

# Patent Strategy for Tech Companies

**By Robert Greenspoon**

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Every startup faces this moment. Your product finally works better than anything else on the market. Customers love it, investors are interested, and competitors are starting to notice. But here's the critical question: have you protected what makes your technology special before everyone else tries to copy it?

Patent strategy isn't just legal paperwork—it's business positioning. For U.S. tech companies, the right intellectual property approach determines how you differentiate products, attract investment, and launch with confidence. Those who get this right early often control their markets longer and exit for higher valuations.

Why timing matters goes beyond just beating competitors to the patent office. Smart patent planning attracts investors who see protected technology as lower-risk assets. It also prevents the nightmare scenario where you build a successful product only to discover someone else owns the patents for your core features. In today's competitive landscape, patent filing has become as essential as product development itself.

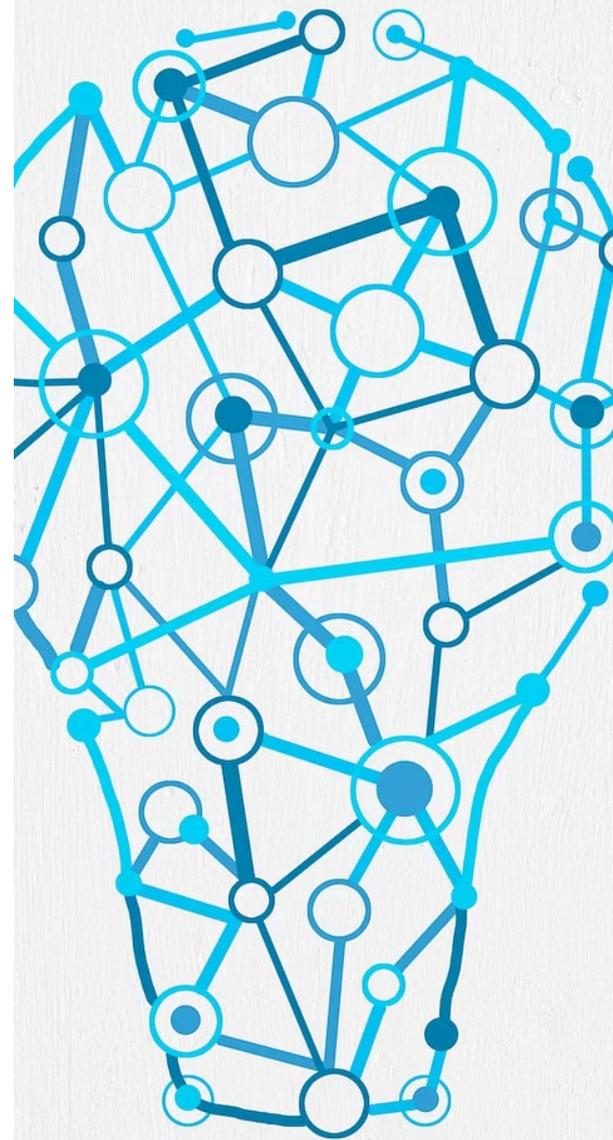
Consider a real scenario that plays out regularly. A promising AI startup in San Francisco develops breakthrough image recognition technology. The team focuses entirely on product development and customer acquisition for two years. When they finally think about patents, they discover a competitor filed similar patents 18 months earlier. Their technology leadership advantage disappears overnight, and their next funding round becomes much more challenging.

As intellectual property attorneys who've worked with hundreds of tech startups, we've seen two distinct approaches to patent strategy. The reactive approach treats patents as an afterthought, often resulting in weaker protection and missed opportunities. The strategic approach integrates patent planning into product development from day one. The difference isn't technical complexity—it's understanding how patent protection drives business value.

### **Why Patent Strategy Matters for Your Business**

Patents typically give you exclusive rights to your innovations for 20 years. This means competitors can't legally copy your protected features, giving you time to build market share and brand recognition. When design-around solutions take longer than your sales cycles, you control the conversation with customers.

