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33 min

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Look Before You Leap... Intellectual Property and Crowd- Funding

Why Major Crowd Funding Sites Couldn't Care Less
About Protecting Your Ideas and How to Deal with
It.

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The logo for IPvCrowd Funding is displayed on a blue rectangular background. The text "IPvCrowd" is in a bold, black, sans-serif font, with a white "v" character between "IP" and "Crowd". Below it, the word "Funding" is written in a larger, bold, black, sans-serif font.

IPvCrowd Funding

Recently, I was invited to speak at the Northeast Conference of the Industrial Designers Society of America on intellectual property and crowd-funding (CF). I am not a lawyer but I have consulted with some of the best around. Over the

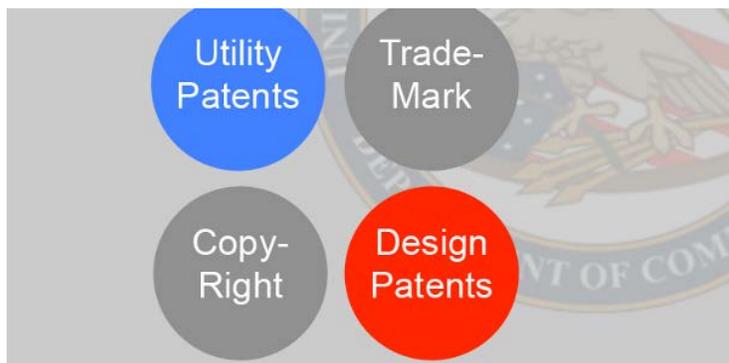
past 35 years I have been an expert witness in over 75 major patent cases related to product design, industrial design and GUI design. That experience has taught me a great deal about how innovators deal with the realities of their intellectual property.

As an expert in support of such litigation, most of what one learns with respect to the current intellectual property system is what inventors do wrong. In fact, a primary focus of IP-related litigation is to prove or disprove the effectiveness of the IP-related processes of the opposing parties: Who did what improperly in terms of filing their patents, writing claims, preparing the design patent drawings, referencing prior art, naming inventors, claiming inventions that are obvious or not truly innovative. This effort becomes an extensive analysis whereby one examines the entire history of a given patent application, seeking problems in the filing process and the decision-making of the USPTO (United States Patent and Trademark Office) in granting the patent. □

This eventually leads to an opinion, among others, as to whether the patent is

valid and enforceable and what is the actual scope of the claimed invention. These are the knives and forks of the litigators' meal. They determine whether or not you, the inventor, end up with an innovation worth a billion dollars or pennies. Patent litigation is a blood sport. It is also a cornerstone of effective high-tech business practice. This, of course, cuts both ways as the patent holder and accused patent infringer take up positions and attempt to enforce or dismantle protections only the legal system can ultimately verify or reject.

At the end of the day, intellectual property protection is far better than the alternative: just giving away your next big thing to all takers and I can assure you there are takers. The Founding Fathers who signed the US Constitution held in very high regard the ability of inventors to have a limited monopoly on ideas they developed. Indeed, the authority for Congress to enact laws to issue patents is enshrined in the US constitution. Some have said the US patent system is a cornerstone of our commercial success in global markets. This option is yours to hold or squander. If you are considering crowd-funding your next big idea, look before you leap. Oncoming traffic can be fatal.



Know Your Options Clearly, as an innovator of confidence, you have at your disposal IP frameworks that allow you to protect almost all aspects of your next big thing. If you are about to seek crowd-funding, your understanding of what you are

giving up in the interest of speed and access to investors is not a simple issue. Below is a simplified overview of IP protections available to you, should you decide to protect your innovation before launching on a crowd-funding

platform of your choice. Note that registered IP falls under the category of exclusive rights; in other words, obtaining this kind of protection gives you the right to exclude others from infringing on your IP. One enforces exclusive rights often by litigation. First, what protections are available.

Utility Patents: This form of IP covers the functional aspects of the product (or service, chemical composition, method of operation, etc.) you create and is the primary vehicle for helping ensure that how your product works is protected from infringing parties. Utility patents are the most costly form of IP and require the assistance of a skilled patent attorney. They can also take the most time to create and file. If you have functional innovations that meet certain legal requirements, utility patents have high value. For in-depth information go here:

(<http://www.uspto.gov/patents/resources/types/utility.jsp>)

Design Patents: These cover how your product looks visually. A design patent can be directed at the overall appearance of your product or just a portion thereof. In recent years, design patents have become very important. The way your product looks is the essential means of establishing a presence in the marketplace. In a world where there is significant competition from products that have similar functional attributes, a design patent can be more important than a utility patent. Never forget that the design of your product conveys a great deal about your invention well beyond the simple visual impression. The cost of a design patent application is generally substantially less than utility patents. For in-depth information go here:

