

by Don Lancaster

The Case Against Patents

Let's start off with a seemingly simple quiz – Which of the following is the most likely to cause you no end of grief?

- (A) Dealing noontime crack on the front stairs of the Salt Lake City police station.
- (B) Shooting a sequence of kiddy porno videos in the basement of your favorite church.
- (C) Calling yourself an inventor and behaving like one.

A trick question, of course. Given the normal franchise prepayments and when handled as a class act, (A) and (B) will both have considerable upside potential and a rather well defined risk to reward ratio. (C) is *certain* to be an absolute and total loss.

Over the years, "they" have defined any *inventor* as a mark to be conned. As a sheep to get shorn, gang raped, flayed alive, and finally nailed to the nearest shed.

Now, it is fine to be an *industrial product developer*, run a *prototyping house*, or be a *concept consultant* or an *evaluation specialist*. All of these are acceptable roles in society for which, at least occasionally, you may end up being quite well rewarded. These are also the sorts of things that you, as a *Midnight Engineer* should be striving towards. Upward and onward.

But don't *ever* refer to yourself as an inventor or act like one, for you are certain to end up done in very badly. Don't ever let anyone even suspect that you are capable of inventing anything.

Those invention marketing services with the tiny classified ads are not really the main problem. These folks are basically selling dreams and wish fulfillment in much the same way as a vanity publisher or, for that matter, an X-rated movie rental. Since the use of any invention marketing firm is the guaranteed kiss of death for any new product, these also do serve a useful purpose in helping keep abysmal junk out of the marketplace.

The patent process itself is by far the worst offender in inventor bashing. If a Las Vegas casino operator had the gross effontery to offer the same odds the patent office does, they would be tarred, feathered, and run out of town on a rail. If it were not a government bureaucracy, the patent office would long ago have been shut down under the RICO racketeering act.

Now, the patent system may or may not still retain some marginal utility in a Fortune 500 context. But, as a small scale *Midnight Engineer* or *Hardware Hacker*, *any involvement whatsoever with the patent system in any way,*

shape, or form, is virtually guaranteed to cause you a monumental long term loss of time, money, and sanity.

I'd guess the main problem is the mythology that has built up around the patent process over all the years. A mythology that no longer applies to the *Midnight Engineer* or the small scale startup. Let's try and replace the myths with some cold hard facts...

Fact – Your patent does not in any manner prevent others from stealing or using your ideas.

Should you go patent something, anyone is totally free to market your product, rip off all your ideas, or tell others about your work. And there is nothing immediate you can do to stop this from happening.

All a patent does is give you the right to sue someone in a civil action. At some future date in a ridiculously costly, extremely drawn out and easily circumvented legal process.

Nobody has ever "won" any patent litigation. The sole purpose of patent fights are to cause more grief and harm to the opposition than you are causing yourself. Almost always, this purpose fails miserably.

Fact – Not one patent in one hundred ever shows any positive cash flow.

There have been lots of studies done on patent productivity. While most of these cite ratios of several hundred to one or higher, 100:1 is a good and very generous working figure. Thus, your state lottery is usually a vastly better investment than a patent.

Fact – There is not one patent in one thousand that cannot be invalidated or severely minimized by a diligent enough search for prior art done in obscure enough places.

Don't ever refer to yourself as an inventor, for you are certain to end up done in very badly.

Very simply, there are zillions of people worldwide who are inventing things. And they all have pretty much the same tools and technology at their disposal. Almost certainly, you are not first with your idea. All it takes

is some provable *prior art* anywhere, and your patent is patently useless.

Fact – Prior art is not needed to bust any patent.

All you really have to do is show that the claims would have been reasonably obvious to a "practitioner in the field." That's all it takes.

As is often the case, a patent search is made without

actually looking at any of the *non-patent* history of the field in the way of key papers, seminars and trade journals. All you have to do is find someone somewhere that says it sure would have been obvious to them.

When (not *if*) your patent ends up busted, you will also run the risk of a *frivolous litigation* countersuit. Thus, if you have the temerity to try and defend your patent, you could end up being fined thousands of dollars.

Fact – Ideas are usually worthless.

At one time, way back in the golden age of inventing, ideas were worth as much as a dime a dozen. These days, they are worth less than a dime a bale in ten bale lots.