Patents also change how investors view your company. A strong patent portfolio demonstrates your understanding of how to protect valuable assets and think strategically about competition. During due diligence, investors consistently ask about intellectual property protection—having good answers speeds up funding decisions.



# Strategic Patent Filing: Where, How, and When to Act

## Where to Focus Patent Efforts

Different features offer different levels of patent value. Strong portfolios tend to focus on innovations that solve technical problems in new ways, provide measurable performance improvements, are difficult for competitors to design around, and directly connect to customer value and revenue. These characteristics often make patents more defensible and commercially valuable.

### Technical Problem Solving

Innovations that solve technical problems in new ways.

### Performance Improvements

Provide measurable performance improvements.

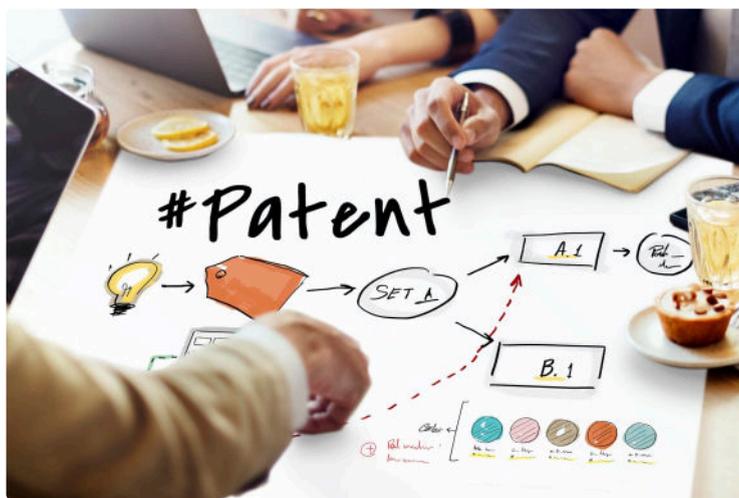
### Design Around Difficulty

Are difficult for competitors to design around.

### Customer & Revenue Connection

Directly connect to customer value and revenue.

This focus matters because patent budgets are limited. Concentrating resources on fewer strategic patents often achieves better business outcomes than spreading budgets across many weaker applications. The question is what actually differentiates your product in the market and protects your revenue streams.



## The Role of Development Documentation

Detailed records throughout development typically include problem definitions and solution approaches, design decisions and alternatives considered, performance improvements and test results, and team discussions about technical challenges.

This documentation serves two business purposes. It helps establish invention dates when priority matters in patent disputes. It also provides the technical detail patent attorneys need to write comprehensive applications. Documenting as you develop typically results in lower costs and stronger applications than reconstructing information later.

## How Provisional Patent Applications Work

Provisional patent applications allow you to secure an early filing date at a lower cost while refining an invention. You have 12 months to file the full application, which creates time to test market response, raise funding for full patent prosecution, and develop additional features that strengthen claims.

Many startups use provisionals as a strategic tool that provides flexibility. Announcing "patent pending" status signals IP protection to investors and competitors, while deferring the larger investment until commercial potential is validated. The tradeoff is that provisional applications don't result in granted patents on their own—they simply preserve a filing date for the subsequent nonprovisional application.

## Patent Filing Timing and Public Disclosure

One pattern distinguishes strong patent portfolios: filing applications before presenting at conferences, publishing papers, or launching products. The reason relates to how patent law treats public disclosure. Once information is publicly disclosed, it becomes prior art that can prevent patent grants in many countries.

Many startups coordinate their patent filings with product launches and funding rounds. Announcing patent filings alongside other business milestones strengthens the narrative with investors. A patent filing timed near a product launch demonstrates comprehensive thinking about market positioning. The challenge is that product teams often want to share innovations immediately, while patent timelines benefit from holding information confidential until applications are filed.

For global business, filing in key countries within specific deadlines preserves patent rights. Missing these windows can eliminate the possibility of protection in important markets.

# Choosing Between Patents and Trade Secrets

Strategic decisions about whether to seek patent protection or maintain innovations as trade secrets depend on several factors. Each approach has distinct advantages and limitations.

