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ADVOCATI RES MENTIS

***TITLE:*** *Ideas That Resonate - Recognize, Capture & Profit From Intellectual Property (IP)*

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**ABSTRACT:**

Use your brain! Over a third of U.S. GDP wealth is produced by ideas - intellectual property (IP). You do not have to invent a new quantum-entanglement transmitter to profit from your ideas. Have you said AHA! recently? Consider a patent. Crowded fields such as connectors and cables continue to have innovations patented. Some government contracts even require inventors to file patent applications. There are over 64,000 radar-related patents alone. Create wealth by recognizing, capturing, then protecting ideas - through patents, trademarks, trade secrets, and copyrights [1]. This article presents tools to use to save your thoughts.

## I. Introduction

This is not legal advice, and it does not establish an attorney-client relationship. Okay, now that we have that out of the way, what follows will hopefully clarify the role of intellectual property in establishing wealth. As the abstract said, non-obviousness (AHA!), not technical sophistication, is the determining factor for intellectual property protection. Intellectual property protection then creates business opportunities. Business opportunities, well executed, produce wealth.

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For example, one of the first coaxial cable connector patents, 2,615,953 from 1952, is certainly recognizable.

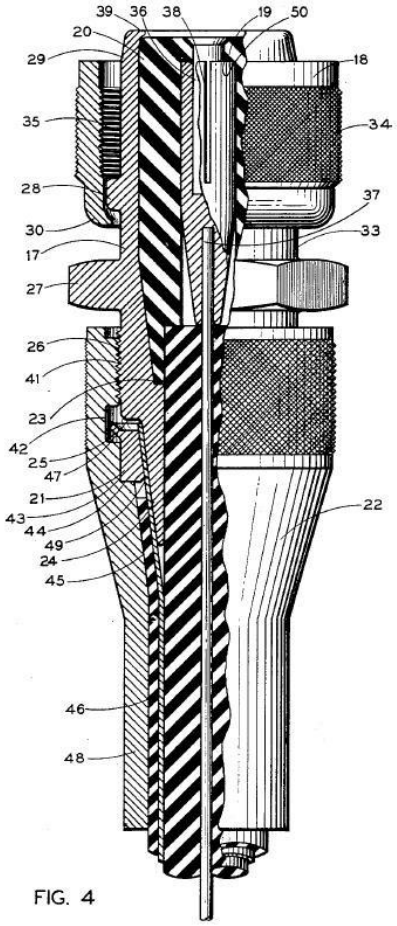


FIG. 4

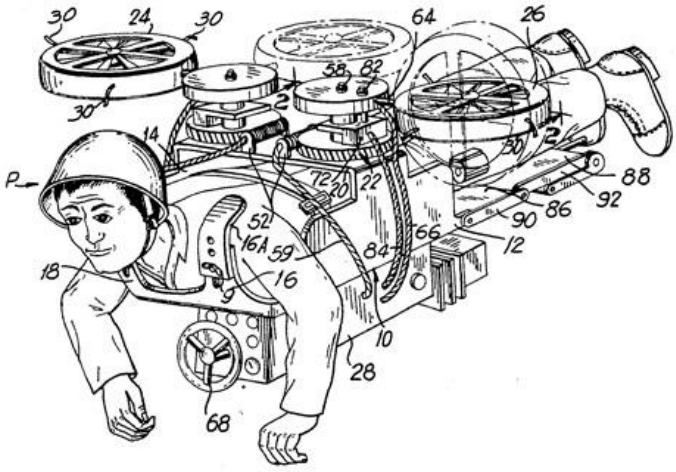
In hindsight, while detailed, this invention is no flux capacitor, but a better way to electrically mate cables. Patents are measured by their business value, not necessarily by their gee-wiz quotient. The similarities to today's coaxial couplings indicates that inventor Amory H. Waite, Jr. got it right. We still use the basic design sixty years later. When industries adopt an invention, prosperity follows.

This patent references a tubing coupler from 1931, pat. 1,862,833. One principle this illustrates is that inventions build on what is known. While they need to add extra-ordinary results, they do not need to represent new fields of technology.

This patent is also an example of government interest in patents. Its first line states that the Government may manufacture and use the invention without royalties. Federal Acquisition Regulation (FAR) Subpart 27.3 and elsewhere can even require that if a patentable invention is made under a government contract, a patent application must be filed. Check your contract for "Subject Inventions" language!

## II. Patents - What Are They?

The muscle behind patents is that they give you the right to stop others from copying your ideas. I suspect that misconceptions prevail that patents are like registrations. You record them with the patent office, and get a weapon that lets you go after those who didn't bother to get a patent. The government is not just granting you an ID to show you own the idea. It is more like a birth certificate that says this is a new creation that came from your mind. It never existed anywhere before you gave birth to it. Continuing in analogies, patents are like dissertations, you must prove that the ideas are original and yours. Furthermore, as long as there is some utility, there is no judgment regarding the feasibility of the idea. Take Patent 3,556,438 for a one-man flying apparatus.