(http://www.uspto.gov/web/offices/com/iip/pdf/brochure_05.pdf)

Trademarks: These cover the names and logos used to identify your innovation and your company (the source of your innovation) in the marketplace. These are not costly to file. If you fail to file trademark protections, anyone can co-opt the name of your company and even your logo

with relative impunity in any states in the US where you are not selling your product. There are certain trademark common law rights that attach to your innovation as soon as you create it, but filing for a trademark gives you additional rights. For in-depth information go here: (<http://www.uspto.gov/trademarks/>)

Copyrights: This type of protection covers written material related to your invention, including promotional and marketing materials, instruction manuals, photographs of your product (perhaps on your website) and related communications. Copyrights also cover artwork that is associated with your physical product but is conceptually separate (such as a label on your packaging). Copyright protection attaches as soon as you make the expressive work; you don't have to file to have rights, but filing (also known as "registering," in this context) gives you additional rights. Like trademarks, these are less costly to file for and can be critical in protecting how you describe and identify your new invention in the marketplace. Be advised that filing for a copyright registration is a prerequisite to accessing the court system for litigation. Further, failure to file for a copyright registration within 3 months of your first public disclosure of your work will result in disqualification from later seeking attorneys fees and statutory damages in the event you need to bring an infringement case. If you fail to file copyright protections, anyone can co-opt your marketing materials, web site design, package design and the like. For in-depth information go here: (<http://www.uspto.gov/main/profiles/copyright.htm>)

Trade Dress: This type of protection can only be obtained by having your product achieve high levels of success in the marketplace through broad exposure leading to documented high levels of consumer recognition. Because of these high standards to secure trade dress protection, it is not something to be considered in the initial stages of a new product introduction. If a product

design does reach this high level of consumer recognition, you can apply for registered trade dress (similar to applying for a registered trademark) or seek to establish such rights in court if there is an infringement of your iconic design. There are advantages to registering trade dress early, including identifying your trade dress so you can craft advertisements and a marketing message that helps in showing secondary meaning. Defending a given design via trade dress protection can only be achieved through costly and complex litigation. I mention trade dress to be comprehensive. Note that the details of trade dress protection are actually much more complex than overviewed here. For in-depth information go [here: \(http://tmep.uspto.gov/RDMS/detail/manual/TMEP/Oct2012/TMEP-1200d1e835.xml\)](http://tmep.uspto.gov/RDMS/detail/manual/TMEP/Oct2012/TMEP-1200d1e835.xml)

Big USPTO Changes Impact Crowd-Funding Under recent changes in the US patent system known as the America Invents Act (AIA), you as an innovator are living in a different world than inventors that came before you. When Congress changed the US patent system in September of 2011, they tweaked a few things mostly of interest to lawyers. However, one change is vitally important to you when considering crowd-funding for your project. For in-depth information on AIA go here: http://www.uspto.gov/aia_implementation/index.jsp

Prior to AIA, the entire US patent system was based on the idea that whoever invented something first had rightful claim to the invention. This was called “First-To-Invent.” As you can imagine, this led to no small amount of problems when an inventor filed for a patent but later found out that someone else had come up with same idea earlier. It was felt that this led to increased litigation costs for a variety of reasons including the complexity of searching and establishing who came up with a given invention first. Often whoever prevailed in the murky evidentiary battles (discovery process) prevailed in the case.

Now, under AIA, the USPTO operates under an entirely different model consistent with much of the rest of the world's IP systems. As an innovator, you are now subject to the requirement known as the "First-Inventor-To-File" system (FITF) not the old "First-To-Invent" system. The new system provides a bright line test as to who is entitled to a patent, namely, the inventor who FILED first.

Others May Patent Your Idea

It may seem like an arcane and unimportant technical detail, but consider this. If you submit your next big thing on a crowd-funding site without filing for IP protection and it is very successful, anyone can



file a patent on your design under "First-Inventor-To-File." Even if they did not invent the idea, if they do file, they may end up owning your IP, and it is a difficult and costly process to prove to the USPTO that they captured your idea and were not an inventor. If you think this is far-fetched... think again.

When you put up your innovation without protection, millions of individuals have access to your product, and I can assure you that of those millions there are some number who are simply trolling for ideas to file patents on knowing that you, as an early-stage innovator, may not have the awareness or bank account to deal with such problems. This is, of course, a basic business model of some Non-Practicing Entities (NPEs) or patent trolls. Note that no one can fraudulently take your invention if they are not the inventor, but if a skilled patent troll decides to file anyway, you may be facing substantial legal fees to prove the invention is yours.

