14 of COVID-related causes at 74. He said the pronunciation was intended to be like the peanut butter brand Jif, and once even posed with a jar of it that said Gif.

With that dictionary properly dissed, we wonder if Wilhite would have accepted this definition of GIF from the Urban Dictionary: “a form of computer image that moves as an animation, because it consists of frames, like a movie with no sound.”

Hmmm, maybe that still isn’t clear. But you’ve seen many a GIF—a series of images or short video clips that run over and over in an unending loop, usually meant to be funny. (Many involve animation, such as characters from “The Simpsons” and “SpongeBob SquarePants,” but hey—sometimes funny has a very low target.)

A GIF has long been a web staple, so familiar now that it is used as a verb: “I’m going to GIF that,” the same as when people say, “I’m going to Google that.”

More than a quarter-century after the World Wide Web went mainstream, the GIF is still more than a cute diversion. It’s used in website design, how-to-guides and workflow documents, among other things.

You may have sensed by this point that I’m not a big fan of the GIF. But Wilhite’s admittedly creative and innovative discovery—in many ways a stroke of technical genius—struck a chord with billions of people and became a part of what they do.

Isn’t that what great inventing is all about?

—Reid

(reid.creager@inventorsdigest.com)

Inventors

DIGEST

EDITOR-IN-CHIEF
REID CREAGER

ART DIRECTOR
CARRIE BOYD

CONTRIBUTORS
ELIZABETH BREEDLOVE
LOUIS CARBONNEAU
DON DEBELAK
JACK LANDER
JEREMY LOSAW
EILEEN MCDERMOTT
APRIL MITCHELL
EDIE TOLCHIN

GRAPHIC DESIGNER
JORGE ZEGARRA

INVENTORS DIGEST LLC

PUBLISHER
LOUIS FOREMAN

WEBSITE ADMINISTRATOR
ELIZABETH BREEDLOVE

FINANCIAL CONTROLLER
DEBBIE MUENCH

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Ad rates, subscriptions & editorial content:
520 Elliot Street
Charlotte, NC 28202
info@InventorsDigest.com
www.InventorsDigest.com
reid.creager@inventorsdigest.com

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):

An inventor's dilemma

What happens if you contact a potential business about your idea, and they just pass—and then later design and sell it?

—JEFF HASH, J59P59@GMAIL.COM

Editor: "Lander Zone" addresses that very issue in this very issue of *Inventors Digest*:

"Should you reveal the product in detail in your proposal? It's a risk, of course. Your prospect could reply that it is not interested, and then copy and produce it.

"However, revealing a patented product is also a risk. If your product is copied without your

permission, your recourse is to sue. But the cost could be as much or more than you'll recover.

"It's not likely a lawyer would take on such a case without a substantial upfront fee. And a small company probably doesn't want to get into a legal battle for the same reasons you don't.

"My sense is that the only way to entice your prospect is to reveal your product in your first contact, and hope you are dealing with ethical people. I can't imagine any company president getting excited about a 'mystery product.'"

CONTACT US

Letters:

Inventors Digest
520 Elliot Street
Charlotte, NC 28202

Online:

Via inventorsdigest.com, comment below the Leave a Reply notation at the bottom of stories. Or, send emails or other inquiries to info@inventorsdigest.com.

KATY PERRY WINS, GETS ON HER HIGH HORSE

The audience at Katy Perry's Las Vegas show on March 11 was "treated" to some new lyrics from her 2013 hit single, "Dark Horse."

Balancing atop a gigantic red hobby horse, she modified the verse that is supposed to say, "So just be sure before you give it up to me, up to me, give it up to me." Instead, she screamed, "So just be sure before you take me to court, 'cause I'm a Scorpio b-----!"

It's unclear what Perry proved with her defiant declaration, one day after the U.S. Court of Appeals for the Ninth Circuit upheld a district court ruling that vacated a jury's \$2.8 million award to three Christian hip-hop performers in a copyright infringement case. And it's unclear what her victory proved for future cases.

The eight-year saga—assuming it's finally over—was much ado about ostinatos.

That's the term for continually repeated musical phrases. The Ninth Circuit ruled that the ostinatos Perry used in the recording, though resembling the one used by rappers Marcus Gray ("Flame"), Emmanuel Lambert and Chike Ojukwu in their 2008 single "Joyful Noise," were not copyrightable expression as a musical work. The court said that to rule otherwise could inhibit artists' future creativity.

The court compared the two ostinatos. Each eight-note pattern begins with the same first six notes. Each pattern is repeated; each has the same rhythm.

That would sound "substantially similar" to a lot of people—but apparently not enough to be a copyright violation.

Flame and Co. had filed suit (*Gray v. Hudson*, the latter Perry's real last name) in 2014. They were awarded damages by a Los Angeles jury in a



unanimous verdict in 2019, only to see a judge overturn the award.

The rappers had appealed the ruling in October 2020. It is not certain whether their appeals have Flamed out.

In an ironic celebrity copyright infringement footnote, in 1976 George Harrison was found guilty of "subconscious plagiarism" in his 1970 No. 1 hit "My Sweet Lord." The song was found too similar in medley to the Chiffons' 1962 hit "He's So Fine." Harrison had to pay \$1,599,987 in damages.

One of Harrison's later albums was titled "Dark Horse." —Reid Creager

BRIGHT IDEAS

Reencle

KITCHEN-TO-GARDEN FERTILIZER COMPOSTER

reencleus.com

Reencle converts food scraps to nutrient-rich fertilizer, with 1.5 lbs. capacity.

Add the Reencle organic additives and pour some water. The Reencle device keeps the mix stimulated and active. Food waste may now be added; the composter devours this in 24 hours.

The composter's makers say it is odor free, utilizing a three-tier filter system. The organic additive eliminates the bacteria that generate bad smells during the natural fermentation and degradation process. Steam and refined air then goes through the mesh exhaust filter, and a carbon filter absorbs the remaining odor using activated carbon.

Scheduled for shipping to crowdfunding backers in May, Reencle will retail for \$699.



Uniek

PORTABLE POTTERY STUDIO

unieklife.com

Uniek bills itself as an all-in-one compact wheel for pottery that is also a home decoration.

Inspired by retro home design from the 1950s, Uniek features a potter's wheel that is much smaller than traditional models. The turning wheel is interchangeable for two sizes: 45mm and 65mm (the latter an add-on item). You can make different sizes of pottery by a larger turning wheel.

Uniek has internal 7000 mAh batteries, allowing it to run non-stop for 4-6 hours. Features include a water holder, control button, battery indicator, tool box, tool pen and 15 tool bits.

The product will retail for \$139, with a July shipping date planned for crowdfunding backers.



ACPOTEL

NIGHT VISION BINOCULARS

acpotels.com

ACPOTEL are a new range of affordable night vision binoculars.

They offer three display modes, a space-saving Trinocular design, and 500m (1,640 feet) vision in total darkness.

At the flick of a switch, users can transition from daylight to darkness with a five-to-eight times digital zoom. Record video and take still photographs, which can be previewed on a 4.5 inch HD display.

The binoculars feature a built-in, 2000mAh rechargeable lithium battery that minimizes the need to constantly recharge. They promise 8 hours on uninterrupted power when infrared lighting is deactivated.

ACPOTEL will retail for \$299. Shipping to crowdfunding backers is to begin in April.

“Accident is the name of the greatest of all inventors.” —MARK TWAIN

Huenit

AI CAMERA, MODULAR ROBOT ARM

indiegogo.com

Huenit combines advanced artificial intelligence with a modular arm to execute complex activities with speed and precision.

The AI camera, which can capture 30 frames per second, comes with sensors that enable real-time facial recognition, object detection and more. It has an intuitive 2.4-inch touchscreen display and a microphone that offers voice recognition. The camera works with Wi-Fi and Bluetooth for pairing with smartphones.

The arm can rotate 220 degrees, lift up to 26.5 oz. and stretch to 15.4 inches. Various tools can be added to the arm, including a 3D printer and high-power laser that can cut and engrave paper, wood, leather and aluminum.

The basic kit with the creator module will retail for \$1,199. Delivery is set for July.





Turn! Turn! Turn!

STILL PLAYING, THE MUSIC BOX HEARKENS BACK TO A GENTLER, MORE ROMANTIC TIME **BY REID CREAGER**

*What do you see
You people gazing at me
You see a doll on a music box
That's wound by a key
How can you tell
I'm under a spell
I'm waiting for love's first kiss
You cannot see
How much I long to be free
Turning around on this music box
That's wound by a key*

ACTRESS Sally Ann Howes was proud of this song. Her performance of “Doll On a Music Box” as the character Truly Scump-tious in the fabled 1968 movie “Chitty Chitty Bang Bang” required her to make stilted, doll-like movements in time with the music and her singing as the stand revolved before a mesmerized audience.

Near the end of her life—she died in December at 91—Howes said the degree of difficulty “was almost mathematical to an nth degree, you know. Everything was done on a count.

“I think I did it in one take, and I was so pleased. And I got a great round of applause, I remember that, from all the extras.”

Highly acclaimed and awarded musical composer Richard Rodgers of Rodgers and Hammerstein fame was also impressed.

He said Howes was “the greatest singer who ever sang on the American musical stage.”

Whose box is it, anyway?

This scene embodies the poignant nature of the music box—long a staple in children’s rooms and associated with the

THAT RING OF BLING

The right music box can still make some beautiful ka-ching sounds, per recent eBay auctions:

- A Reuge Music 18KT Gold-Plated and Silver Masterpiece Singing Bird Box sold for about \$9,750 (best offer accepted) on January 15.
- A Swiss Silver & Enamel Automaton Singing Bird Box C. Bucherer Timepiece (right, circa 1900) sold for \$8,900 (one bid) on February 6.



most tender and pure love with its sweet and innocent bell tones.

