

# Top Six Best Practices for Inventors

Discover the essential steps to transform your innovative ideas into successful inventions. This guide covers the top six best practices that every inventor should follow.

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# 1. Know why you are interested in patenting.

Everyone knows the television hit SHARK TANK, but not enough people know exactly why the SHARKS seem to ask about patenting during every investment pitch.

"Inventor" is one of the only titles of honor that does not require a certain level of educational attainment. Anyone can become an inventor, from a 9-year-old child to a 99 year old tinkerer. No fancy degree is required. And you do not have to file a patent application to call yourself "inventor," or build a business around an idea. But if you do file for a patent, you must learn what it can be good for and why to do it.

It is perfectly okay to file for a patent just for the thrill of being able to hang it on the wall after it publishes. When you get a patent, that means the United States government has examined your claimed invention and decided it met the requirements of patent-eligibility, novelty and nonobviousness. Nothing beats that feeling when you first see your Notice of Allowance, showing the government agrees that you did something special.

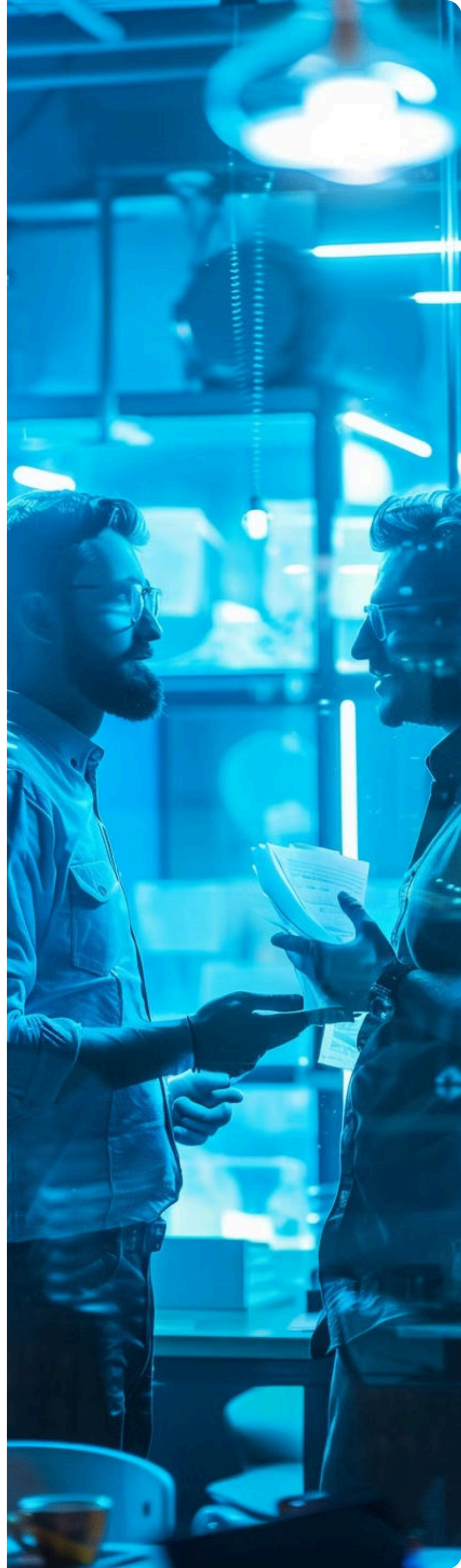
The most common operational purpose of a patent is to protect a market. If you designed and sell a new consumer product, and you get a patent that protects it, you now have the power to go to court to seek an injunction. Even without expensive court proceedings, platforms like Amazon, eBay, Walmart, Temu and Shein will work with you to take down listings of infringing products. Market exclusivity is powerful medicine. It can help keep your sales volumes high and your profits healthy. As President Lincoln famously said, the patent system "added the fuel of interest to the fire of genius."

