



HOW TO NOT GET SCAMMED AS AN INVENTOR

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Inventors are commonly the target of scams, so much so that the USPTO has issued specific guidance, invention promotion companies are subject to mandatory disclosure requirements, and Congress has passed a law prohibiting “Improper and deceptive invention promotion”. The World Intellectual Property Organization has issued warnings about fraudulent bills being sent for various fees (and has even asked for suggestions from the public as to methods for stopping these schemes).

These schemes range from truly pernicious (e.g. “pay us \$50,000 in advance and we promise you success”) to borderline silly (“Congratulations on your newly issued patent. We are offering a one-time-only set of coffee mugs and a framed certificate for a low payment of \$200.”). However, they all have one thing in common: They exploit the natural affinity an inventor has for anything to do with her invention.

It is notoriously difficult for independent inventors to see every invention as anything short of an amazing innovation that the world need only see to fall in love with. With my 170th United States patent issuing in a few weeks, I find it shocking that my legal training (Harvard no less), my tens of thousands of hours of IP development, marketing, and strategy experience, and my experience in licensing and sales do little to make it easier to abandon inventions that logic says are no longer good investments. In my opinion and experience, inventions themselves serve as a “receptacle for personality”, making abandoning them tantamount to giving up on a part of yourself.

If abandoning them is unduly difficult, the drive to be overprotective of them is unduly powerful. The powerful role inventions play in the development of an inventor’s feelings of self-worth is a bug in human programming, and one that bad actors now regularly exploit. If humans were software, the inventor’s almost parental love of his own inventions would be an unpatchable zero day exploit. Like a true zero day exploit, inventors are almost all unaware of the problem, and even if aware, are often unable to eliminate it.

The best thing an inventor can do is to get advice from a dispassionate third party. An attorney familiar with intellectual property and licensing can be a fantastic resource to this end. While there is no substitute for legal advice (and the following is not legal

advice), here are some quick tips, inventor to inventor:

(1) The only time it is ok to pay money to somebody up front before a patent issues is if they have a long track record and good, third party references. Even so, I would only pay money up front to an IP lawyer, an experienced inventor, a collaborator, an employee, or a technical writer. These are all people who can help you figure out whether to continue to invest in the invention and/or help you develop and dimensionalize the invention.

(2) If somebody promises to get you money for an invention you haven't filed for a patent on, that is a huge red flag. There are some programs that are legitimate (for example, the Invention Development Fund), but these are few and far between. Even for legitimate programs, be sure to read and understand the terms of the deal, since they may not work for you. Remember this: A pending patent is worth little in the vast majority of cases. Investors are often risk averse, so unless they are a company staffed to the hilt with patent lawyers and experienced patent strategists, a legitimate company is going to apply an inordinate discount to the price — if they are willing to pay anything at all. Again, if you don't talk with an attorney or advisor very familiar with the IP market, you are probably going to lose money.

(3) Legitimate patent brokers do not charge you up front. Period. They get paid by taking a percentage of the deal price. There may be exceptions (though I haven't encountered them), but ask whether you would be willing to pay a real estate broker their commission up front, without any promise that the sale would even happen. Despite the America Invents Act's negative effects on the value of patents, patents remain a property right and paying up front means you are paying in advance somebody to try to sell your property.

(4) It is very flattering to get letters congratulating you on your invention — so much so that whenever a patent issues, the inventor can expect to get half a dozen letters attempting to exploit that flattery. Whether they tout a non-existent customer for your patent if you only advance them a few thousand dollars, or whether they try to sell you a \$1 ceramic mug for \$50 because they've emblazoned it with your patent number, you must view these letters with the highest level of skepticism. I have literally never made a penny, or seen a legitimate opportunity, in any unsolicited letters sent directly to me. However...

(5) Sometimes letters are sent to your patent lawyer of record. A company willing to send a letter to the lawyer expects the contents of the letter to be scrutinized with a protecting eye. I have been presented with legitimate opportunities in unsolicited letters sent to my IP lawyers.

(6) Patents are an unusual thing, expensive to obtain and imprinted with the personality and dreams of the inventor. In their best incarnation, they are world-changing ideas worth hundreds of millions of dollars. However, the best incarnation is rare, like finding a gold nugget in your backyard rare. Many inventors think their invention is the exception, so important and valuable that the rules don't apply to them. Those inventors are playing with fire. Get professional advice. Get an IP lawyer and an IP consultant on board. Better safe than sorry.

(7) If you have a question about whether a bill is legitimate, call relevant patent office to confirm it. Make sure you are calling the right office (do *not* use the number they provide on the bill — look up the number yourself).

(8) Very few inventors are able to generate valuable IP without the help of a patent lawyer. Just hire one. Don't assume that an expensive lawyer, or a lawyer from a giant firm, is the best choice. Patent lawyers are quirky, and the great ones often prefer less formal work environments. I've gone from small firm lawyers to big firm lawyers and back. You need to find a lawyer you trust, you get along well with, you communicate well with, and you trust.

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