The music box was invented in the late 1700s. As is often the case with credited inventors, that part is subject to debate and the reporting of internet “facts.”

Many sources credit Antoine Favre-Salomon, a clock maker and watch maker from Geneva, Switzerland. According to the Singapore Musical Box Museum, he patented the first cylinder musical box that utilizes a metal comb with tuned teeth to produce the music.

Onlyonemusicbox.com says Paul Lochmann of Germany invented the music box in 1770—but that he brought it to market in 1885 (which would be 115 years later).

And ’round and ’round she goes.

Swiss movement

This much is certain: The Swiss were the primary mechanism behind the music box’s development.

According to John A. Pfirrmann, writing for the Passaic County (New Jersey) Historical Society, Swiss watchmakers were setting small musical movements into watch cases as early as 1770. They used a small tuned-steel comb played by pins or pegs set in a cylinder or disc.

“By (1780), they were making tiny music boxes with from 15 to 25 teeth tuned to scale, screwed separately into position on the comb, and played upon by steel pins set in a brass disc. These first music boxes played only the simplest of airs.”

Next came the “key wind” unit, playing four to six tunes. By 1815, Pfirrmann wrote, specialized music box makers added decorative touches and more teeth to the comb for better sound. Because mahogany and oak would deaden sound, favored woods were rosewood and walnut with zinc, brass, and mother-of-pearl used for inlay work.

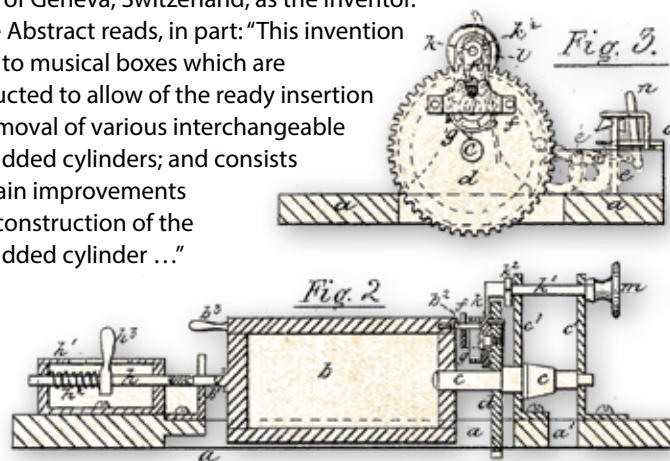
Over the years, more refinements emerged: even more teeth to the comb, as well as

PATENT PATHWAY



The oldest American patent *Inventors Digest* could find in connection with a music box was granted in 1879. U.S. Patent No. 215,146A, called Improvement in musical boxes, lists Henri I.A. Metert of Geneva, Switzerland, as the inventor.

The Abstract reads, in part: “This invention relates to musical boxes which are constructed to allow of the ready insertion and removal of various interchangeable pin-studded cylinders; and consists of certain improvements in the construction of the pin-studded cylinder ...”



adding zithers, bells, castanets, drums and cymbals. These improvements, combined with the added painstaking art details, drove the prices of music boxes beyond the reach of the average person.

And the boxes themselves? Square and rectangular grandeur. In his 1952 book, “Musical Boxes: A History and an Appreciation,” John E.T. Clark wrote:

“The earliest musical snuff boxes were of silver or silver-gilt. A few were of gold. The cases were especially made to contain the tiny musical movements. Some of the cases were quite plain polished silver, others were chased or engine turned. The lid always received the most decoration.”

This 1800s music box was made by Polyphon-Musikwerke in Leipzig, Germany—the country where the disc music box was invented.



The music box was invented in the late 1700s. The identity of its inventor is subject to debate and the reporting of internet “facts.”



More than 200 years after the music box's invention, a turning cylinder is still the starting point for the tones in today's boxes.

Still turning

Germany's Lochmann is credited with inventing a new form of music box—the disc box, which plays circular cardboard discs that revolve and are struck with goose quills to produce the desired effect. Per Pfirrmann,

this patent was first put on the market in 1886 and known as the Symphonion.

Modern production methods eventually lowered prices and simplified the manufacturing process, allowing the boxes to be sold at reasonable prices. The disc box took over the market by 1900, but Thomas Edison's 1877 invention of the

phonograph turned music boxes into a secondary music source and more of a collectible.

Japan is now an important producer of music boxes. Shortly after World War II, Sankyo (Seiki) began making the music box mechanism as a smaller model, with nine to 30 teeth, in an industrial way with a lower production cost. This opened a new market for music boxes, such as in jewelry cases and many novelty and gift items.

Music boxes remain popular today. Three longtime U.S. companies include The Music Box Co. of Sutter Creek, California; the Porter Music Box Co. of Randolph, Vermont; and the San Francisco Music Box Co., headquartered in Merriam, Kansas. Some of these stores may do restorations. 🎵

INVENTOR ARCHIVES: APRIL

April 16, 1867: Wilbur Wright, credited with co-inventing the first manned and engined airplane with his brother, Orville Wright, was born in Millville, Indiana.



On the morning of December 17, 1903, Wilbur and Orville took turns piloting and monitoring their flying machine at Kitty Hawk, North Carolina (now Kill Devil Hills). Orville piloted the first flight that lasted 12 seconds and 120 feet. On the fourth and final flight of the day, Wilbur traveled 852 feet and was airborne for 59 seconds.

Wilbur was four years older than Orville.

According to biographer David McCullough, Wilbur was more energetic, outgoing, serious and studious; Orville was very shy but also much happier, with a sunnier outlook on life. He also had a brilliant, mechanically oriented mind.

Just nine years after their historic flights, Wilbur died at 45 of typhoid fever in Dayton, Ohio. He contracted it after eating bad oysters at a hotel in Boston.

April 12, 1988: Drs. Philip Leder and Timothy Stewart, on behalf of Harvard University, were issued the first patent (U.S. No. 4,736,866) for a new animal life form: a genetically altered mouse called the OnCoMouse. (This was presumably shorthand for oncology, the study and treatment of tumors.)

"Transgenic non-human mammals" detailed how the two scientists isolated a gene that causes cancer in many mammals, including humans, injected it into fertilized mouse eggs and developed a new breed of genetically altered mice. Because half the females develop cancer, the altered breed is a more effective model for studying how genes contribute to the development of cancer—especially breast cancer, Leder said.

The patent came one year after the then-United States Patent Office announced it would allow inventors to patent new forms of animal life created by gene-splicing and other biological technologies.

Dr. Leder died in 2020. In a 2001 anniversary report of his Harvard class, he wrote: "What a wonderful ride it has been. But I now see more clearly than ever before that whatever modest gift of knowledge my colleagues and I have been able to turn over to posterity, it has been poor by comparison to the thrill of seeing our grandchildren walk off into the future."



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No Patent. Now What?

HOW TO SPARK INTEREST IN PRODUCING
YOUR UNPATENTED PRODUCT **BY JACK LANDER**

NEARLY TWO YEARS have passed since you applied for a patent. You've filled a rebuttal to the patent examiner's first "office action," which was a rejection of all your claims.

Now your patent attorney just phoned you to say that the rebuttal has failed; your patent won't issue.

Your original goal was to license your patent. You had no interest in producing on your own, and you still don't. Now what?

You've invested more than \$10,000 so far. But maybe all is not lost.

There may be invisible value in your patent rejection and the time you've invested in other aspects of your venture. For example, if you change your mind and proceed to produce and sell your invention, you know that an eventual competitor can't patent your key feature—the one that would have given you an advantage in the market if it had passed the patent examination process.

That feature is still yours to exploit. However, once your product is on the market and is seen by potential competitors, they are also free to use it.

Leverage your value list

So, the big question here is: Can you interest anyone in producing your unpatented product? If it is obvious from your original market survey that there is a significant demand waiting to be filled, the answer is yes.

But will a manufacturer be willing to pay you for revealing your product? A common term for such payment is "finder's fee."

Ah, here's where we get shrewd.

Let's not call it a finder's fee. You didn't *find* your invention. You recognized a product opportunity that no one else has recognized and developed. You created a great sell sheet

that convinced you and your friends that your invention would sell.

You've also done your own survey of strangers; you had a market surveying service provide a professional evaluation of the product. And so on. So, let's call this fee the "developer's fee."

Now, let's list all the value items in the package you plan to license or sell:

- **First in market:** Being first in the market has advantages. If the market is relatively small, a would-be competitor may sense that two producers is one too many to make a profit. So, you might have the market all to yourself. If the market is large, you may establish yourself as the trusted "original," and limit the impact of competition. Example: "Insist on the *original* WonderSponge."
- **Professional survey:** Surveying the market using SurveyMonkey reveals a market that is waiting for this product.
- **Establishing market channels:** Establishing key catalog and internet sellers can lock out or delay competition. Such sellers may want assurance that your brand will sell in a profitable volume before taking on a second source.
- **Sell sheet:** As I showed you in last month's *Inventors Digest*, having an outstanding sell sheet is essential for establishing catalog and internet sellers, and informing any interested party about the benefits of the new product.
- **Newsworthiness:** Entering the market with a new product is newsworthy. New-product news releases for trade journals and magazines can produce amazing responses that lead to untapped market resources.
- **Branding:** By establishing a clever brand name, you may dominate the market. Scotch tape is still a common consumer name for several brands of "clear plastic tape for



If your invention meets the criteria of a long value list that is attractive to prospects, you should be able to license or sell it to a small manufacturer.

application, mainly to paper.” A clever brand name is priceless.

- **Manufacturing plan:** A manufacturing plan helps convince the prospect that the product is not difficult to produce.
- **Consulting:** Offering your consulting services is a value, especially if the company doesn’t have a manufacturing engineer on staff.

Now, seeing that your unpatented product has at least eight hidden values, you should be able to license or sell it to a small manufacturer without a patent.

