

The lessons from patent concepts for the entrepreneur

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The entrepreneur's task in making products and services relevant, distinctive, and exclusive is a process of fundamental change from the status quo. At the heart of entrepreneurship is the goal of being a change agent within one's field of expertise. In Peter Drucker's classic text, *Innovation and Entrepreneurship*, he quotes economists Joseph Schumpeter and J.B. Say as saying "the entrepreneur upsets and disorganizes ... his task is creative destruction." Over the years, established businesses have seen start-up competitors move from marginalized pests to dominant forces.

The railroads were powerless to stop the automakers, which could not stop the airlines. Motion picture studios acted too late to influence television. Radio companies participated in the development of television, but the radio stations themselves were marginalized. Today, Google, Yahoo and Apple are poised to overtake GE and AOL/Time Warner as media companies, and these new Internet media empires may have already sown the seeds to overtake Microsoft and Oracle as software companies. Tomorrow ... is utterly unknown. What can be predicted is that entrenched companies are less able to move than the entrepreneurs who embrace change. This is not because of their unwillingness to accept risk.

Many industrial giants are good at managing and participating in risk. Instead, the industry leaders struggle because one cannot be distinctive from oneself. Entrepreneurship does not come from being on the outside, but being on the inside of an industry limits the transformations and disruptions one can cause.

Rather than risk-taking, the successful entrepreneur needs to understand the business fundamentals and have a keen perception of the consumer's needs. Drucker puts it succinctly: "Entrepreneurs innovate." To borrow from the patent concepts discussed below, a new business must have the same three attributes as those needed for a patentable invention – the start-up business must be new, useful, and nonobvious to the competition. The successful entrepreneur can both identify and satisfy the new, useful and nonobvious needs of the consumer.

- The newer or fresher the business, the less competition and the more opportunity for capturing the market.
- The more useful, the more relevant and higher the demand.
- The less obvious, the greater the opportunity for capturing those exclusive attributes of the business – creating the ability to ***Own It***.

By applying a new, useful, and nonobvious approach to satisfying consumer needs, the entrepreneur will increase his chance for success. Focusing on these attributes will transform even mundane enterprises into valuable ones. Newness/freshness can lead to innovation in restaurant menus, packaging, pricing, or service combinations.

Innovations must be tested against customer interest and demand. Just as a patent will not

¹ This is part of a series of book excerpts from *OWN IT, The Law & Business Guide™ to Launching a New Business through Innovation, Exclusivity and Relevance*, which provides a step-by-step guide to developing successful start-up companies using concepts of intellectual property in all aspects of business planning and financing (lawbizbooks.com).

be issued for an innovation that serves no purpose, a new product will generate no demand if it serves no purpose or satisfies no customer need. The product's innovation must excite some population of intended consumers.

The innovation, however, must do more than merely excite the consumers. The nonobvious nature of the product creates the separation between this product and the other products in the field. To have staying power, the product must be more than the next logical progression of a previous product. The competition does not stand still. Merely anticipating the next step in the product's development will be insufficient to compete with the established companies. Product development cycles allow established companies to exploit existing products, distribution channels, and relationships to keep start-up competitors from entering into the market.

If the entrepreneur's entry product is nothing more than the existing product's next logical step that "everyone" in that industry expected, then consumers are not going to leave established relationships to try the new competitor. Instead, the improvement must be at least two steps ahead, nonobvious to the competition, and not anticipated from what has come before in the field. The consumer has to be sufficiently impressed to take the risk of buying from an untested source.

If the proposed product is truly new, useful, and nonobvious, then the entrepreneur has the potential to compete in the marketplace. The innovation must be useful to the intended customers. Generally this means that there will be a positive reaction in the industry trade press, at trade shows, and in other venues which influence decision making. A positive industry response to the new product indicates that consumers will be interested. In other words, the product will be relevant.

Once the competitors see the success of this new relevant product, they will change their products to provide the same relevance to customers. To keep the lead, the entrepreneur must own some aspect of the new product so that it cannot be exactly duplicated. The harder to duplicate, the greater the opportunity for the entrepreneur to build his company and enter the market. This is the value of exclusivity.

For an inventor, patent law is available to protect new, nonobvious and useful inventions. These can include entirely new products or undiscovered improvements. For example, if a new stuffed animal or doll had embedded voice recognition software which enabled the toy to recognize the voice of the child to whom it belonged and to respond to various family members with appropriate comments and gestures, it is likely that toy could receive a patent (or could have before I described it in this book – now it is no longer nonobvious).

Such a mechanism could be embedded in a new line of toys or it could be added to existing products such as Care Bears and Cabbage Patch Dolls. The patent would allow the inventor to create new products, or to license that technology to others, for the twenty years of patent protection. The voice recognition interactive doll patent has exclusivity.

Another step is to pair the invention with a trademark. "Voice Recognition Interactive Doll" is not a very catchy phrase, and it is entirely descriptive of the invention. Instead, the products using the technology are known as "I Hear You" dolls. This name is suggestive of the voice recognition technology but not descriptive of it. As a result, any product with the patented mechanism has an "I Hear You" tag and label. As the sophistication of the technology continues to improve, the "I Hear You" tag develops a following. The "I Hear You" technology may become so popular, inexpensive, or ubiquitous that soon it is added to laptop computers, cell phones and PDAs. Voice recognition for such items is not likely patentable because it has been available in some forms for several years. Nonetheless, a cell phone with the "I Hear You" tag will have a market advantage over competitors

because the public recognizes the trademark.

Next, the invention should be paired with a copyrightable work. The inventor may choose not to license the invention for use with Care Bears or Cabbage Patch dolls so that he can build an entire industry based on his doll. If the inventor creates his own characters for the “I Hear You” dolls, then those characters designs will be protected by copyright. With cute furry faces and oversized ears, “Eddie the Listener” and his friends are protected by copyright. The popularity caused by the technology could result in many of these characters being purchased. From their humble origins as the fur and cloth housing for the voice recognition interactive doll, these characters grow to star in television series, films, books and video-games.

In this manner, the invention leverages both the trademark and the copyrighted materials associated with the use of the invention. It may not all come to pass. The invention may prove too expensive to sell or the audience too uninterested to buy, but this is the methodology of leveraging exclusivity in an invention from trademark and copyrighted materials.