## Patent Protection

Patent protection makes sense when competitors could reverse-engineer the innovation from the product, when demonstrating tangible IP assets to investors is important, when the innovation involves customer-facing features, or when licensing the technology is part of the business model. Patents require public disclosure but provide legal protection that persists even after competitors learn the methods.

- ❑ **Key Characteristic:** Provides time-limited exclusivity with public disclosure.

## Trade Secrets

Trade secrets work well when the technology stays hidden on internal servers, competitors can't easily figure out how it works, confidentiality can be maintained indefinitely, or the innovation involves internal processes or data. Trade secrets can last forever but provide no protection once information becomes public through any means.

- ❑ **Key Characteristic:** Provides indefinite protection only while confidentiality lasts.

The business consideration is that these protections work differently. Patents provide time-limited exclusivity with public disclosure. Trade secrets provide indefinite protection only while confidentiality lasts.

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## The Economics of Patent Protection

Total costs typically range from \$15,000 to \$25,000 per U.S. patent from filing to grant, including attorney fees. International filing can add \$10,000 to \$15,000 per major country. Maintenance fees are required at 3.5, 7.5, and 11.5 years after grant. These costs vary based on technical complexity and the amount of examination required.

### Effective Budget Management

- Provisional applications defer major costs by 12 months while commercial potential is validated.
- Focusing resources on fewer, stronger patents often produces better business results than spreading budgets across many applications.
- Bundling related inventions in single applications can share preparation costs across multiple innovations.
- Planning international filing based on actual market opportunities rather than broad geographic coverage aligns spending with business strategy.

Mature patent portfolios benefit from periodic review to assess which patents still support current products, whether any patents create licensing opportunities, which patents might be abandoned to save maintenance costs, and what new innovations need protection. This review process helps ensure patent spending aligns with evolving business priorities.

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## International Patent Filing Considerations

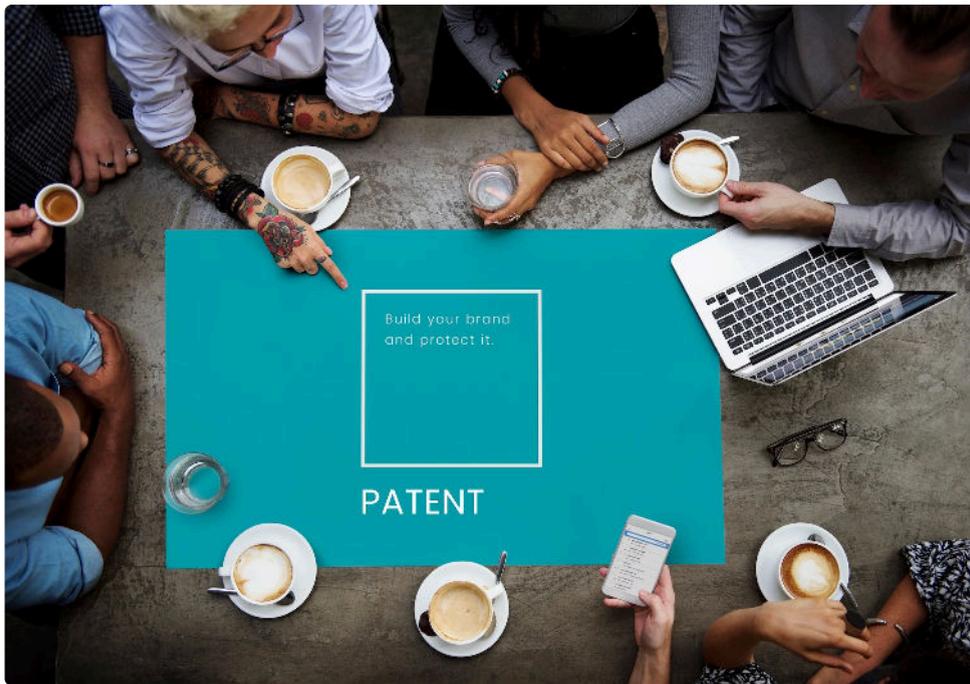
Most U.S. tech startups consider patent protection in several jurisdictions based on their business models. The United States provides the home market foundation. Europe becomes relevant when selling to European customers. China matters when manufacturing there or facing Chinese competitors. Japan or Korea become important for certain tech sectors. The choice of countries depends on where you expect to manufacture, sell, or face competition.