Consider smaller companies

The few inventors I have talked with who have tried selling their unpatented inventions to a large company tell me that they don’t even get a response; or they receive their proposal back with a letter stating that it had not been read; or that the company does not accept proposals from outside.

Big companies are a bit paranoid about dealing with inventors. (Your business card should read, “new-product developer,” not “inventor.”)

Large companies presume that all product ideas are in the public domain until a patent not only issues but has been unsuccessfully challenged in court. Also, large companies usually have new products under development; they often believe that if a potential product has

value, they have already thought of it—and may even be developing the same idea as yours.

Small companies seldom have legal departments that may discourage inventor correspondence. Novel products may attract the small company, especially if you have a functional prototype. Your proposal should be based on the eight values above.

To reveal, or not?

Should you reveal the product in detail in your proposal? It’s a risk, of course. Your prospect could reply that it is not interested, and then copy and produce it.

However, revealing a patented product is also a risk. If your product is copied without your permission, your recourse is to sue. But the cost could be as much or more than you’ll recover.

It’s not likely a lawyer would take on such a case without a substantial upfront fee. And a small company probably doesn’t want to get into a legal battle for the same reasons you don’t.

My sense is that the only way to entice your prospect is to reveal your product in your first contact, and hope you are dealing with ethical people. I can’t imagine any company president getting excited about a “mystery product.”

In any case, you are going to reveal it at some point, so it may as well be early when it could have the most infatuation value.

Finer negotiating points

Suppose your prospect invites you to demonstrate your prototype and explain why your product will sell. The question of how much money you are asking is sure to come up.

Common sense suggests that a royalty of significantly less than you could get if you had a patent is appropriate. Let's say that 2 to 3 percent on net sales should seem fair to both parties—more or less depending on the lifetime earning potential of the product, a figure that neither of you knows at this time.

Should you ask for a sum upfront? That could sour the deal. But without something to lose, your prospect could put off its investment in startup costs indefinitely.

Asking for your investment costs could also kill the deal. After all, one of your bargaining points—not among the eight above—is that you are, in effect, saving your prospect the \$10,000 plus that you spent to find that your product wasn't patentable.



If you were to ask for that money upfront, it could bring negotiations to an abrupt halt. So, avoid this point until you are almost ready to sign an agreement.

Another way to handle this is to write into the agreement that production must start within a certain number of years. If it fails, the deadline royalties will begin, and you have the right to withdraw from the agreement.

You'll need a business lawyer to draft the agreement, which should mention the intangible values you bring in exchange for the royalty payment.

So, you see that not just your invention still has value. Several of the steps you have accomplished along the way also have value when put together as a package with a well-written proposal. 📁

Jack Lander, a near legend in the inventing community, has been writing for *Inventors Digest* for nearly a quarter-century. His latest book is "Hire Yourself: The Startup Alternative." You can reach him at jack@inventor-mentor.com.



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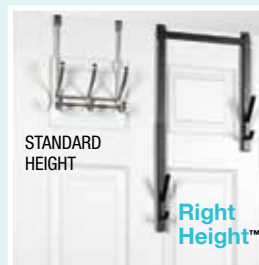


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Your Market Introduction Plan

KEEP THIS CHECKLIST OF IMPORTANT CONSIDERATIONS, AND YOUR ACTION PLAN **BY DON DEBELAK**

INVENTORS almost always find that marketing their idea is much more difficult than creating it. So where do you start? To whom do you sell?

Even if inventors know this, they rarely know how to get their foot in the door. This is where a market introduction plan is important for inventors deciding to introduce their product themselves.

Here is a checklist of factors to consider in two parts: marketing essentials, and your action plan.

Essentials

- _ Your product: selling points and drawbacks
- _ Current sales history and current customers
- _ Name and branding strategy
- _ Packaging strategy
- _ Your target customers
- _ Competition
- _ Your price vs. competitor's pricing
- _ Market testing regarding pricing
- _ Targeted distribution networks
- _ Price discount structure of the industry to distributors and retailers
- _ Typical industry margins
- _ Key trade shows
- _ Key trade magazines
- _ Key market contacts
- _ Distribution most receptive to new products
- _ Buying season (for example, stores decide on summer purchases in September, seven months before receiving stock)
- _ Sales strategies (for example, through manufacturer's sales representatives, other companies or through an in-house sales staff)
- _ Required inventory levels
- _ Payment terms
- _ Typical contract terms with customers (if any)
- _ Internet strategy including web page, and internet orders
- _ Customer service
- _ Social media strategy

Action plan

- _ List action items by what you will do first, second and so on, including:

- _ Branding strategy
- _ Packaging
- _ Sales team
- _ Distribution
- _ Social media
- _ Internet strategies
- _ Inventory buildup
- _ Trade shows
- _ Networking
- _ Customer service

- _ List the key activities for each action step. It's also helpful to put together a 12-month calendar of what activities will occur each month.



I know this appears to be a lot of work—and it is. Most inventors ignore this because they are anxious to get their product to market.

There are two important reasons to do this. First, having a plan will show all your contacts—including people in the sales channels, key industry contacts, potential manufacturers and contacts at other vendors—that you have a plan for success. That will typically help them be more cooperative and helpful to you.

Second, it will help you maintain market momentum, which is a key for every contact. You can't have a three-month delay in action without your contacts starting to lose confidence in you.

Having a sequenced plan lets you know when you are falling behind so that you can increase your efforts to catch up. ☞

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.



Keeping Up With the I

HOW TO TAILOR YOUR MARKETING STRATEGY TO MORE INSTAGRAM CHANGES AHEAD **BY ELIZABETH BREEDLOVE**

INSTAGRAM continues to roll out new changes. Is your marketing strategy keeping up?

Last month, this column covered how to ensure your Instagram account shifts to keep up with the company's stated desire to become a video app, with a focus on how to use Reels in your marketing strategy.

This month, let's go over two other important recent changes to Instagram.

User experience updates

Head of Instagram Adam Mosseri has teased some major changes to the way users interact with the Instagram app.

Per Mosseri, Instagram will soon start rolling out three different views on your home screen: Home, Favorites and Following. Users will be able to toggle between the three, and will even have the option to see posts chronologically.

Users will be able to toggle between the different views, giving them the ability to create a more custom experience on the app and to view and interact with content exactly in the way they want.

The Home view will likely be similar to the way Instagram's home view is structured now—with a mixture of posts from people you follow and people you don't, all shown to you based on the Instagram algorithm. The Favorites view will show content from your favorite accounts, and the Following view will show all posts from everyone you follow in chronological order.

So, as an inventor or product developer, how do you tailor your Instagram strategy to this new user experience?

The Favorites view will be the most important for you to consider.

As a content creator, your goal should be for your audience to add you to their Favorites. In order to do this, your content has to deliver some sort of value—whether it's educational, entertaining or a bit of both.

Simply posting promotional content won't work. Make sure your content is on brand and inspires your followers to come back and see more of your content. Focus on sharing creative, inspirational, educational content that is enjoyable to consume both in Stories and in feed posts, using Reels and other tools Instagram offers.

As you form your content strategy, consider creating videos or posts that give your audience a deeper look into your company, explain how your product would add value to their everyday lives, or offer important, relevant information in an entertaining way.

We've talked extensively in the past several months about Reels and short-form video, but don't overlook the value of long-form video as well. You can use long-form video to show interviews with members of your company or industry experts, answer FAQs, do in-depth product demos, or offer tutorials and how-to videos.

Beyond getting a coveted spot in your audience members' Favorites view, you can use your Favorites feed as part of your marketing strategy as well by setting it up to follow those accounts that provide the most marketing value to you.

For example, if you are working with Influencers, you can add them to your Favorites so that you can keep track of what they are posting and interact with them. If you want to keep tabs on what your competition is doing on Instagram, adding them to your Favorites is an easy way to ensure you never miss a post or video.

In Instagram's new user experience, the Favorites view will be the most important for you to consider.

Fighting unethical marketing

Like many other social media companies in the last year or so, Instagram has taken steps to crack down on unethical marketing or content creation strategies. This can be seen in several different ways.

The first and perhaps most well-known change is one we're seeing across all social media platforms. Instagram is getting strict about community guidelines, and accounts that violate these standards will be "shadowbanned," or deprioritized by the algorithm. Posts with misinformation, hate speech and bullying, for example, can be reported.

Another important change is the way Instagram (and parent company Meta) is working to protect teenagers online. Soon, parents will be able to see how much time their teen is spending on Instagram and set time limits.

Teens will also have the option to notify their parents if they report something they see on Instagram; the platform hopes this will open up conversations between kids and parents about online behaviors.

Another new feature is Take A Break. When enabled, this feature will remind users to Take a Break from Instagram after a set amount of time and give them a prompt to do something else.

Here's how Instagram's focus on ethics affects your marketing.

Remember: On Instagram, as with any other marketing channel, you're creating content for humans. These people will ideally support your brand in some way, and you need to treat them honestly and ethically.

This means you must stay true to your brand, as well as staying transparent and authentic. Don't exaggerate results, make misleading



claims, or bully competitors. Remember the Golden Rule, and don't market your invention or business in a way you wouldn't feel comfortable being marketed to as well.

Additionally, if your target market includes teenagers or young adults, keep Instagram's goals of protecting teenagers' user experiences in mind as you set your content strategy. Your goal should be to inspire them to take action offline, not to suck them into the app even further.

Other changes to come

Keep in mind that these changes are ones Instagram has stated are in the pipeline, and all these features are not available to all users yet. However, the marketing principles related to them still ring true: We should always be creating good content and marketing our products and businesses ethically.

To keep a closer eye on changes to Instagram and other announcements, you can follow Adam Mosseri on Twitter at @mosseri. 📌

Elizabeth Breedlove is a freelance marketing consultant and copywriter. She has helped start-ups and small businesses launch new products and inventions via social media, blogging, email marketing and more.