An idea becomes useful only *when and if* it can get converted into some marketable product that in fact ends up solving end user needs.

If you cannot demonstrate end users getting off on your idea, it has no value. It ain't creative unless it sells.

Fact – Big industry does NOT buy ideas or patents.

Change of any kind is anathema to any large Fortune 500 corporation. The only reason a new or improved product is ever released is in response to a clear threat of losing market share. Even then (as was obviously the case with minicomputer manufacturers), a larger corporation may choose to drop the ball completely, rather than adapting to any sorely needed change.

Consistently, it is all those garage startups and other smaller companies that introduce innovation and change to the marketplace. Only when those changes are overwhelmingly superior does big business pay attention.

Many larger corporations have a policy of flat out rejecting any outside invention submission. The reason for this is simple – several millions of dollars of in-house ongoing research and development could be lost should some outside epsilon minus and his attorney scream "You stole my idea!"

The NIH (Not Invented Here) syndrome is alive and well in most larger firms. It looks bad when the R&D staff gets blown out of the water by some kid in a garage somewhere.

So even if you have an absolutely outstanding new idea with rock solid patents behind it, most of industry simply could not care less.

Fact – Nobody voluntarily pays any patent royalties.

Nearly any company would much prefer to give their legal department \$100,000 to bust your patent before they would ever stoop to paying you \$10,000 in royalties. Outside patents are something to be ignored, avoided, worked around, or outright busted in court. But *never* to be honored.

Fact – You WILL get ripped off.

The odds are very much stacked against the Midnight Engineer startup from day one. If you are a creative type that designs things, the chances are you got that way in the first place through ignoring people and legal details. So, you *will* have your ideas stolen. You *will* be lied to. You *will* be misled.

The trick here is to recognize the inevitability of this ripoff process and not get too upset when it happens.

Ripoffs come with the territory. So, factor them in ahead of a time and it won't be nearly as rude a surprise when it

surely happens to you.

Some Better Alternatives –

So, if you are a Midnight Engineer, what are the alternative methods for successfully marketing your ideas and concepts? Based on many years of personal experience and several cubic yards of overflowing third-party patent victim files, here's what I'd suggest...

First, you *totally* avoid any and all contact with anything even remotely patent related. In any way, shape or form. Do so religiously.

Second, don't even bother creating anything in any field in which you are not eventually certain to become an expert. An expert who is thoroughly familiar with the technical literature, the history of the field, the marketing realities, the insider trade journals, and the mainstream tools and techniques in use. There is no point whatsoever in writing forest fire simulation software if you have never sharpened a *Pulaski*. Nor (as sadly happened to yet another victim just this morning) in patenting a "new way to replace inductors" without having read and understood *Sallen and Key* in their 1955 classic paper.

Third, publish all your key secrets and ideas in a major magazine, leaving out no detail, and omitting no insider secrets. This immediately can generate positive cash flow for you and safely tucks all your ideas away in the public domain, preventing most others from attempting to patent them. This also exposes your new ideas to the widest possible audience.

Fourth, try to set up some royalty arrangement with a small to medium firm in some position to market and distribute your invention. A normal royalty payment is typically in the five percent range. Now for the tricky part: *They must come to you*, and *never* vice versa. That is why it is super important to publish your ideas and creations and expose them as widely as possible.

You should have one and only one defense against getting ripped off in any royalty setup – the expectation that you will be delivering newer and better stuff in the future. That's all.

Fifth, employ the *shotgun* technique. There is no way that one single idea or product will hack it. To survive in this game, you'll need hundreds or even thousands of new ideas and concepts working for you on a total lifetime and total lifestyle basis. Chances are that one or two genuine winners will pay for all the others lost or stolen.

Finally, be realistic. You don't create things to get filthy rich. You create things because you like to create things and have some compelling desire or need to do so. As long as there are enough nickels to keep going, that is all that should really matter. ♦

Microcomputer pioneer and guru Don Lancaster is the author of 26 books and countless articles. Don now maintains a no-charge technical helpline you will find at (602) 428-4073, besides offering all of his own books, reprints, and various services. He also has a free brochure chock full of his new insider desktop publishing secrets waiting just for you. Your best calling times are 8-5 on weekdays, Mountain Standard Time. Or you can reach Don by way of his Synergetics, at Box 809, Thatcher, AZ 85552.

