

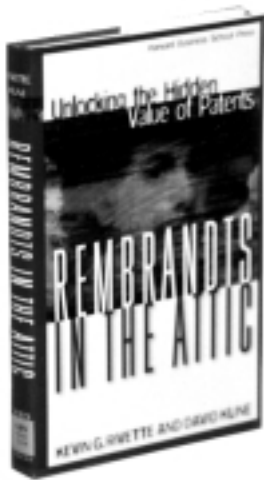
Rembrandts in the Attic Unlocking the Hidden Value of Patents

I've changed my mind about patents because of this book. I was involved with Wired magazine when Wired invented the click-through ad banner on the Web. Had any of us known this innovation was patentable (it was), I don't think we would have done so, even though the authors of this book calculate this patent could have been worth \$20 million per year. But as in any arms race, had we invented it now we would have been forced to patent it just so another company would not.

I don't think patents give you much protection if you are the little guy, and I think the US patent system needs a top-to-bottom overhaul. But if you are running a company, my advice—and this is where I changed my mind—would be to behave as if you are patenting everything. The discipline of patenting emphasizes the value of ideas, and the skills to manage, assess, and develop intangibles, which is ordinarily difficult to do. Until the laws are changed, run your company as if any good idea was potentially patentable, even if you don't follow through, except occasionally. (See a radical alternative view below.)

Whether you decide to play this game, or change it, the practical art and science of mining, leveraging, swapping, planning, and strategically using patents are covered here concisely and with the clarity of an alarm bell.

—KK



Rembrandts in the Attic Unlocking the Hidden Value of Patents

Kevin G. Rivette and David Kline
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Harvard Business School Press

"With everything moving at Web time now," he asks, "who the hell has time to do a patent search?" Perhaps a better question to ask is, Who has the time (or the million-plus dollars) it takes to defend against a patent suit? And who can devote a year or more of R&D effort on a product only to have to abandon it later because of an infringement problem that could easily have been spotted and designed around early in the process? In any event, allowing patenting strategy to be defined solely by the life span of the product itself is a very shortsighted approach.

Perhaps the best way to grasp the concept of bracketing is to imagine that your competitor has invented a new high-intensity light and has patented the filament. But, as it turns out, the filament requires a more durable glass bulb and socket housing to absorb the added heat, as well as more heat-resistant shade construction and electrical connectors. Your competitor may have patented the filament, but if you patent everything else, then the competitor is locked out of much of the market. That's the essence of bracketing.

[Thoman] saw first-hand how an aggressive intellectual property effort boosted patent licensing royalties

a phenomenal 3,300 percent, from \$30 million in 1990 to \$1 billion annually today. This \$1 billion per year, it should be noted, is largely free cash flow... To match that sort of net revenue stream, IBM would probably have to sell \$20 billion worth of additional products each year...

A 1997 study by Coopers & Lybrand (since merged with Price Waterhouse) found that two-thirds of the \$7 trillion market value of all publicly traded U.S. companies is not even shown on their balance sheets because it lies not in their real estate or plant and equipment but in their intangible assets such as intellectual property.

Accelerating technology is plunging the world of ideas into a runaway patent arms race. More ideas are being created, and more emphasis and wealth placed on ownership of those ideas. At the same time courts are expanding what can be patented. This forces many companies and universities into a pure defensive maneuver to patent ideas they would not have otherwise. And that in turn forces others to do the same.

Our current legal containers for intellectual property—patents and copyrights—are not adequate for this rush, yet never before has it been so essential that our ideas be anchored in the law. Until our intellectual property laws are updated, this book makes it utterly clear that executives should be sure they are patenting, or at least assessing, every idea their companies have.

FIGURE 3-1 DOW CHEMICAL IP AUDIT MAP

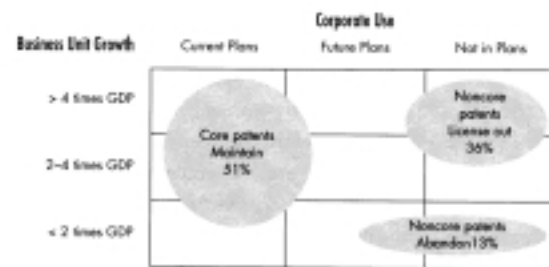
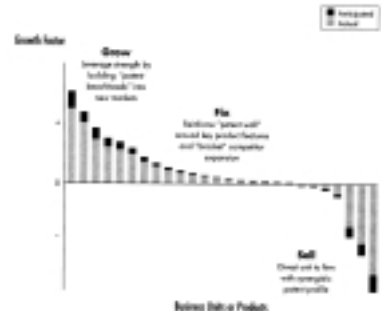


FIGURE 3-2 USING PATENT STRATEGY IN THE GROW-TO-SELL TRIAGE



Case Against Patents

On the other hand, I'm convinced by Don Lancaster's (and others') arguments that patents make no sense for a small-time inventor or technical genius. Patents guarantee you nothing but the right to fight for your idea. Fighting takes a full apparatus, lots of time, negotiating assets, lawyer fees, and emotional surplus. The same results from fighting (ineffectually 99 percent of the time) can be had by moving fast and staying nimble. Patents are a corporate game and should be avoided by anyone trying to work outside of that framework. Here's a lot of encouragement and support from a master non-patent inventor.

—KK

Case Against Patents

Don Lancaster
\$28.50 from
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High Tech Start Up

You have is a brilliant idea. But a high tech company to make that idea real is an incredibly complex machine to launch. What you really want is someone who has done this before, someone who can tell you how the bankers really make their money, what dilution means, how to quit your current job ethically, and what you should expect at each stage of "capital development." What you need is John Nesheim, the guru of high tech startups. He's been involved with Silicon Valley entrepreneurs for decades and has seen everything. Despite being an engineer, he correctly places great emphasis on the emotional costs (to you) at every stage. This book is the best; it doesn't hide the nasty side, and it is explicit in an engineer's way about what you have to do. It's worth its weight in stocks.

—KK