When to Stop Pitching?

EVEN AFTER GETTING THE GO-AHEAD FROM ONE COMPANY, BE READY FOR POTENTIAL CURVEBALLS **BY APRIL MITCHELL**

“WE LOVE IT and want to move forward with it.”

These are the words every inventor wants to hear! This is what we work toward and why we do what we do.

But I have learned it is just as important what we do after hearing these words.

It may be tempting to assume everything is going to work out and that we should cease pitching our product because we think it has found a home. If only it were that easy.

5 possible obstacles

The hard truth is that it is long from being a done deal when we are told a company wants to license our product. There are many things to consider before taking your concept out of the pitching arena.

I have been in some tough situations where I thought I had done deals, but they weren't

because that dotted line was not signed. Even then, until the product is for retail, things can still fall through—but that story is for another day.

Even when a company is “working on the contract” or “running things through legal” or “finalizing manufacturing costs,” anything can happen. When these things happen, inventors must choose whether to keep pitching the concept or pull it off the market.

Some things to consider before you stop pitching your concept to “other” companies because one company said it wants it:

- **Company licensing procedures.** Depending on the size of the company and its legal procedures, receiving the licensing contract can still be weeks away. And after receiving the contract, there is often some back-and-forth before the contract is finalized and signed. This can take a couple weeks or even more.
- **Change of priorities.** A company's priorities can change in a drop of a hat—and without notice to the inventor. It can love your product, but because of something completely out of your control the company may decide it cannot take it on right now. You might not get the courtesy of being told right away (yes, this has happened to me). When you find yourself in this situation, if you are not already pitching to other companies it would be a good idea to resume.
- **Established relationships.** These are important and can be very helpful in moving things forward. However, having a good relationship with someone can give a false sense of security and trust when a company says it will license an item. We may also give the company more time or leeway because of our relationship. There is a fine line we need to walk here. We don't want to ruffle any feathers; at the same time, this is business and our livelihood.

There are many things to consider before taking your concept out of the pitching arena.



- **Miscommunication.** Sometimes, communication can be off and misunderstandings can happen. This can include terms not set before getting to the stage of saying “yes”; maybe the person you are working with doesn’t fully understand what the owner/company typically agrees to for licensing deals. Be sure to follow up calls/meetings with a summary or bulleted talking points of the call.
- **Expectations.** Understanding the company’s timeline and what all needs to happen before you are actually given the contract is important. Often, companies will say they want to move forward with your product but first need to get factory samples, pricing and more. This can take several months. Other companies license the product and then figure out all that information.

The ‘option’ option

Because every situation is different, I have found there is no exact way to go about things. But you have to know what you are willing to ask, do and give in these situations.

I have personally had a “yes” change to a “no” and deals fall through for various reasons, including those listed above.

One option is to ask for an “option” if a company wants you to stop pitching your concept. This is like a holding fee: The company gives you an agreed-upon amount of money to stop pitching your concept for an agreed-upon timeframe. When the time is up, the company either licenses the concept, signs another option, or you start pitching it again.

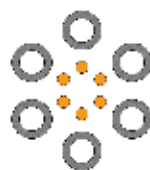
I have witnessed people waiting over a year for a licensing contract while the company was working on things, and the deal fell through. This is time we can’t get back.

Ask questions and stay on top of things, helping to ensure the process is progressing as planned—whether you stopped pitching or not. 📌

April Mitchell of 4A’s Creations, LLC is an inventor in the toys, games, party and housewares industries. She is a two-time patented inventor, product licensing expert and coach, and has been featured in several books and publications such as *Forbes* and *Entrepreneur*.



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Upside-Down World

CROATIANS' PRESCHOOL LEARNING SYSTEM TURNS CHILDREN INTO TEACHERS **BY JEREMY LOSAW**

STEFAN VEDRINA was surprised. A middle school teacher in his native Croatia in 2018, he was asked by a student about a programming language but didn't know anything about it.

His breakthrough moment came when he imagined a role reversal: The student would teach him.

Vedrina asked the student to research the programming language and teach it to him. He discovered that the student mastered the concepts much better than if he had proffered it to *him*.

"Why wouldn't we put a little kid in a position of teaching?" said Vedrina, noting that often, "little kids don't like learning very much. So if we switch them into teaching, they will learn without even knowing (it)."

The Moopies were soon to invade.

The premise: The Moopies have just landed on Earth and have no knowledge of our planet. So it is the child's mission to help these loveable aliens learn the skills they need to adapt.

These digital Moopies have a living quality like Tamagotchi digital pets that were a popular toy in the late 1990s. They need to eat and sleep, which gives them a virtual life with which children can relate. There is also a physical plush toy Moopy that gives a physical manifestation of the digital character the kids can teach.

The product is scheduled to launch on Kickstarter in April, with shipping later this year. It will be available for about \$60 from themoopies.com and other online retailers.

"It's true that children today spend a lot of time in front of screens, but in our application we have a solution to this problem," Vedrina told Total Croatia News. "The focus of the Moopies project is an educational application for children in which children learn without even being aware of it. ...

Stefan Vedrina is the main programmer at Hiroma Design. Mateja Vedrina is the main 3D/2D artist.

Shared adventure

Moopies is a preschool learning system/app that gives children the opportunity to teach. It uses a mix of digital and physical products, with cute characters at the center of the action.



The Moopies have just landed on Earth and have no knowledge of our planet. So it is the child's mission to help these loveable aliens learn the skills they need to adapt.

"As the Moopy learns, it evolves. When downloading the app, the parent determines how long their child will play the game.

"After this period, Moopy, with whom the child is currently playing, goes to sleep and they can continue the game only the next day. In addition, the application will be accompanied by content that is thematically related to the application—i.e. merchandise; soft toys; a catalog with pictures; tablet pens, and T-shirts."

Concept evolution

Vedrina and his wife, Mateja, cofounded Hiroma Design three years ago in Novska, Sisak-Moslavina, Croatia. They create video games, 3D projections and augmented and virtual reality applications. Stefan is the main programmer at Hiroma Design; Mateja is the main 3D/2D artist.

They developed the Moopies concept at the PISMO business incubator in Novska. The program provided mentorship and some funding to develop the idea.

The first lessons of the digital curriculum were created during the 6-month program. This included the concept of the alien monsters, loosely referential to the design elements of Pokemon, along with working out the physical assets it would take to augment the app.

"Little children love monsters and aliens and that kind of stuff—especially if they are paired with big eyes and big teeth. That's why we went for the alien look," Stefan Vedrina said.

In the pitch competition at the end of the program, Moopies beat approximately 50 other startups to win best innovation and \$25k Euros to launch a Kickstarter campaign—and a trip to the 2022 Consumer Electronics Show to exhibit the product.

Building in 2022

There are no patents for the Moopies system,

but it has other forms of IP.

The custom-built lessons are copy-righted, as are the designs of the 26 characters that make up the Moopies universe. Vedrina said a lot of the value is in the brand and the ecosystem, and getting the characters right.

With the product in pre-production, a lot of effort has been put into the manufacturing ecosystem. The plush will likely be made by an Asian factory, but the plan is to create the rest of the physical assets domestically in Croatia. Low-cost options there will be of high quality to impress the U.S. marketplace—the primary target market.

Cost-effective shipping will be a challenge to get the product distributed effectively in the United States, but the hope is that creative problem solving will solve that challenge.

The success of the upcoming Kickstarter campaign will dictate how aggressively the team rolls out manufacturing of the product. As of this writing, just one of the 26 characters has been produced as a plush, but a successful campaign will allow more of the characters in the physical world.

Given the push to develop content in English to reach larger audiences, a healthy Kickstarter raise will also allow the content to be narrated in Spanish for dual language learning.

The team will be on the lookout for investors during the launch—to help grow the company, the world of the Moopies, and change the narrative of early childhood education from student to teacher. ☺



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/.



Kicking the **Bucket**

NEW JERSEY WOMAN'S SHOWER ATTACHMENT INSPIRED
BY A HOUSE TEEMING WITH PEOPLE AND DOGS **BY EDITH G. TOLCHIN**

THE ADAGE “Necessity is the mother of invention” sums up the way this invention was conceived: 15 guests, along with pets, at *one* New Jersey shore house.

That created the perfect storm for New Jersey-based Lisa Lane’s invention, the Rinseroo. It’s a patented, slip-on shower attachment hose.

Edith G. Tolchin (EGT): How did Rinseroo come about?

Lisa Lane (LL): I was at my Jersey shore home with my extended family. There were 15 of us in all, plus four dogs. It seemed that I was cleaning my showers and bathing the dogs on a constant basis.

We had no handheld shower attachments, so I was filling a bucket over and over to get the job done. It was messy

and time consuming and I thought, there has to be a better way. Life is too short to rinse with a bucket! That is when the Rinseroo was born—right there in my shower.

EGT: Did the recent COVID-19 pandemic help increase business?

LL: COVID did help launch the product and increased our sales. The Rinseroo became a huge problem solver when housecleaners stopped coming to homes and when dog groomers were closed.

Homeowners and pet parents needed to find an easy way to clean their showers on their own and be able to bathe their dogs in their homes. They went online searching for a solution, and the Rinseroo fit that bill perfectly! It has an easy slip-on, slip-off design that fits most shower heads, spigots and faucets.

“When I first launched, I found that 10,000 Rinseroo units were assembled improperly. The only solution was to open every box, remove the contents, reassemble, and retape every box.” —LISA LANE

Lisa Lane’s Rinseroo has two versions: one for “go anywhere” pet bathing, the other for shower wall cleaning.



EGT: Tell us about your background.

LL: I have worked in pharmaceutical sales and marketing, and have served as a career expert for many pharmaceutical websites and major newspapers. I am also the author of multiple books about how to break into the industry.

