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How To Write A Provisional Patent Application That Has Value



Stephen Key Contributor ⓘ

I write about how to use intellectual property to profit.

I think inventors should try writing their own provisional patent applications, even if they end up hiring a patent attorney to write the final version. Why? Because committing your thoughts to paper will help clarify your thinking about your invention. Creating drawings and a prototype will help you determine what is working well and what needs to change. You will incorporate all of the discoveries you make into the final version of your provisional patent application.

Ultimately, doing this kind of research and development will save you time, and when it comes to working with attorneys, time is money. Remember, your attorney is an expert on patent law. To get the best patent application possible, you must become the expert of your product, its category, and at least a good deal of the corresponding prior art.

[Like I've been writing about](#), a well-written PPA is a tool you can use to help fulfill [your overall business strategy](#), be it raising money or licensing.

The first step is to study the market. I recommend starting with [Google Images](#) and [Google Patents](#).

Unlike non-provisional patent applications, there are no specific requirements or set guidelines for what has to be included in a PPA. Meditate on that. The nature

of your idea — like whether it's a simple consumer product or a game-changing innovation — has to be taken into account. If it's the former, you may be able to generate income without ever needing to file a non-provisional application. If it's the latter, you will need a wall of patents to keep others at bay.

That said, there's no doubt more professional-looking PPAs establish a higher level of perceived ownership for you and increase the confidence of your potential partners. If you have a big idea, assume others (like potential licensees) are going to make the best effort possible to work around you. You need to be aware of this. You need to prepare for it!

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This is business advice. I'm an entrepreneur, not an attorney. Over time, the way I approach filing intellectual property has evolved. Protecting your invention is one thing. Protecting your *innovation* is another. Your invention is literally what you originally envisioned which is novel and unique. But if it's a big idea — cases in which your invention could possibly, with slight alterations, be made in other ways or used across other categories in many other ways — you are going to want to try to protect your right to own and profit from that innovation. This is a subtle but important difference.

All of which is to say, intellectual property that has value describes variations. Not only of your invention — also the innovation. To come up with variations, you will need to use your imagination.

A good PPA takes the following questions into account:

- What are the parts or components of your invention?
- How do the components connect?
- How does the invention operate?

- Are there other ways to construct your invention?
- Can your invention be used in more than one way?

To come up with further variations,

- Imagine different uses for what you've invented.
- Change the size and shape of your invention.
- Consider the use of different manufacturing materials.
- Research various manufacturing methods, including on YouTube. You could contact an engineer who works in the field to ask questions.

This level of analysis is clearly warranted for ideas that have broad multi-industry potential. For simple consumer product ideas, less is demanded.

Another way to add value to your provisional patent application is by including numerous professional drawings.

“The single most effective way to expand any disclosure is by including high-quality drawings,” says patent attorney and IPWatchdog.com founder [Gene Quinn](#). (Full disclosure: Last year my company [inventRight](#) hired Quinn to create [SmartIP](#), a program for writing PPAs.)

He believes many patent applications do not include enough drawings. Even when an invention relates to a method, he advocates for the inclusion of lots of drawings. “There is always something that a picture can show that will be informational.”

I agree. I've learned that if you show something in the drawings section of your PPA that you forgot to describe in your write-up, you can still include it in your non-provisional patent application. (If you don't include something in your PPA, it can't be added later. You can file another PPA, but that will change your priority date.)

Startups that file intellectual property early and often raise the most money. That's not surprising. If you're competing in an arena against giants, intellectual

property protection is Survival 101. My patent attorney [John Ferrell](#), whom I've known for 20 years, said 60% of his business revolves around startups.

As a member of The Band of Angels, Silicon Valley's oldest seed fund organization, he sees 700 pitches a year. Most startups do not have a clear understanding of intellectual property strategy, he told me. Which makes them unlikely to receive the funding they need.

Developing a clear understanding of how to protect your innovation in the marketplace is crucial, then. The most important thing a startup can do is study the landscape of the marketplace to formulate a point of difference, he believes.

My big idea — a technology for applying packaging labels that resulted in 75% more space — was relevant to food, beverage, and drug industries. Who doesn't want more information? There were so many potential applications. I became a one-man startup. To fulfill my goal of getting paid for the hard work of bringing this concept to life, I knew I would need patent protection. As I kept doing research and development, I had Carr & Ferrell keep filing patents. I needed to protect not just the product itself, but the innovation.

I didn't think about it this way at the time, but I was creating a portfolio composed of shields, swords, and crown jewels. Patents that block others from participating in your space are shields. Think about how you'd steal your idea from yourself — seriously. With swords, you go out on the offensive. The patents that protected the core aspects of my innovation were the most important. These were the jewels, and they included how my product worked as well as manufacturing techniques.

It was like building a fence. I wanted competitors to think twice before coming in. When you do that, you create perceived ownership. My packaging innovation was never hugely successful, but it won [numerous awards](#) and enabled me to take my family on a six-month road trip around United States.

With time and effort, I promise, you can become very good at this. Really, you must. I can't stress the importance of knowing your technology inside and out enough. At the very beginning, you can do a lot of this work yourself. Then, when

you're in a position to hire a patent attorney to build out your portfolio, you'll be able to provide this person with the correct information — and in such a way that your applications are truly valuable.

Educate yourself. Not only about patents and provisional patent applications — also trademarks, copyrights, and trade secrets. Because filing a provisional patent application costs just \$70 for individuals, it's a great tool.

Next week, I have the honor of traveling to Washington D.C. to help judge the [Student Innovation Showcase](#) at the National Academy of Inventors annual conference. The six university finalists have all developed patent-pending inventions that relate to the medical field. How am I going to evaluate their potential for commercialization? By immersing myself in prior art and reaching out to industry experts, of course.



One of author Stephen Key's patents. STEPHEN KEY

*I am a lifelong entrepreneur who has brought dozens of product ideas to market. My strategic insights about the value of intellectual property are hard-won and based on practical experience. I am the proud recipient of 20 patents as well as two Edison awards. I defended said... **MORE***

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