Don Lancaster's

RESOURCE BIN

number thirteen

Perils and pitfalls of patents and patenting.

Our usual reminder here that the *Resource Bin* is now a two-way column. You can get tech help, consultant referrals and off-the-wall networking on nearly any electronic, *tinaja* *questing*, personal publishing, money machine, or computer topic by calling me at (602) 428-4073 weekdays 8-5 MST. I've got a free pair of insider secret resources brochures waiting for you when you call or write.

This month, I thought we'd take a slightly different tack. Instead of my showing you lots of great places to get stuff, I will be showing you the *one* resource that you should studiously avoid at all costs. Because it is *certain* to waste your time, energy, money, and sanity.

The term *mark* first came from the carnival midway. Any time a scam operator (the *rube* in carneyspeak) had significantly lightened a prospect's wallet, he would give him a friendly exiting pat on the back. Along with a supporting "Gee Fella, that's too bad."

Unmentioned and unbeknownst to the lightenee was the fact that the rube had secretly dipped his hand in a hidden stash of powdered chalk just before the pat on the back. And thus *marking* a large "X" on the lightenee, clearly identifying him as worthy of special treatment by the next rube on down the line.

Eventually, every non-rube who so much as entered the carnival midway area became known as a mark. And were contemptuously treated as such.

These days, we no longer have too many marks left. So, you substitute the term *inventor* instead. Any time an "inventor" context crops up, you are assured of an uneven playing field very much comparable to a carnival midway or a casino floor. A scene which is intended primarily to (A) liberate as much money as possible from the mark, and (B) to keep the status quo exactly where it is.

The foremost reason to studiously avoid any "inventor" context is the totally absurd popular mythology which now surrounds patents and inventing. Nearly all of which is dead wrong. To prove this to yourself, just mention the word "patent" at any party and then observe the ludicrous disinformation heaped upon you.

Then challenge them to name *one* individual anywhere, ever, *whom they personally know* that, in a *small scale context*, has shown a net positive cash flow from their patent involvement. A cash flow that was worth the time and effort involved.

No, the windshield wiper guy has not collected yet. The Sears wrench dude has wasted his entire lifetime by tilting at windmills. To me, Hyatt looks like a rube. Tesla died a pauper. The patent system drove Armstrong to suicide. And Edison was a ripoff artist who made most of his bag by simple theft, using the most ruthless gaggle of renegade patent attorneys ever assembled anywhere.

So much for urban lore.

Now, patents might or might not retain at least a marginal utility in a Fortune 500 context. Our concern here

NEXT MONTH: Secrets of starting up your very own craft or tech venture.

is simply whether patents are a useful or appropriate tool for a small scale startup or an individual.

Out of some *six million* patents filed to date, I have yet to find *one* example of a lone individual who has profited from patents. On the other hand, my patent victim files are bursting at the seams. Putting my money where my mouth is, a free new *Incredible Secret Money Machine II* to any current *Nuts & Volts* subscriber who is now able to

personally claim a worthwhile net positive cash flow from their patent involvement done as an individual or small scale startup.

As a mark and not a rube, of course.

Your second largest reason for the uneven playing field is the patent system itself. Over the years, I have observed that *any individual or other small scale involvement in the patent system is virtually certain to end up as a net loss of time, energy, money, and sanity*. Most often, your state lottery is a vastly better investment.

Very simply, patents are almost always inappropriate, time-wasting, counterproductive, vibe-destroying, and totally unnecessary tools. At least when misapplied within small scale or individual contexts.

It is fine to serve as an *industrial product developer*, or run a *prototyping house*, be a *concept consultant*, or work as an *evaluation specialist*. All of these form acceptable roles in society for which, at least occasionally, you might end up being well rewarded. These are also the sorts of things you should be striving towards.

Now, I simply cannot fathom why anyone would ever purposely refer to themselves as an "inventor". This is the same as pre-chalking yourself up before you enter the carney midway. Which leads us up to Horschnoggle's first and second rules...

RULE #1— Do not ever, under any circumstances, refer to yourself as an inventor or behave like one. To do so will open you to interminable scams. Don't even let anyone else so much as suspect that you are even capable of inventing or marketing anything.

RULE #2— If you ever do associate yourself with any inventor's resource, use a fake name and wear a disguise. Remember that you are an impartial observer and a disinterested outsider. You are neither a mark nor a rube.