First-Inventor-to-File Cuts Both Ways It turns out that under the new FITF system there are sometimes strategic reasons for releasing your innovations without filing for IP protection. This comes as a surprise to those who do not understand how FITF works.

Blocking Your Competitor From IP By Early Disclosure A situation in which you might consider this option is when you are confident that a major competitor is going to launch an invention that is essentially the same as your invention very soon. Under this situation, it might make strategic business sense to publicly disclose your invention via a press release, by posting comprehensive information about the invention on your website, or by launching your invention on a crowd-funding site so that the formal disclosure record shows that your product predated your competitor's product. If your competitor then applied for protection under "First-Inventor-To-File" they would be subject to rejection based on your "first-to-disclose" behavior. What, exactly do I mean by this?

If you publicly disclose your invention and then the second inventor files, in legal terms your disclosure is technically "prior art." Should your competitor attempt to patent their competitive product, their application would be rejected because your design preceded theirs in the public marketplace of ideas and inventions. However, if you attempt to file later, your patent application would also be rejected because you were not the first-inventor-to-file. Understand what is happening here: This is a form of intellectual property mutually-assured destruction. You have no IP and neither does your competitor. Let's be clear: this is not the norm nor a recommendation. Your best option is to file a patent application first and require that your competitor license your IP later. Keep in mind the flip side of this situation. Even if your competitor invented a like product earlier, they have no IP rights if you also invented the same invention and filed first, before they disclosed their invention to the public. This is another example of how oncoming traffic

in crowd-funding situations is complex and can be fatal.

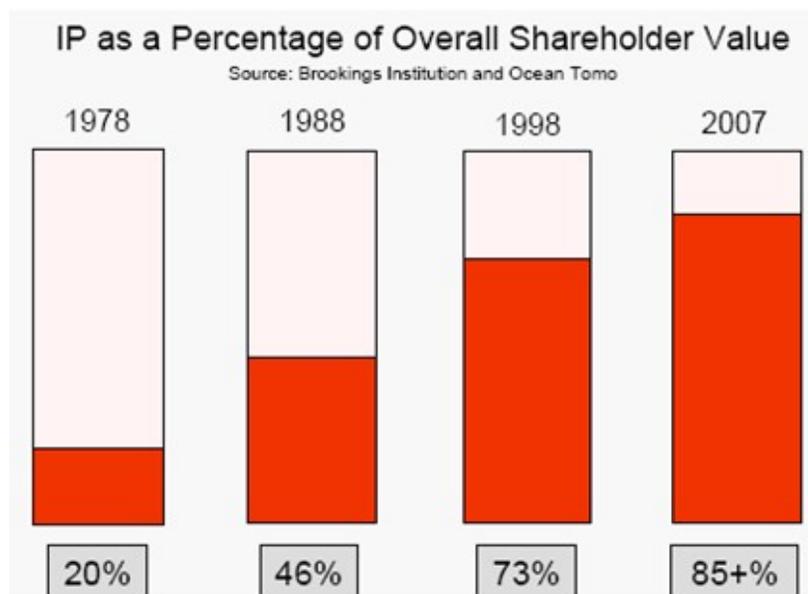
The Bigger Picture All of this clever strategic thinking is interesting but when taken from the larger perspective, most early-stage inventors who are considering crowd-funding or VC support do not understand how IP protection actually impacts the basic asset value of their ideas and eventual business success.



Plus 20% / Minus 20% It is surprising how few inventors, especially recent graduates of leading design and engineering programs, have even minimal understanding of how to protect their innovations. It is no coincidence that this is the same profile that is fodder for the crowd-

funding cannon. Yet the valuation of these same inventors' ideas is often determined to a significant extent by whether or not they have filed for and have obtained some measure of IP protection. VCs are famous for this method of decreasing the value of your innovations. No IP, -20% of the valuation. Rock solid IP, +20%. So the bottom line on IP is the bottom line. Of course, as with all matters legal, it is not really that simple. Some innovators create technologies that have staggering valuations and essentially no IP...think Facebook or Instagram or even the very early days of Apple. But as soon as Wall Street shows up, IP pops to the top of the list. There is an increasing trend today toward using patents as collateral for funding and financing. This is not surprising considering that IP as a percentage of shareholder value has substantially increased in recent decades. According to the Brookings Institution and Ocean Tomo, in 1978, the value of IP rights were about 20%

of overall shareholder value, whereas today the value is greater than 85%. This is another way of saying, if you want to be a billionaire, thinking in terms of robust IP cannot be ignored. However achieving this goal by crowd-funding you innovation may not get you there. The basic thinking behind CF has been around a long time.