It may be novel and non-obvious, but who would risk strapping on fans, motors and brackets to fly? While patents may protect your idea, to be worth the investment others must be willing to pay for the product.

## The Patent / Trade Secret Conundrum

While patents protect the invention directly, trade secrets protect ideas only as long as they are kept secret. Think of patents as protecting ownership of the horse in the corral, and trade secrets as the corral around the horse. For trade secrets, if the horse (invention) becomes public by escaping the (trade secret) corral, all is lost. The value of trade secrets comes from secrecy. All is lost when secrecy is lost. Nondisclosure agreements can give some hope of restitution, but the invention is lost to the public. Patents, by their nature, are pre-disclosures of inventions that give the inventor 20 years of exclusivity in return for revealing the invention's secrets to the public. After the 20 years, all benefit from free use of the invention.

## III. To Patents And Beyond!

Or, what do all those superscripts mean?

The Circle C and the Circle R are not Texas ranches; they are legal indicators of ownership, precisely:

© the circle C designates a copyright that protects "original works of authorship fixed in a tangible medium of expression". This is for original books and art, for example. More information than you can imagine can be found at copyright.gov [2]. Their FAQs are the best.

® the circle R designates a trademark registered with the U.S. Patent and ***Trademark*** Office (USPTO). This protects your product names and logos.

TM designates a mark currently without a registration at the USPTO. Sort of a precursor to ®.

Actually, the Circle R also IS a Texas ranch. The Circle C is a New York ranch and a neighborhood in Texas. As an irrelevant aside, although Disney had a trademark allowance for "To Infinity and Beyond", they allowed it to go abandoned. However, "Math Infinity - To Infinity and Beyond®" with logo is a licensed trademark of Unifier Learning Academy Corporation Taiwan.

Some particulars and cautions on trademarks. A common disappointment with new businesses is the loss of a favorite name after getting a cease and desist (C&D) letter. Creative founders brainstorm a terrific company or product name without a search. The patent office has a quick search page called Trademark Electronic Search System (TESS) [3] that they could have used. However, now it is their baby's name and becomes intimately associated with the enterprise. The problem is, they are number two. Unknown to the founders, the name was in-use, and worse, registered by another. Someone had already succeeded in registering the name with the USPTO. They discovered the successful new founders using the same name. Their lawyers send a cease and desist letter to the founders. Sometimes, these are nastygrams demanding immediate ending of use of the name and removal from all products, publications and the web. All may not be lost, especially if the pre-existing registered mark is for different goods and services. The problem is, even if this is true, proof will cost much for the legal defense. Take-away: do not be inseparably married to you mark before you check with TESS.

## IV. Is That A Troll Or My Co-Inventor?

A word about patent trolls. In the popular press patent trolls are getting a bad rap. Non-practicing entities, call them what you want, they are legitimate owners of patents. As an owner of a patent, an inventor can sell that ownership. Thus the property part of intellectual property. For various reasons, inventors / patent owners sell their rights in their patents to others, including their co-inventors. This does not diminish the rights attached to the patent. For many inventors, their business plan is to create something new for the world, patent it, sell it to another to extract the value, and move on to another invention. From an economic perspective, this specialization can extract the maximum value from ideas and produce the maximum number of new ideas. Of course there are bad actors in every group. Specific tactics can be questionable, but the underlying premise of patent ownership and its rights is independent of a patent's link to the original inventor. The risk in over-censoring 'trolls' is reduced compensation for inventors when they try to sell their patented inventions. Not all 'trolls' are bad; address the behavior, not the label.

## V. Do You Know Where Your Business Plans Is?

All the consultants tell you to "start with a business plan", "failing to plan is planning to fail", "the only bad plan is no plan". Regarding IP, justification is the issue. Regardless of plans, can you dedicate five plus years on-and-off and likely (much) over ten thousand dollars, for the right to stop others from copying your idea? This is the question to be answered. While this applies to primarily to patents, trademarks also require thought, time, and investment. Considering copying, how important will it be to stop others from copying your idea? As mentioned, this is the muscle behind patents. If it is easy to work around the invention, or the invention has a very limited competitive lifespan, patenting may not make business sense. The considerations are many and can be complex beyond the scope of this article. The point is to have considered them before skipping down the patent path.

## VI. Summary

As you watch the Olympics this month, look for ©, ®, ™, and patent-pending markings. You can bet real money is involved with that intellectual property! You too can get deserved rewards by applying the legal protection available for your ideas. Hopefully, you have at least a little better understanding of your options.

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**References**

[1] http://www.uspto.gov/inventors/index.jsp?utm_source=dlvr.it&utm_medium=twitter
[2] http://www.copyright.gov/
[3] http://tess2.uspto.gov/