A second operational purpose of patents is to secure investment. This is closely related to the first purpose, and gets back to the SHARK TANK reasons. If you can convince an investor that your product in the future will be legally hard to copy, that should be a tailwind to help you start or grow your business in the first place. You show your investors a higher likelihood of being able to pay them back, with a proper investment profit. You also show sophistication and credibility when you make thoughtful progress to putting an "IP fence" around your marketplace.


There are other reasons to get patents. And there are even reasons not to get patents (*e.g.*, to preserve trade secrecy). The point here is to make sure you think through your own reasons.

## 2. Talk to other inventors about their experiences.

- You are not alone on your inventorship journey. Nearly every community in the United States has inventor clubs where you can attend virtually or in person to share experiences and absorb other people's wisdom.
- There is simply no substitute for asking a colleague, "how did you get your patent," or "what was your experience with a nonfinal rejection, and having to argue about it," or "what are some pitfalls I need to avoid before I enter the marketplace?" Peers can be valuable resources.
- National organizations exist as well, who stay current on all aspects of patenting and inventorship. These include the United Inventor's Association, who sets up in national trade shows with tables to let inventors market and license their advances to industries like housewares, hardware and toys. These also include US Inventor, who advocates tirelessly in Washington, D.C. to advance inventor rights with lawmakers and agencies. These national organizations can also be important places to meet people and learn the ropes.





A close-up photograph of a clear glass incandescent lightbulb. Inside the bulb, there are faint, hand-drawn technical sketches and diagrams, including what looks like a circuit or a mechanical part. The bulb is resting on a surface that appears to be a technical drawing or blueprint, with some lines and text visible. The background is a soft-focus blue with some bokeh light effects.

### 3. File a patent application promptly, but not before the idea is ready

Ever since 2012, the United States (like most of the world) has operated under a "first inventor to file" patent system. When two people have essentially come up with the same patentable invention independently (which does happen sometimes), Congress in its wisdom set up a "race to the Patent Office." The one who is first gets the patent.

Take for example INVENTOR 1 who filed a patent application on April 1, 2023, and INVENTOR 2 who innocently and independently files for the same invention on April 10, 2023. INVENTOR 1 wins the race, and (if the system is working correctly) the USPTO will deny INVENTOR 2 any patent rights because INVENTOR 1's documented filing will (upon publication) be deemed "prior art."

But don't be too fast. No paper napkins, please. Even if filing a "placeholder" provisional patent application, any future patent rights that claim priority to that filing must have full and total "support" in the early-filed specification for what is claimed. This means even your earliest filing must have enough detail to meet requirements of: (1) enabling a person of ordinary skill in the art to make and use your invention without undue experimentation, and (2) allowing a person of skill in the art to perceive you have "described" the full scope of your claimed invention.

A patent professional (attorney or agent) can advise you on whether your ideas have ripened enough to justify investing in a patent application.



## 4. Avoid invention marketing scams

Sharks and snakes exist in all industries. Unfortunately, once your patent application publishes (usually 18 months after the filing of a nonprovisional application), nothing prevents unscrupulous people from learning who you are and preying on your hopes and dreams. Ignore unsolicited outreach, and be especially wary of entities who promise to market your invention to famous companies for a price. These rarely succeed.

### Good Licensing and Product Development

1. **Good licensing professionals exist.** And reputable companies have what is called "open innovation" programs where you can safely submit ideas, preferably already protected by an issued patent, and potentially to be taken up as a "technology transfer" opportunity. Do your own research if you want the services of a licensing professional, but do not hire anyone who marketed those services to you without your invitation and opt-in.
2. **Good product development shops also exist.** If you have an idea that just needs the final stages to put it into mass production, many companies and professionals can help you get there. Ask around at your local inventor clubs how your peers found their perfect injection molding shop, or overseas factory. You may be surprised how easy and reasonably priced it can be to bring your idea to the marketplace.
3. **Out-licensing your invention is not mutually exclusive of building a physical product market.** You can do both at the same time. You can even build a small market for your idea (e.g., on KICKSTARTER) to help your chances of securing a licensing arrangement with a big company. Just keep in mind that you will have no vested legal rights through the patent system for protecting your marketplace until your patent actually issues. It is much more rare to license an invention when the application is still pending, before it has issued.