I launched the Rinseroo on my own website rinseroo.com, as well as on others just over two years ago. Since then, my brand has become a top seller on Amazon Launchpad, and it also sits atop its “most wished for” list.

I am currently at work scaling the brand into thousands of retail stores nationwide, and am in the process of adding line extensions in the cleaning and bathroom space. I hope to re-invent the way we rinse, clean and bathe. I am well on my way to seeing this dream come to fruition.

EGT: How is Rinseroo sold?

LL: We currently have two versions of the Rinseroo. One is for “go anywhere” pet bathing; the other is for quick and easy shower wall cleaning.

EGT: Have you had any difficulties with developing Rinseroo?

LL: When I first launched, I found that 10,000 Rinseroo units were assembled improperly. The only solution was to open every box, remove the contents, reassemble, and retape every box.

It was extremely stressful because I had no staff to help and had to recruit my husband and family to help. That mistake was time consuming and definitely not fun! Thankfully, we persevered and learned a lot.

EGT: Do you plan on introducing any new products?

LL: Yes. We plan to introduce four new line extensions later this year. We came up with them based on customer feedback and requests. The goal is to turn Rinseroo into a brand, not just a product.

EGT: What advice do you have for inventors seeking to develop a household cleaning product?

LL: Do market research and be able to answer this question: How many people could potentially use my product?

PATENT ADVICE

Lisa Lane has two utility patents on her product, thanks to one of her best friends from college.

Patent attorney Carolyn Favorito “did a patent search, found that it was something that I could possibly patent, and worked on it as if it was her own. She encouraged me and motivated me to make it happen.

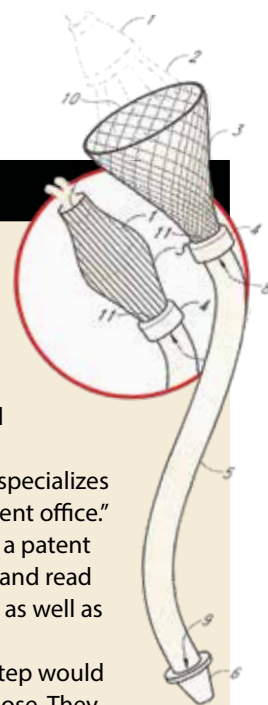
“It’s important to hire a good attorney who specializes in patents and knows how to navigate the patent office.”

Lane says a simple place to start is by doing a patent search at patents.google.com. You can search and read the full text of patents from around the world, as well as finding prior art for free.

“If you don’t see anything there, your next step would be to reach out to a patent attorney if you choose. They can do a full patent search for a fee.

“A good attorney will also tell you if they think your idea is patentable and will make recommendations on how to proceed. For example, my attorney suggested going with a provisional patent application to test the waters before investing in a utility patent.

“During the provisional patent application, you have one year to determine the marketability of your product. During that time, you can decide whether to pursue a utility patent. Before selecting an attorney, be sure to choose one who knows what they are doing and has your best interests in mind.”



If you are selling something that only appeals to a small group of people, you are not going to sell millions of units. You need to determine whether your market aligns with your goals.

Ask complete strangers to use it and get their honest feedback: If their experience is less than stellar, be willing to jump ship.

Understand margin requirements for multiple marketplaces and learn about how much margin you will need to make a profit.

Have it manufactured and cook up a marketing plan.

Sell! 📦

Details: admin@Rinseroo.com; 609-259-5414

Edith G Tolchin has written for *Inventors Digest* since 2000. She is an editor (opinionatededitor.com/testimonials), writer (edietolchin.com), and has specialized in China manufacturing since 1990 (egtglobaltrading.com).



FIGHTING THE WEIGHT

FORMER ROCK TOUR MANAGER AND MOVIE PRODUCER JONATHAN TAPLIN ADVOCATES FOR ARTISTS' IP RIGHTS

BY REID CREAGER

A **TOUR MANAGER** for Bob Dylan and The Band in the 1960s, Jonathan Taplin still talks about “The Weight.” He’s not talking about The Band’s folksy rock classic.

In the context of this story, *The Weight* is a smothering financial burden that crushes many musicians and artists despite years of adulation, sold-out stadiums and lucrative profits from sales of their recordings. Suddenly, they learn their works are credited or belong to someone else; worse, they receive no compensation while their work is passed around for free on the internet.

The Weight was too much for Tom Evans. A singer/songwriter who also played bass for the rock group Badfinger, Evans was embroiled in a dispute with former bandmate Joey Molland over royalties from the group’s epic 1970 ballad “Without You,” which Evans co-wrote. On Nov. 19, 1983, after arguing with Molland on the phone, he went out to his garden and hung himself.

The entertainment landscape is littered with similar casualties: some dramatic, some a painful, laborious challenge. In too many instances, performers don’t understand how to protect their intellectual property.

Taplin—also a former movie producer for Martin Scorsese and an internet dealmaker at Merrill Lynch, as well as the creator of the first video-on-demand service—told *Inventors Digest* that the rise of file-sharing services on the internet some 20 years ago exacerbated the problem by robbing many performers of important royalties, with Big Tech still held unaccountable.

The director emeritus at University of Southern California’s Annenberg Innovation Lab, Taplin was scheduled to be a featured speaker at the 2022 Intellectual Property Awareness Summit on April 5. The event, at the UC Berkeley Haas School of Business, is being held by the Center for Intellectual Property Understanding in conjunction with the Institute for Business Innovation.

Helm was two-timed

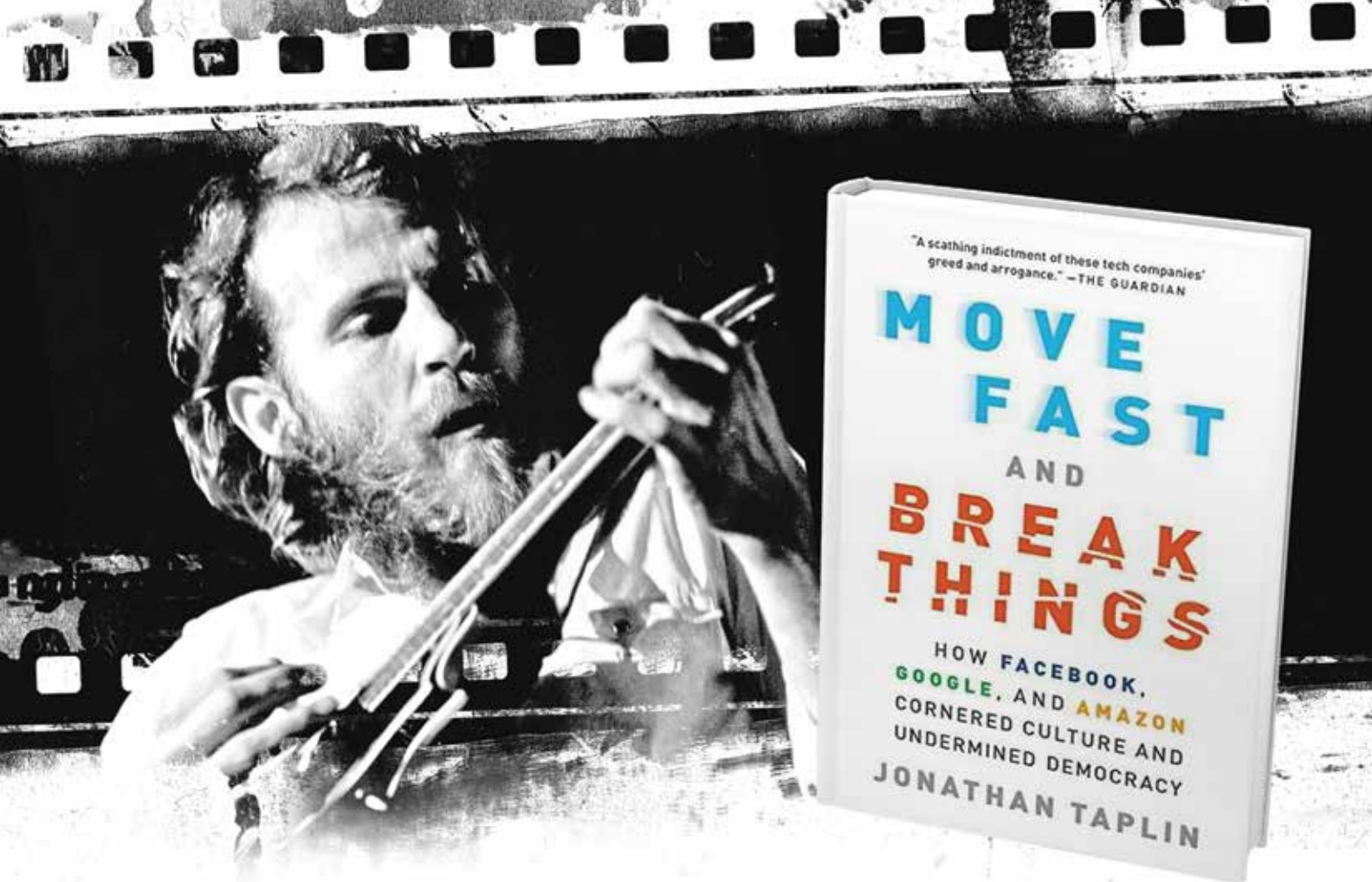
Levon Helm was intimately familiar with “The Weight.” He was the lead singer on the 1968 recording.

Jonathan Taplin, here with Janis Joplin at the Newport Folk Festival in 1968, has worked with many rock and movie greats. Some have been robbed of royalties on credits, and by free internet services.



LEFT: PHOTO DAVID GAHR





"I wrote a book ... laying out solutions of how to bring Big Tech to heel. Since then there has been a lot of talk, but no action." —JONATHAN TAPLIN

When Taplin was asked to illustrate an example of the importance of intellectual property, his first thought was what happened to vocalist and drummer Levon Helm (above) of The Band.

