



What About Money?

February 27, 2015

There is a complex relationship between intellectual property protection and money.

Many venture capital sources and angel investors will not invest without some kind of assurance or plan to reduce the risk that a big company will see what you are doing, swoop into your space, and use their money and market dominance to take your business.

Copyright is free and automatic (and registration costs a de minimis amount), but in most cases it would be a trivial task for one of the tech giants to write software from scratch providing the same functionality as yours does. By contrast, a patent protects functionality.

Let's take a look at a startup from 1998 — Google. In 1998 when Google landed an initial \$100,000 angel investment, it was patent pending on application 09/004,827, "Method for node ranking in a linked database" — their basic search algorithm. On June 7, 1999, Google landed \$25 million in equity investment — two months before their patent application's August 26, 1999 first office action, a non-final rejection by the patent office. In a very typical history for patent applications, the rejection was eventually overcome and the patent was allowed on April 23, 2001 and issued on August 16, 2001.

The bottom line for Google is that they paid for a provisional patent application (filed Jan. 10, 1997) and a utility patent application (filed January 9, 1998) before they landed any substantial investment. Google was able to say they were "patent pending", and investors were able to evaluate the patent application and gain a measure of confidence that the then-competing search giants (e.g. Yahoo, DEC's Alta Vista) would not eat Google's lunch by stealing their algorithm. While the actual role of the patent application in Google's funding is something we can speculate about, the fact is that they followed a solid path to getting funding: Take steps to protect your intellectual property first, then seeking funding.

At this point, many potential start-ups may be thinking the obvious: "If I need money to pay for a patent application and I need a patent application to get money, what do I do?" There are several pathways that can be followed. A provisional patent application

protects the filing date and can be created for \$5,000 or less (around \$100 if you do it yourself without a lawyer — something I don't recommend). A bare bones utility application would cost around the same. It is definitely worth talking with a patent lawyer to get options and estimates (as well as advice as to how to approach family and friends for the initial \$10,000 to protect the IP without putting the IP at risk in discussing it before filing).

There are a few additional options. One is to find investors who are willing to invest before IP protection has been obtained. Matt Nutting has identified several classes of angel investors who are willing to invest for reasons other than pure financial motives. Those investors are excellent candidates for investment in a company pre-patent filing.

You can also utilize local resources to get fundraising advice. In the Central Valley and Fresno, you can get free help finding financing by going through the Fresno State Small Business Development Center (SBDC).

The Intellectual Property Group advises employers of all sizes on laws that impact their business. If you have any questions regarding this article, contact us, at (559) 248-4820 or info@ch-law.com.

About the Firm:

Established in 1994, Coleman & Horowitz is a state-wide law firm focused on delivering responsive and value driven service and preventive law. The firm represents businesses and their owners in matters involving transactions, litigation, agriculture and environmental regulation and litigation, intellectual property, real estate, estate planning and probate.

The Firm has been recognized as a "Top Law Firm" (Martindale Hubbell) and a "Go-To" Law Firm (Corporate Counsel). From six offices in California, and the Firm's membership in Primerus, a national and international society of highly rated law firms (www.primerus.com), the Firm has helped individuals and businesses solve their most difficult legal problems. For more information, see www.ch-law.com and www.Primerus.com.

Disclaimer: This article is intended to provide the reader with general information regarding current legal issues. It is not to be construed as specific legal advice or as a substitute for the need to seek competent legal advice on specific legal matters. This publication is not meant to serve as a solicitation of business. To the extent that this may be considered as advertising, then it is expressly identified as such.