## 5. Learn about all forms of intellectual property

For consumer product inventions especially, many people end up realizing that getting a patent is important, but other business success might be more important, at least when first starting out. These may include getting a head start in a new marketplace, solidifying a supply chain, and even getting (and protecting) proper branding, such as through federal trademarks. You should also learn all about trade dress, trade secrets, design patents, and all other forms of intellectual property that might boost your business and its prospects.

And don't forget to consult tax and business law professionals about any advantages there may be to forming an LLC or incorporating. If you do so, you will want to explore recording an "assignment" – a document that transfers ownership from (e.g.) named inventors on a patent or application to a corporate entity. The USPTO offers free "recording" services for completed assignment documents.

# 6. Know what a patent cannot do for you.

1. A patent does not guarantee commercial success. Just because you have a patented invention does not mean that people will automatically buy it.
2. A patent does not prevent others from inventing around your patent. Competitors can often find ways to create similar products that do not infringe on your patent.
3. A patent does not give you the right to make, use, or sell your invention. There may be other laws, regulations, or existing patents that prevent you from commercializing your invention.
4. A patent does not protect your idea. It only protects the specific implementation of your idea as described in the patent claims.

## Limitations of Patents

As great as that patent looks framed on the wall, or as confident it makes you feel when it issues in your name to protect your consumer product business, patenting cannot do everything for you. A patent can be an incredible tailwind to help you keep market exclusivity. But it is still up to you to execute a sensible (and profitable) business plan based on marketing, sales, supply and demand.

## Misperceptions about Patent Protection

It is a common misperception that holding a patent on a device protects you against third parties who might claim that you infringe their patent. This is usually false. A patent is not a "positive" right to sell what you want, but is a "negative" right to exclude others from making, using or selling the invention described by your own patent claims. Situations arise where both earlier and later patents from third parties might "cover" a device that has its own separate patent protection. And odd situations have come up where two companies each patented their own version of a product, thus keeping each other out of a market – and nobody went away happy.

## Misperceptions about government approval

- A second common misperception is that the government has placed its seal of approval on the quality of your product when it grants you a patent. **This is also not true.**
- That said, there is nothing wrong with boasting about patent protection in your consumer-facing marketing, so that the public knows that you were first, and your ideas (as far as the government is concerned) were new and nonobvious at the time they were examined.

## Bonus: Consult a Competent Patent Professional

- **Patenting is often exactly the right decision** for an individual or business to make. It can show your innovative spirit, enhance your reputation in your field, help protect a market, and serve as a "beacon" to others that you have rights available to license under appropriate technology transfer agreements.
  - **Consult a competent patent professional** to understand the opportunities (and limitations) that every inventor or business must know when it comes to patenting.
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**Robert Greenspoon** is a Partner at [Dunlap Bennett & Ludwig](#). He is a registered patent attorney who concentrates his practice in the litigation, trial, and appeal of patent and other complex cases. Rare among lawyers, his practice spans every aspect of the patent field. Robert works with inventors to file new patent applications, defends those inventions in all types of Patent Office proceedings (including PTAB challenges), tries patent cases in the courts, argues for appellants and appellees in patent appeals at the United States Court of Appeals for the Federal Circuit, and brings and defends patent proceedings at the United States Supreme Court.

Robert also manages the patent prosecution team at DBL. He drafts and prosecutes patents, while overseeing global patenting strategy, for clients such as the Massachusetts Institute of Technology, 3-D printing startup Impossible Objects, seasonal decorations company Holiday Bright Lights, healthcare technology company Peerbridge Health, and many others.



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