

# Patents, Why or Why Not

By: Ted Northway

For some folks, a patent is a mystery and intimidation follows and nothing happens as far as protecting an idea (invention). For others, there is the notion that “I’m not smart enough to get a patent”, and again, nothing happens. Others find that filing for a patent is a process where an employer encourages their employees to develop ideas and supports the cost for the effort evolved. This condition results in the employee obtaining recognition for the patent effort. The company benefits through the demonstration of the companies’ leadership in their industry and as an important source of income such as royalties associated with licenses grants to other companies.

For the last group, and there may be many others, these folks see dollar signs and consider patents a way to make a fortune, which can happen, but there are things to be considered before one reaches the end of the rainbow. The purpose of this article is to briefly discuss these considerations and share a bit of insight on patenting an idea.

## What Is a Patent?

To begin, the patent mystery, in short is defined as: “It is a property right for an invention granted by a government to the inventor. A United States patent gives inventors the right “to exclude others from making, using, offering for sale, or selling their invention throughout the United States or importing their invention into the United States” for a limited time. In exchange for public disclosure of the invention when the patent is granted and for fees paid to the United States”.<sup>1</sup> What????

Simply put, a patent, once filed with the USPTO (United States Patent and Trademark Office) becomes a contract between an inventor or inventors and government. (Yes, there can be more than one inventor listed on a patent.)

The “disclosure” (invention) requires that the inventor(s) provide a complete enabling description of the idea (the invention) so that others can learn from, improve, and use it. In return, the government grants the inventor(s) the right to keep other people from making, using, or selling the invention for a limited period of time. What is a limited period of time? “Patent protection only lasts 20 years in the United States, ...”<sup>2</sup> The referenced link provides more details on the patent protection.

## You, Too, Can File a Patent

Now that the patent mystery has been breached, the next question is the intimidation and / or “we’re not smart enough to get a patent” attitude. Other excuses include, but are not limited to, “I’m not really a creative person” or “I’m not a genius”. Keep in mind that the simple notion of a patent is that an idea generally comes from solving a problem or addressing a challenge in the course of doing something either at home, at work, in pursuit of a hobby, etc., that required finding a different way of doing it.

Thomas Alva Edison, up until 2005, singly or jointly held the world record for patents - 1,093<sup>3</sup>. Intimidated? Don’t be. Edison said, “None of my inventions came by accident. I see a worthwhile need to be met and I make trial after trial until it comes. What it boils down to is one per cent inspiration and ninety-nine per cent perspiration!”<sup>4</sup>

“Yes, but he was a genius!” Maybe, but consider this, Marx brother Zeppo Marx, top left below<sup>5</sup>, received three U.S. patents. On March 18, 1952, he received the patent #2,590,026, for a Vapor Delivery Pad for Distributing Moist Heat. He also received two patents, #3,426,747 (on February 11, 1969) and #3,473,526 (on October 21, 1969) as a co-inventor.

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1 [http://inventors.about.com/od/inventing101patents/f/What\\_patent.html](http://inventors.about.com/od/inventing101patents/f/What_patent.html)

2 [http://www.inventionstatistics.com/Patent\\_Protection\\_Time\\_Periods.html](http://www.inventionstatistics.com/Patent_Protection_Time_Periods.html)

3 [http://en.wikipedia.org/wiki/List\\_of\\_prolific\\_inventors](http://en.wikipedia.org/wiki/List_of_prolific_inventors)

4 [http://en.wikiquote.org/wiki/Thomas\\_Edison](http://en.wikiquote.org/wiki/Thomas_Edison)

5 <http://Hollywood-haiku.blogspot.com/2010/01/marx-brothers.html>

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Both of these patents pertained to cardiac pulse monitoring.<sup>6</sup> Again, the point is: Don't be intimidated. If a member of a comedy team can do it, so can you.



But there are a few warnings that must be stated. Those warnings include: make sure your idea is patentable and understand the costs associated with patenting an idea.

## Patentability

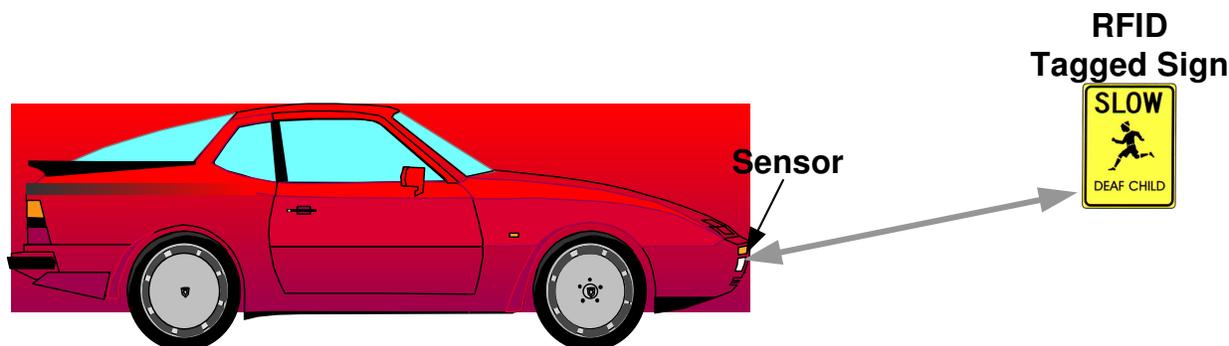
To be patentable, the idea must be novel or unique, useful, and non-obvious.