He was also well acquainted with The Weight.

Taplin said Helm is the first person who comes to mind as an illustration of the importance of IP: Helm "was making a decent living from record royalties all through the 1990s, as consumers replaced all their favorite vinyl with CDs.

"Then he got throat cancer in 2000 (he died in 2012), and was no longer able to play live. His royalty income went from \$150,000 a year to almost zero. At one point, he didn't have enough to pay for his health care.

"In 2006, you could go on YouTube and listen to every single song of The Band, for free. I wrote a book called 'Move Fast and Break Things: How Facebook, Google and Amazon Cornered Culture and Undermined Democracy' in 2017, laying out solutions of how to bring Big Tech to heel. Since then there has been a lot of talk, but no action."

Helm was victimized by forms of IP theft since early in his career. In his autobiography, "This Wheel's On Fire," he wrote:

"When (the album) 'The Band' came out (in September 1969), we were surprised by some of the songwriting credits. In those days we didn't realize that song publishing—more than touring or selling records—was the secret source of the real money in the music business. We're talking long term.

"We didn't know enough to ask or demand song credits or anything like that. Back then we'd get a copy of the album when it came out and that's when we'd learn who'd got the credit for which song. True story....

"When the album came out, I discovered I was credited with writing half of 'Jemima Surrender' and that was it." Among other group members, "Richard (Manuel) was a co-writer on

three songs. Rick (Danko) and Garth (Hudson) went uncredited. Robbie Robertson was credited on all 12 songs.

"Someone had pencil-whipped us. It was an old tactic: divide and conquer."

After Napster

It's the newer, internet-enabled tactics that Taplin is fighting hardest—not only on behalf of artists, but for writers, entrepreneurs and all innovators.

"Ever since Napster destroyed the income of many of my musician friends in 2000, I have been waging a battle against Big Tech," he said. "Many billion-dollar businesses like YouTube were built off pirated content."

During a recent discussion on the podcast series "Understanding IP Matters" with long-time innovation leader and IP supporter Bruce Berman, Taplin talked about the inherent inconsistencies and wrongs of downloading others' work for free.

"Just because it happens to be intellectual property, what excepts that from the general notion that you don't ask for cars to be free; you don't ask for food to be free? And just because it seems to be a little evanescent, why, all of a sudden, should that (IP) be free?"

Taplin said that before Napster, the music business was worth about \$30 billion. Now it's worth about \$10-12 billion. "Artists are substituting analog dollars for digital dimes."

Not all artists suffer from streaming services, he says—but the vast majority do.

"It used to be that a record company would get 80 percent of their revenue out of 20 percent of their product. In other words, 1 in 5 records or 1 in 5 movies would be a hit.

"But when I did my book, 'Move Fast and Break Things,' I did some research and it had gotten to the point where 90 percent of the revenue was coming from 1 percent of the product.

"So that meant that Jay-Z and Beyoncé and Adele and Taylor Swift were doing really well in the streaming world, but there were just millions of artists who weren't making any money at all, or who were making, you know, \$1,000 a year."



Working With George and Dylan

What was it like for Jonathan Taplin? When we posed this question to him, we got an entrepreneur's answer.

"It was a joy," he said. "Buy my book, 'The Magic Years,' and you can read all about it."

Asked about Bob Dylan recently selling his publishing catalogue rights for an estimated \$150 million to \$200 million, he said: "If you were 80 and someone was willing to pay you for royalties you might receive in 2050, wouldn't you take that deal?"

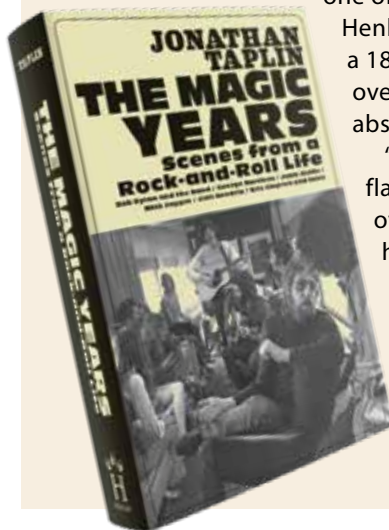
Taplin, who spent the spring and summer of 1971 working on the "Concert for Bangladesh" with George Harrison (for which he was co-producer), told Rolling Stone that Harrison was "just calm. And being a Beatle, he lived on a level that most of us don't understand."

As an example, he mentioned one time he and Harrison were driving in England. "He had the fastest Mercedes-Benz sedan ever, with a V12 engine, and he wanted to show me how fast it could go. We were on the M4 or

one of those roads out towards Henley, and he took it up to like a 180 kilometers per hour (well over 100 mph) or something absolutely insane.

"Then we see a cop and the flashing lights and we pull over. 'Oh, Mr. Harrison. You have to be more careful.'"

"He got a pass. There was no ticket issued. It's like how they would have treated Prince Charles."





“Ever since Napster destroyed the income of many of my musician friends in 2000, I have been waging a battle against Big Tech.” —JONATHAN TAPLIN

Taplin speaks at the Hollywood IT Society's Digital Marketing and Analytics Summit in 2013. He says YouTube has been notoriously lax about copyright law.

Laws need changing

Taplin says laws must be changed to protect the typical artist. He cites two “safe harbor provisions” as the biggest offenders: Section 230 of the Communications Decency Act and Section 512 of the Digital Millennium Copyright Act.

The former says that “basically, no internet provider like Facebook can be called a publisher,” enabling a major inequity and unfair protection.

If a newspaper publishes something that is untrue and libelous, it can be sued. But because these social media sites are not considered publishers, they cannot be sued.

Some may find the latter provision even more surprising.

“On the Section 512 part, I can’t sue YouTube for putting up music that I own, copyrights that I own, without my permission. All I can do is file a takedown notice. And as long as YouTube does this within some period of time that’s reasonable—which is usually thought of as two weeks—I can never sue them.”

What ensues is a game of Whac-A-Mole: “They take down one version of The Band’s “The Weight,” and the next morning, another version goes up from another user. YouTube knows that’ll happen, so the song will always be on their system, for free.”

He adds that newer sites like TikTok are just as abusive to copyright holders as YouTube and Facebook, but that YouTube in particular has been notoriously lax about copyright law.

Taplin has firsthand experience in fighting megacompanies.

The 1996 founder of a company called Intertainer, which had some groundbreaking video-on-demand patents, he sued the major movie studios for alleged conspiracy to fix

5th Intellectual Property Awareness Summit (IPAS)

When: April 5

Where: UC Berkeley Haas School of Business

To register:

ipawarenesssummit.com.

Availability is limited for in-person and livestream tickets.



prices for online movie distribution to drive Intertainer out of business and start their own online services. The suit was eventually settled out of court, to Taplin's satisfaction.

Glimmers of light

Although concerned and frustrated by the general lack of attention to artists' IP rights being violated, Taplin sees possibilities for improvement. He is careful not to be one of those "back in my day" complainers and says he sees encouraging signs from the current U.S. administration.

Still, his challenge grows as technology expands.

"Things are slowly getting better in the music business," he told *Inventors Digest*, "but now the cyber-libertarians have a new way to rip off artists called NFTs. (A non-fungible token is a non-interchangeable unit of data stored on a blockchain, a form of digital ledger that can be sold and traded.)

"OpenSea, the largest NFT market, admits that 80 percent of the content they are selling is pirated, but they say their 'community' doesn't want them to police the site. OpenSea is owned by two of the richest men in tech, Peter Thiel and Marc Andreessen."

Some organizations exist to protect artists' rights. But as The Band's Helm explained in his biography, that protection is arbitrary and specific, with no protections for artists who don't fully understand the process.

Taplin reminded Berman that because of performing rights organizations such as ASCAP and BMI, "songwriters continue to get paid all the time, when the musicians who just played on the album didn't get paid. ... those organizations were very good at collecting money from every Gap store that played music, every bar that played music, every retail location that used music.

"That's the kinds of things that technology can actually do. You can actually check out how many people hear your song at the Gap."

He also sees hope via latter-day artists' rights advocates such as Taylor Swift, who recently forced her new music label Universal Music Group to share 3.6 percent equity with other artists that the label holds in music streaming service Spotify (total value: about \$2 billion).

"She stuck up not just for herself, but she stuck up for all the artists that were on the label. And that's an extraordinarily important gesture. And it had meaning for a lot of people. A lot of people got a check out of that who were not Taylor Swift-level artists."

He wants to remain optimistic in the face of these challenges to IP rights because of how intellectual property helps motivate the creative spirit. And as of this writing, the original studio version of "The Weight" was nowhere to be found on YouTube. 🎧



JONATHAN TAPLIN

Occupation: Director emeritus at University of Southern California's Annenberg Innovation Lab; author; cultural critic; board member of The Authors Guild, Americana Music Association, and Los Angeles Mayor Eric Garcetti's Council on Technology and Innovation

Home: Pacific Palisades, California

Hobbies: Reading, golf, swimming

Favorite music artist: Bob Dylan, The Band, the Beatles, Jason Isbell, Rhiannon Giddens, Yolo, Billy Strings, Bruce Springsteen, Brandi Carlile

Favorite actor: Denzel Washington

Favorite inventor: Steve Jobs

Favorite movie: "Blade Runner"

Favorite quote: "Show a little faith, there's magic in the night."—Bruce Springsteen



PART 1 OF 2

The LoRa Difference

LOWER-FREQUENCY WIRELESS COMMUNICATION ADDS RANGE, WITH LOW POWER CONSUMPTION **BY JEREMY LOSAW**

THERE WAS a time when everything electronic that sent or received any kind of data had to be wired and plugged in. Whether a computer mouse, telephone or temperature sensor, the data had to be transmitted through wires and back to whatever was controlling or reading the signal.

