

Getting a Patent is Pricey

Considerations you may not hear from your patent lawyer

SMALL BUSINESSES ARE interesting beasts. An entrepreneur comes up with an idea and one of the first

thoughts is protecting the new business from competition. Big business often protects novel “inventions” through patent registration. Small businesses quickly find out that obtaining a quality patent is too expensive. When launching a soon-to-be-fledgling enterprise, a business founder often correctly decides that \$10,000 to \$30,000 can be better spent on driving the growth of the business.

The benefits of owning a patent can be potentially significant. If you are looking to raise capital or want to increase business value, owning intellectual property creates a barrier of entry to potential competitors. Unless you are flush with capital, however, the cost of enforcing your patent rights could be out of reach. The patent infringement lawsuit that goes to trial reportedly costs an average of \$3.5 million—not a real attractive option for a small business. Unfortunately, the chances of being able to find a law firm to pursue infringers on a contingency fee basis are simply remote and highly unlikely. Patent infringement litigation is rarely treated like personal injury or car accident claims.

Please understand that I am not a patent lawyer. I know patent lawyers. I work with patent lawyers. When our firm is litigating a patent-infringement case, we rely upon patent lawyers. But I do know that the stories of an inventor convincing a law firm to take a patent infringement case on a contingency basis are extremely rare because the value of the invention must be significant, the patent registration must be strong, the infringers must not be judgment proof (or difficult to locate or identify), and the law firm must be convinced to, in effect, loan you several million dollars. Demanding licensing fees without litigation is sometimes successful, but most often met with resistance unless you have a history of enforcement of your patent rights through litigation. How, then, do you enforce a patent? The answer is that a small-business patent holder often cannot.

For those of you trying to raise capital, you should consider the fact that angel investors, venture funds and investment banks like to see barriers to entry. But they are not keen on having funds intended for growing a business used instead to finance expensive and time consuming litigation. The prospective investor most often wants to know that your



John Dozier

entire focus is on growing the business, recruiting the best management team, staying focused on the key metrics driving your business success and even continuing with your inventive and creative endeavors. The keys to protecting your business are to get in early, develop a quality business model and execute at a fast pace. The greatest barrier to competitor entry is speed and quality: speed at delivering innovative solutions coupled with doing things the right way and having happy customers.

Want to protect your business? Think better and move faster. Create a public persona of invincibility to deter or discourage competition. Capture dominant market share quickly. Cut deals with key players that are exclusive and that tie up important distribution channels. Cut your future competition “off at the pass,” so to speak. Partner with companies, establish strategic alliances and by so doing expand your realm of influence. Create business-based barriers to entry. Recognize that your ideas are going to be copied and your business model will be replicated. And, in the end, spend time in the conference room focused on growing your business—not answering questions in a deposition. ☞

The information in this article is not intended to be legal advice. Always consult your attorney when faced with legal issues.

John Dozier is president of Dozier Internet Law, PC, a law firm representing small and mid-size online businesses.

PREVIOUS ARTICLES



JULY 2006
“Web User Agreements”

AUGUST 2006
“Trademark Registration”