### → The Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT) delays country-specific filing decisions for up to 30 or 31 months from the first filing. This delay serves several business purposes:

- You can validate market demand before spending on international patents.
- Raise funding to cover international filing costs.
- Refine patent claims based on initial examination feedback.

The business tradeoff is that PCT fees apply for this flexibility, and the delay doesn't eliminate the eventual need to file in specific countries.



## Building an Effective Patent Team

Strong patent portfolios typically build on relationships with patent attorneys who have technical background in your field, understand startup business challenges, can explain complex legal concepts clearly, and have track records with similar companies. The technical background helps attorneys understand innovations deeply enough to write strong applications. Understanding startup challenges helps attorneys provide practical guidance that fits budget and timing constraints.

Effective patent programs typically designate someone internally to handle several functions: tracking invention disclosures from engineering teams, coordinating with outside counsel, monitoring competitor patent activity, and managing filing deadlines and budgets. This internal coordination ensures that patent activities align with product development cycles and business milestones.

## Common Challenges in Patent Strategy

1

### Disclosure Timing Issues

Presenting at conferences or publishing papers before filing patents creates prior art that can prevent patent grants. The pattern among strong portfolios is filing before public disclosure. The challenge is that product teams often want to share innovations immediately for business reasons, while patent preservation benefits from confidentiality until filing.

2

### Documentation Gaps

Incomplete records of the invention process and technical details make it harder to write comprehensive applications and prove invention dates. Strong patent portfolios typically build on detailed development logs and technical specifications created during development rather than reconstructed later.

3

### Resource Allocation Questions

Decisions about how to allocate patent budgets affect portfolio strength. Filing patents on every innovation dilutes resources and can produce many weak applications that provide limited business value. The strongest portfolios typically concentrate resources on inventions that drive business value and competitive advantage, even when that means leaving some innovations unpatented.

4

### Timing Decisions

Delaying patent decisions until funding pressure creates urgency often results in weaker protection because prior art has accumulated, documentation is incomplete, or public disclosures have already occurred. Strong portfolios typically build on patent planning integrated into product development cycles from the beginning, treating patents as part of product strategy rather than a response to external pressure.

# How to Manage Patent Risk

Active IP risk management typically monitors several indicators: competitors announcing similar features, key employees leaving to join competitors, and new patent applications published in your technology area. These signals can indicate emerging patent conflicts or competitive threats.

1

## Monitor Competitor Filings

Monitoring competitor patent filings provides early warning of potential conflicts.

2

## Pre-Launch Analysis

Conducting analysis before major product launches helps identify existing patents that might affect commercialization plans.

3

## Maintain Counsel Relationships

Maintaining relationships with patent counsel ensures access to guidance when issues arise.

4

## Budget for Contingencies

Budgeting for potential licensing or litigation costs acknowledges that patent conflicts occur regularly in competitive markets.

## Understanding the Strategic Value

Patent strategy isn't about accumulating as many patents as possible—it's about protecting the innovations that drive your business value. The most successful tech companies treat patents as strategic business tools, not legal afterthoughts.

## Strategic Partnership for Innovation Protection

At Dunlap Bennett & Ludwig, we work with tech companies on patent strategies that support business success. Our team understands both the technical challenges of protecting innovation and the business realities of startup life.

Dunlap Bennett & Ludwig is a veteran-owned law firm with offices across multiple states. Our team works with tech companies navigating the complexities of intellectual property protection.

To learn more about Dunlap Bennett & Ludwig, call 888-306-4030 or email [clientservices@dbllawyers.com](mailto:clientservices@dbllawyers.com).

**Please note:** *This article is for informational purposes only and does not constitute legal advice. The legal process is complex and highly dependent on the specific facts of your case. For guidance on your unique situation, we invite you to schedule a confidential consultation with our experienced legal team.*