Wireless technology has allowed us to detangle our mess of cords and given us the freedom to add sensors without having to run ugly and bulky wires everywhere. In the consumer space, most of this wireless communication is done via Bluetooth or WiFi, both of which use 2.4GHz signals to transmit data.

This high-frequency communication is fast and has a lot of bandwidth, but it is severely limited by the range of the signal and heavy power requirements that can be burdensome for communicating with IoT sensors. That's where LoRa comes in.

LoRa is a new wireless standard that uses a lower frequency band to send small amounts of data, with a potential range of miles.

Barely more than a decade old, LoRa is revolutionizing the IoT industry and giving us a better way to read sensors that only need to transmit small packets of data.

Part 1 of this two-part series will look at LoRa's basics, and its history and applications. Part 2 will explore how to set up a LoRa network, and techniques to prototype with it.

Definition and attributes

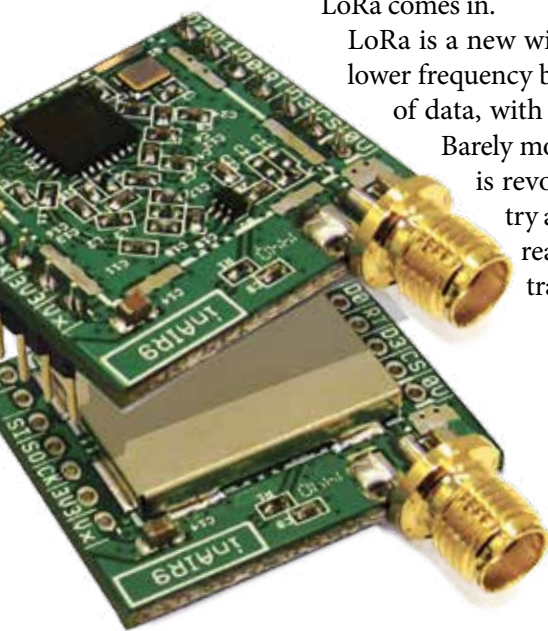
LoRa is a sub-gigahertz (below 1 gigahertz) wireless communication protocol for long-range, low power communication. The acronym is short for "Long Range"—which is what you get when engineers run the branding department, and where LoRa excels.

Although Bluetooth and WiFi have ranges that top out at 30-100 feet, respectively, LoRa has a transmission range of miles. In perfect conditions with line of sight between transmitter and receiver, data can travel 30 miles.

In practice, the range is 3 miles or less in urban areas and 10 miles or less in less densely populated areas—still a massive improvement over 2.4GHz options. It also has good penetration within buildings. One LoRa router can typically provide coverage in a multi-floor building, a scenario that would require multiple WiFi routers to cover.

LoRa also has low power consumption, low cost and large networks. It can be configured for

This LoRa module, about the size of your thumb, has the capability to transmit data for miles.



LoRa is a sub-gigahertz (below 1 gigahertz) wireless communication protocol for long-range, low power communication. The acronym is short for "Long Range."



ultra-low power use, waking up sending small packets of data and going back to sleep. In some applications, a 10-year battery life on a single coin cell is possible.

The overall cost of the network deployment is low because it requires fewer gateways for a given coverage area. Additionally, the circuitry and sensors are low cost, and development time can be accelerated by using the plethora

of open-source code from which to pull.

LoRa servers are built to handle a huge amount of data throughput (the rate of production or the rate at which something is processed)—thousands of gateways and millions of data packets. Based on these positive attributes, it is perfect for many IoT applications whose purpose is to monitor a few sensors and report data back to the cloud.

This evaluation kit features Semtech's LoRa Edge™ LR1110 and is configured for the 868MHz frequency band for Europe.

HISTORY

LoRa is a fairly young protocol whose history extends to only the late aughts. Its origins are in 2009, when Frenchmen Nicholas Somin (left) and Olivier Seller (right) were looking for a long-range, low-power, wireless solution. They met their third partner, François Sforza, the following year.

The three were originally looking to create sensors for monitoring utilities such as water and electricity, using a technique called Chirp Spread Spectrum (CSS) modulation technology.

CSS is similar to sonar, like how dolphins send chirping signals as part of echolocation. But with LoRa, this

technique is used to send data instead.

The three formed a company around the innovation called Cycleo, which was acquired by Semtech in 2012. That company is now the owner of the technology and sole manufacturer of LoRa chips.

The LoRaWAN standard was established in 2015. Similar to how the Bluetooth standard has its own protocol that defines how the technology can be deployed, the homologation was created to ensure interoperability between LoRa devices.

This has helped the protocol gain adoption worldwide and aided in deployment of the technology on a massive scale.





This LoRaWAN temperature and humidity sensor provides monitoring at long distances.

Applications

Despite being available for less than a decade for commercial use, LoRa has found a broad range of applications.

Because it is made to send small packets of data at great distances, it is a perfect fit for sensing applications that naturally have low data

throughput. Bluetooth and WiFi have much greater bandwidth but are often overkill for monitoring applications.


For example, LoRa is perfect for situations when a person may be measuring the temperature of a freezer or refrigerator, where the collected data fits in a small packet size and is sent infrequently.

Because it has such long range and good indoor signal penetration, it is also well suited to monitoring conditions in remote or hazardous areas. Its long battery life is also a plus in scenarios where it would be difficult or dangerous to replace batteries regularly in the field.

LoRa also gained widespread adoption in the rise of smart cities where a single gateway can cover many blocks of sensors for leak detection, smart lighting, and other monitoring of utilities.

As developers begin to understand the power of this technology, more applications are being developed, and more router coverage is coming online every day to push and pull the data. ☛

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A Booster for Patents

BLACKBERRY'S \$600 MILLION DIVESTITURE IS NOTEWORTHY FOR MULTIPLE REASONS **BY LOUIS CARBONNEAU**

GETTING ONE'S booster shot has been the talk of the town. But who would have guessed that the IP market would recently get a shot of its own?

Yes, I am talking about the \$600 million patent divestiture announced by Blackberry.

This deal infuses much welcome validation that patent assets still have significant value, assuming they are packaged correctly and sold to the right buyer. More below, with my take on this deal and potential unforeseen hurdles ahead.

In parallel, we saw two important decisions of late. These highlight the outcome when large damage awards leave the hands of the jury and enter the scrutiny of the appeals court. (I'll give you a hint: It usually does not benefit the patent owner.) I'll expand on this as well.

Finally, there is interesting data on what is going on in the courts, which in turns directly affects the IP market.

Call it ironic

It has been a decade since we saw a transaction of the magnitude of the Blackberry deal: Microsoft's acquisition of 800 patents from AOL for a whopping \$1 billion. It then resold some of those to Facebook (now Meta) for \$550 million. Incidentally, can you imagine anyone paying \$1 billion for 800 patents nowadays?

There were a few other noteworthy deals subsequent to AOL—such as the acquisition, also in 2012, of 1,100 imaging patents owned by Kodak for \$525 million by a consortium of tech companies through defensive aggregator RPX. Also, there was defensive aggregator AST's acquisition (via a special-purpose vehicle called Bridge Crossing) of the vast majority of the MIPS portfolio for \$350 million. More recently, in 2018, Interdigital acquired the whole Technicolor Portfolio (21,000 patents) for \$150 million in cash, but some of the future

revenues were to be shared with Technicolor and the whole deal was valued at \$400 million if memory serves me well.

But the Blackberry deal is newsworthy for at least a couple reasons.

First, it is the largest NPE-driven deal reported to date. (*Editor's note:* An NPE, or non-practicing entity, holds patents with no intention of developing them.) The portfolio was not bought to protect infringers but to be asserted directly against those.

This is somewhat ironic, given that Blackberry was almost undone when it was sued for patent infringement in 2006. Its maker, Research in Motion (as it was then called), had to shell out almost \$612.5 million in cash to settle the case brought by NTP Inc., a patent holding company, to avoid an injunction that could have blocked the sale of its flagship phones in the United States.

The Blackberry transaction proves that patents as an asset class are far from dead, and this deal may be a harbinger of more to come.

As you may remember, people were addicted to those pocket-sized keyboard phones; hence the nickname “Crackberry.” This was also before the 2006 *eBay* Supreme Court decision that consequently made such injunctions pretty much a thing of the past.

Blackberry is now getting that \$600 million back, so to speak, 15 years later—but at the high price of selling 30,000 patents that it conveniently calls “legacy” assets to soften the blow. Legacy they were to its product line (BB no longer makes phones), but certainly not to its balance sheet.

Second, it is not exactly a straight patent sale; thus, the usual metrics (such as price per patent) do not really apply here.

The acquirer is buying the whole and extremely profitable IP licensing division, which comprises of patents, know-how, significant royalty streams on licensing deals already



2 APPLE WINS

One of Tangible IP's factors for evaluating the patent market's vitality is large patent awards. The higher the damages awarded, the more headlines. The more headlines, the more boardroom discussions. And eventually, some companies receive instructions to avoid similar fates as the losing defendant and tend to engage a dialogue—as they should—when alerted they may infringe someone's else patents.

In turn, this gradually drives up valuation. At least, that is the theory—though honestly, most of them don't really care.

So, when we see not one, but two large awards from lower courts being overturned by the U.S Court of Appeals for the Federal Circuit just a week apart, we need to pay attention.

In both cases, the short-term beneficiary is Apple, which was on the receiving end (along with Broadcom) of a \$1.1 billion award in the Caltech case, and another one of \$145 million (later reduced to \$85 million) in the Wilan case.

Although the federal circuit sided with the patent owners on some important points (especially on the issue of estoppel for Caltech), the practical effect is that in both cases, the judges did not agree with the methodology used by the plaintiff's damages expert and remanded the case back to the lower court for a new trial on those points.

