

“Hot Topics” in Intellectual Property

Presented by The Michelson Institute for Intellectual Property



How to Strengthen Your Patent

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The primary goal of a patent is to secure exclusive rights to produce and sell your invention or license others to do so. If you cannot enforce it, your patent is not very valuable. This article discusses ways you can strengthen the value and enforceability of your patent.

Four ways to create a strong, valuable patent:

- Present well-written claims,
- Remember that usefulness is more important than novelty,
- Use prior art to distinguish your invention, and
- Try to attack your own patent.

Proper Claims Strengthen a Patent

[Claims](#) are statements that circumscribe your invention’s protection – illustrating its novelty, non-obviousness, and utility. If your claims are too broad, the U.S. Patent and Trademark Office (USPTO) may reject your idea for not being novel. On the other hand, claims that are too specific may reduce enforceability.

Some patents are more enforceable than others. **The best type of patent has a strong set of claims that are broad but to-the-point.**

When drafting a patent application, remember that others will want to use, reproduce, and improve upon your design. A well-drafted patent will make this process difficult or expensive, giving you a competitive advantage.

If your patent claims are too specific, the patent will only serve to prevent others from making an exact copy. They’ll still be free to alter minor components and request their own patent.

Fortunately, you can file continuations after filing your initial application. This way, your claims can evolve as your product evolves and changes occur in the law.

Usefulness is More Important Than Novelty

You can patent an invention even if you have no intention to sell the product. But it usually does not make much sense to patent a prototype then fail to develop the product for market.

Courts are more willing to enforce patents on inventions that have been developed beyond the prototype, making the patent more valuable.

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Usefulness is More Important Than Novelty (cont'd)

Of course, novelty and non-obviousness matter (they're [patent requirements](#)) but it's wise to ask yourself, “what's the point of my invention?” The answer to that question will determine whether your product is truly marketable.

Let's illustrate this process with an example: the [coffee cup sleeve](#).

You have probably never thought much about the simple covering that keeps your fingers from burning while holding a hot cup of coffee. It is one of those commonplace items that we hardly notice, though the patent is worth millions.

The coffee sleeve is not a particularly complex invention – it is simply a small chipboard sleeve designed to go over a hot beverage cup. The important factor though, is that the product solves a common problem, is useful, and fits a particular market: the to-go coffee shop.

Use Prior Art to Distinguish Your Invention

One of the best ways to improve your patent claims is by reviewing [prior art](#). A prior art search can reveal the descriptions and claims of related ideas, which you can use to bolster your own claims. A good search may also help you foresee potential risks, like similarities between your invention and another. When you discover similar inventions (which is likely) you can use the information to differentiate your invention.

Once you identify the key points of difference between your invention and other's, you can include them in your patent application. **By isolating weaknesses in prior art, you can describe those problems and how your product solves them.** This process will also help you define your product's position in the market – a major factor in your patent's strength.

Your invention will need to overcome gaps that already exist in the market. The inventor of the coffee sleeve knew that insulated coffee cups and mugs already existed, yet there was still an opportunity in the market: people were buying coffee to-go and the cups were too hot to hold. Consumers were unlikely to buy the sleeve in mass quantities, but popular coffee shops (the target customer) flocked to the new product because it satisfied an unfulfilled need.

Try to Attack Your Own Patent

This tip is less intuitive than some of the others, but possibly your best bet at creating a valuable patent. You want to be prepared for questions by the USPTO when you submit your application. The better prepared you are to defend your design, including its novelty, utility, and non-obviousness, the more likely you are to receive a patent.

Likewise, you should assume that competitors will want to find ways to profit from a similar design. Think like a competitor and try to find ways they might circumvent your patent – with as many variations as possible.

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Further Reading

- [How to Create a Bulletproof Patent – Stephen Key](#)
- [A Patent is as Strong as its Claims – Scott Keeley](#)
- [6 Tips for Creating a Great Patent Application Description – Freddie Tubbs](#)
- [Creating Better Applications Through Patent Strengthening – Martin Bijman](#)
- [Intellectual Property The Hard Way, Part IV: Early IP Disclosure – Mary Juetten](#)