**Novel or unique** implies that the idea must claim some further or new element(s), new feature(s), new function or a combination, or that the idea clearly demonstrates cooperation to relative prior art. But, and this is key, the idea must demonstrate a novel or unique difference.

With respect to **useful**, the idea must achieve a desired beneficial result. The useful aspect simply describes how the idea works and how useful it is.

Last, the idea must be **non-obvious**. The idea must be great enough that the idea is not obvious to someone who is knowledgeable of the subject the idea is about. The key to non-obvious is what makes the idea non-obvious.

As an illustration of Patentability, one of my disclosures<sup>7</sup> incorporates the use of RFID (Radio-frequency identification) tags which could be implemented by installing standardized passive RFID tags on warning signs. In the illustration below, the motor vehicle would be equipped with an RFID reader that would sense the tag associated with the sign and provide the motorist with an alert signal (sound, voice, or other warning) to inform the motorist of a hearing impaired child playing in the area, a handicapped crossing, etc.



When the tag signal is received, the motorist is sent an alert sound (and possibly a synthesized voice as well) that overrides the vehicle's audio systems to inform them of the condition, which encourages the driver to use extra caution and pay additional attention in the area.

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<sup>6</sup> <http://www.marx-brothers.org/biography/zeppo/inventions.html>

<sup>7</sup> ROADWAY SYSTEMS AND METHODS FOR CONDITIONALLY TRANSMITTING A RADIO SIGNAL TO VEHICLES, DEPENDING ON WHETHER A CERTAIN PERSON IS IN THE AREA 2009-01-27 US 7482948. Co inventor, Randy S. Johnson

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Using the RFID example, the details in the text describe its usefulness and how it would work once deployed. What??? How it would work? Yes, for patentability the disclosure does not require that you build a working model. The invention disclosure must describe that it is technically feasible.

As a self test for considering patenting an idea, I suggest applying these patentability requirements to an idea first. If all requirements can be successfully addressed, patenting your idea may be possible.

## **What Does It Cost?**

As noted above, many employers encourage their employees to develop ideas and support them with the costs that are associated with patenting. Yes, there are costs associated with patents. Coming up with an estimate for a patent in this discussion is very difficult because there are so many variables that go into preparing the idea for patenting. Costs may range from a few thousand dollars to several thousands. A lot depends on the complexity of the idea and its implementation.

So, what are the costs? Costs may include getting the idea down on paper so that the idea may be presented or explained to a person or firm that is practiced or specializes in writing patents. When working with a firm that specializes in writing patents generally they will perform patent searches which looks for prior art to ensure that the idea hasn't already been patented or to determine whether it makes sense to continue with the patent effort; this too is a potential additional cost. The actual writing of the formal disclosure is still another cost. The diagrams or illustrations that may be required to describe the invention may also be a cost. The USPTO filing fee is a cost. Please note that this list may not include all costs that may be required for patenting an idea. It is intended as thought input for someone who may be considering the patenting of an idea.

There are more costs that you may want to potentially consider. For example, costs associated with needed resources such as materials needed to build the invention. Costs for the resources needed to help with manufacturing the idea. Costs associated with the facility (water, power, heating / cooling, etc.) where the idea is manufactured, packaged and shipped from. Marketing, sales, literature and distribution costs are also thoughts to be considered.

For those who are looking for that pot of gold at the end of the rainbow, yes it can be done and yes it does work. This article is not intended to be discouraging, but to help inventors think through all aspects of why or why not to patent.

## **About the Author**

Ted Northway has been with IBM for more that 19 years. He is a Sr. Management Consultant, Certified Process Design Consultant - Process and Business Solutions Architect and is a Master Inventor. He has submitted over 60 patent disclosures, received 17 U.S. Patent Grants 3 International Patent Grants and has published 23 Technical Publications.

His education includes: Undergraduate: Applied Sciences, Lewis And Clark Community College, Bachelor Of Science, Southern Illinois University, Graduate and Post Graduate: Agency & Business, Southern Illinois University.