Some observers have argued that the plaintiffs have only themselves to blame by relying on unproven legal theories. Regardless, if I were Apple's counsel, I would feel like a million bucks and be in my boss's office asking for a big pay raise.

These guys have a real knack for finding ways to drag these trials out for years and years until the other side is left with no choice but to settle at a discount. Others who may have a case to bring often arrive at the conclusion that it is not even worth trying. You just wish all this legal talent was spent on more noble causes.



COURT SCOREBOARD

I recently published on LinkedIn a table (source: Docket Navigator) that shows the rate of success of patent litigants in the United States, by judicial districts that hear the most patent cases. The table did not include settlements, obviously, and most cases will settle at some stage. It didn't include appeals, either.

The data show that in 2021, patent challengers (the woke term apparently for "alleged infringer") were successful 86.6 percent of the time in Delaware; 85.1 percent of the time in the Northern District of California; 71.5 percent in the Central District of California, and 69.2 percent in the Eastern District of Texas.

Of all the courts that handle the most patent cases, the only one with a significant percentage of cases won by patentees was the Northern District of Illinois at 71.1 percent.

This shows that it is clearly difficult to win patent cases in America, no matter where you file. Given the available data, this makes even more intriguing the unprecedented influx of cash being diverted toward patent assertion these days.

Are there simply too many people playing with other people's money?

Recent data involving patent challengers show that it is clearly difficult to win patent cases in America, no matter where you file.

in place, future renewals thereof, precedential licensing data, a very talented licensing team, etc.

So, this is more akin to a mergers-and-acquisitions transaction than a mere sale of patent assets, even if the patents are clearly the deal drivers.

Frankly, if not for the fact that Blackberry is a public company and the market has never been a fan of the revenue lumpiness associated with IP licensing, there would have been no good reason in my opinion for the company to do this deal. Most of the expenses were already accrued, yearly revenues were substantial (even if not linear)—and most important, almost pure profit!

Find me another business division that can generate hundreds of millions of dollars of revenues year after year with very limited CAPEX and a team that you can count on a few hands. Now that this profit center is gone, Blackberry will need to look for other areas to grow its business, and none of them will have the same kind of returns overnight. It will be interesting to watch how the market views this deal a year from now.

This transaction infuses a breath of fresh air into the IP marketplace, and it definitely feels like a shot of vitality for patent owners—at least, larger ones. It may encourage many others to follow suit, especially if they can monetize non-core assets as in this case.

What it will mean for individual inventors remains to be seen. But it proves that patents as an asset class are far from dead and this deal may be a harbinger of more to come, as they rarely happen in isolation.

It also shows there is more than enough money available from new sources to support very large transactions, as operating companies have largely deserted the field. They prefer to fight individual cases in court rather than proactively acquire or license patents relevant to their business. 🍷

Louis Carbonneau is the founder and CEO of Tangible IP, a leading patent brokerage and strategic intellectual property firm. He has brokered the sale or license of 4,500-plus patents since 2011. He is also an attorney and adjunct professor who has been voted one of the world's leading IP strategists.



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Waiver Text Gets Wave of Protest

COUNTRIES REACH COMPROMISE ON IP RIGHTS RELATED TO COVID **BY EILEEN MCDERMOTT**

All Eye On Washington stories initially appeared on IPWatchdog.com.

THE EUROPEAN UNION, United States, India and South Africa reached a compromise on language for a waiver of intellectual property rights related to COVID-19 vaccine technology under the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS). But some groups say the text goes too far, while others say it doesn't go far enough.

The compromise is not final and must get official approval from all 164 World Trade Organization (WTO) member countries.

The U.S. decision to engage on waiver discussions, and this latest text, have drawn criticism from many groups.

The latest text is limited to “patented subject matter required for the production and supply of COVID-19 vaccines” only; the previous proposal was much broader. “Patented subject matter” is defined as including “ingredients and processes necessary for the manufacture of the COVID-19 vaccines.”

However, the text does contemplate extending the waiver to “the production and distribution of COVID-19 diagnostics and therapeutics” within six months of adoption.

The text also limits “eligible members” to “any developing country Member that exported less than 10 percent of world exports of COVID-19 vaccine doses in 2021.”

‘Fundamentally misguided’

Last May, U.S. Trade Representative Katherine Tai said the United States would back the waiver proposal, which was brought by India and South Africa in 2020. Tai said at the time: “We are for the waiver at the WTO, we are for what the proponents of the waiver are trying to accomplish, which is better access, more manufacturing capability, more shots in arms.”

Since then, discussions have been ongoing despite opposition from European leaders across the political spectrum—including former German chancellor Angela Merkel and European Commissioner for Trade Valdis Dombrovskis. Both leaders noted IP protection as being integral to any solution.

Last June, the European Commission submitted to the WTO an alternative proposal for improving access to COVID-19 vaccines and treatments in countries suffering from vaccine shortages. While the EU alternative contemplated the possible use of compulsory licensing, it addressed supply chain issues that many argue are the crux of the problem.



The U.S. decision to engage on waiver discussions, and this latest compromise text, have drawn criticism from many groups. Senior Vice President of the U.S. Chamber of Commerce Global Innovation Policy Center Patrick Kilbride said in a statement that the proposal remains “fundamentally misguided and should be rejected.” He continued:

“It ignores that the overwhelming problem is not vaccine production, it is last-mile delivery, and it will erode the ability of innovative companies to develop the cure for the next pandemic or global health threat. ...

“Vaccine production is estimated to reach over 20 billion doses this year, enough for everyone. As of March, over 65% of [the] global population has received at least one vaccination, and this number is growing every day. Some patients remain hard to reach. Governments and international organizations should avoid political distractions and more quickly achieve comprehensive global vaccination against COVID-19, by focusing on real, practical ongoing issues with last-mile distribution.”

‘Promising path’

A U.S. trade representative spokesperson, Adam Hodge, said in a statement that the “difficult and protracted process has resulted in a compromise

outcome that offers the most promising path toward achieving a concrete and meaningful outcome.”

Many proponents of the waiver believe the compromise text does not go far enough.

Shailly Gupta, communications adviser for the Access Campaign at Médecins Sans Frontières (MSF)/ Doctors Without Borders, said in a tweet “#Tripswaiver only for vaccines! Not good at all.”

And James Love of Knowledge Ecology International said: “It’s amazing how minimal the legal benefits are, and how the EU and the U.S. were able to cram in all sorts of TRIPS plus rules on the use of compulsory licenses, and to normalize even more protectionism regarding exports to high-income countries.”

How such a waiver will play out in practice is uncertain as the pandemic wanes. IPWatchdog CEO Gene Quinn noted last October that this far into the pandemic, there is likely to be little practical impact from any waiver of IP rights. ☞

Eileen McDermott is editor-in-chief at IPWatchdog.com. A veteran IP and legal journalist, Eileen has held editorial and managerial positions at several publications and industry organizations since she entered the field more than a decade ago.



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IoT Corner

Apple is ramping up efforts to prevent cyber stalking via **AirTags**.

AirTags are a coin-sized Bluetooth tracking beacon similar to Tile for people to keep track of their belongings. Unfortunately, they were being used too often for nefarious purposes, as unsuspecting people were being tracked by bad actors putting them on cars or in bags and purses.

To curb the appeal of using the devices for cyberstalking, Apple is making key updates that include shortening the time when the sounder goes off when going out of range from the user: from 3 days to 8-24 hours. Apple will also roll out an Android app to allow easier detection of rogue AirTags. —*Jeremy Losaw*



Wunderkinds

Lino Marrero, a 14-year-old from Frisco, Texas, won the sixth-to-eighth-grade category at the first annual Invention Convention Globals

last year. His invention, Kinetic Kickz 2.0, is a shoe insert energy generator housed inside the sole. His idea hatched while playing soccer: "My phone was dead, and I was thinking about all the energy I just left on the field and how tired I was. I thought, 'What if I could transfer that energy into my phone and charge it?'" He previously won both the Energy Award and Best Video Presentation Award at the Invention Convention U.S. Nationals.



What IS that?

It's **Tubey the Tubeman**—a 1 foot-tall, waving replica of those weird-looking, giant thin-gamabobs flailing about outside businesses that have given up on original promotion. Buyers say the fan that powers Tubey is loud and annoying, but your dog's reaction might be priceless.

2 Number of copyright lawsuits brought within one week against "**Levitating**" by Dua Lipa, *Billboard's* No. 1 song of 2021. One came from Florida reggae band Artikal Sound System; the other was from songwriters L. Russell Brown and Sandy Linzer, who said "Levitating" pulls from two of their songs, one in 1979 and one in 1980.

WHAT DO YOU KNOW?

- 1** Why did James Naismith invent basketball?
 - A)** He failed as a baseball player
 - B)** He was a farmer who used to throw peaches into the baskets
 - C)** He was a teacher who wanted to give his students indoor exercise in the winter
 - D)** He wanted to invent a game that did not have expensive equipment

- 2** In which century was the flashlight invented: 1700s, 1800s, or 1900s?

- 3** **True or false:** All contestants on "Shark Tank" have to see a psychiatrist after making their pitch.
- 4** Which company was not founded by inventor/entrepreneur Elon Musk, the world's richest person?
 - A)** Tesla
 - B)** PayPal
 - C)** The Boring Company
 - D)** Berkshire Hathaway

- 5** **True or false:** George Washington Carver and Henry Ford used to eat sandwiches made with weeds.

ANSWERS: 1.C. 2.The flashlight was invented by David Misell and patented in 1899. 3. True—ostensibly to ensure they are OK after what can be a traumatic experience. 4.D. 5. True. (We couldn't make this up.) Carver called weeds "nature's vegetable." Ford began eating the sandwiches after hearing Carver was doing it.

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