



Got Patents? Great! But So Do Your Competitors...

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Remember how it started? You had a great idea. You decided to turn your vision into a reality. You talked it up, secured investors, started your company, located the best talent you could find, and went to work. It was rough for a while, but eventually you did it. You proved your concept, got your marketing and distribution channels in order, set up for manufacturing, and took your show on the road.

Along the way, you were prudent enough to apply for patent protection. Presumably, your patents will cover your product at least. But hopefully, because success leads to imitation, you've crafted your patents broadly enough to cover your competitor's products as well. That's how you carve out a niche in the market and harvest the real value of your intellectual property.

Remember, a patent doesn't give you the right to bring your product to market. What a patent gives you is the right to stop your competitors from bringing their products to market. This assumes, of course, that your patent covers your competitor's products. So here's some free advice – harvest the real value of your intellectual property, and get patents that are broad enough to cover not only your products, but also those of your competitors.

Of course, on the flip side, your competitor's patents might give them the right to stop you from bringing your product to market! Hopefully you thought about that somewhere between "had a great idea" and "took your show on the road." Nothing's worse than being greeted at a trade show by a competitor who first admires your product, and then tells you he has a patent that covers it.

So what do you do? For starters, don't wait until you're ready to launch your product to assess the competitive patent landscape. By then it might be too late, and you'll end up spending far more time and money fighting over patents than you'd like – often when it's most critical for you to spend your time and money trying to sell your product. Fortunately, there are many

affordable and readily available ways to map out, and negotiate your way through, the minefield of your competitors' patents.

First, there's patent searching. You can always hire someone to see whether they can find any relevant patents for you. But remember, you can't infringe other people's patents, especially if you know about them. So you need to balance desirable knowledge with desirable ignorance.

Suppose you find a patent that gives you just a little heartburn? Now you need to be sure that the patent doesn't cover your product. Ask your patent attorney. If it doesn't, go sell your product.

But what if it does? In that case, find out whether the patent is valid. If it's not, then what it covers is irrelevant. Go sell your product. You might even want to ask the patent office to "reexamine" the patent. But think long and hard before you do that. It could backfire on you.

And what if the invalidity analysis turns your heartburn into an ulcer? You can't be out there selling a product that's covered by a valid patent. So what do you do? One thing would be to "design around" the patent, i.e., change your product so that the patent no longer covers it. This might be easy to do. Or it might be impractical. And it might get you into a big game of cat-and-mouse with the patent owner.

To be sure, there's no shame in licensing someone else's patent. Besides, if you effectively carved out a niche with your own patents, you might be able to cross-license on the cheap. And then you and your competitor can set up booths across from each other at the next trade show, and you can both focus on selling your products, rather than fighting over patents.

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