In the newly minted crowd-funding world, churn is the business model. In this model, the concept is to expose your ideas to as many potential investors as possible, get them to pony up their credit cards and when you reach your goal, take

**Pump
+
Dump**

their profit and dump your project. Prior to creation of the crowd-funding platforms this approach was known as “Pump and Dump,” in which mostly sketchy stockbrokers pushed high-risk investments through cold-calling methods to drive up the price of a penny stock, then dumped the stock at a

higher value and ran for the next idea. So sketchy was this process that some P&D firms ran afoul of the SEC and other legal entities. Crowd-funding is essentially the same scheme but has been repackaged in slick websites with a compelling “your-idea-can-save-the-world” brand positioning. It is hard to miss the similarities between Pump and Dump and crowd-funding. Some may disagree, but structurally they are one in the same. Without churn there is no workable business for these new funding schemes. Have no illusions; crowd-funding platforms know exactly what they are doing.

Predicting the success of your project on a major crowd-funding site has been reduced to a science. It is now possible to predict, within roughly 4 hours after you launch your innovation via CF, if it will be successful. For example researchers at Georgia Institute of Technology examined factors driving funding, creating a list of the top 100 phrases signaling that a project will or will not be funded and describing predictive principles such as reciprocity, scarcity, authority, social identity, and others. Research from École Polytechnique Fédérale de Lausanne (EPFL) and Northwestern University yielded similar sets of quantitative predictors of success and failure for campaigns based on various factors.

The science behind churn drives key aspects of the way crowd-funding sites determine how long campaigns will likely run before achieving success and who gets approved in the first place. If there is a defining variable for crowd funding, it is speed. Get in front of as many individuals with a credit card and an optimistic point of view as fast as possible. However, this need for speed comes with often poorly understood liability related to intellectual property rights and protections. Such issues can cause you no small amount of angst if not outright financial loss, but not in the ways you might imagine.

It turns out, much to the surprise of most early-stage inventors undertaking crowd-funding, that intellectual property rights and related legal frameworks

DO NOT go away just because churn and speed are attractive concepts for funding one's next big thing on crowd-funding platforms. Both speed and churn work against IP in ways those undertaking crowd-funding generally do not understand or appreciate. The interesting point is that such concerns cut two ways.



Your stuff
My stuff

Pay attention here. Possibly the greatest risk to your potential success is not people stealing your ideas, but something entirely different. Your most significant risk is likely to be violation of the intellectual property of individuals

and companies who have already patented your concepts and will not be happy to see you tossing about their IP. Unless you employ some level of prior art search, you are essentially putting yourself in the way of very serious oncoming traffic. Traffic in this case means all manner of rough play by lawyers who are retained by those whose IP you may have infringed. What does this mean?

It means that if you do not employ some measure of IP defense prior to launching your crowd-funded project, chances are that you are going to find yourself with a cease-and-desist letter and a judgment against you that will make your student loan debt look like a rounding error. Such an event is probably not on your project plan or included in your Kickstarter funding model. When you put up your spiffy new gadget on Kickstarter you had better be sure that you do not violate the IP of others who have patents, copyrights or trademarks which are, in the opinion of a team of Harvard-educated lawyers, covered by another party's intellectual property rights.

This problem is not lost on crowd-funding sites and related business models. To be totally clear, crowd-funding sites couldn't care less about protecting your IP but they care a lot about not being sued by others who feel your IP violates their IP. If one takes the IP-related content posted on major crowd-funding sites as an indication of interest, it is clear that the only IP-related issue most CF sites care about is you infringing someone else's ideas. In fact, here is what major CF sites have to say about IP protections and infringement.

Kickstarter

Kickstarter's *Terms of Use* exclusively addresses established copyrights being infringed upon by users of the Kickstarter service (i.e. you). Kickstarter makes no reference to IP protection or assistance for inventors and startups using the site. The site's *Getting Started* guidelines are absent of any suggestion that creators obtain copyrights, trademarks, or patents for their ideas and inventions. Kickstarter says "the easiest way to avoid copyright troubles altogether, though, is to create all the content yourself or use content that is free for public use" in order to ensure innovators avoid infringing on copyrights. (*Important note: when it comes to patents, just because you create content yourself does not mean that your idea is not infringing someone's IP*).

Ref: [Kickstarter Terms of Use](#)

If you have any questions about where Kickstarter stands on protecting your ideas, this statement in the FAQs will clarify: *How do I know someone won't steal my ideas?* "Being open and sharing ideas is an essential part of Kickstarter. The platform is collaborative by nature, and is a powerful community-building tool for project creators. If you are unwilling to share information about your project with potential backers then Kickstarter probably isn't for you." *Translate: We couldn't care less about others stealing your ideas; we just want to churn the projects and make a profit. If you don't*

like it, go some place else. *Ref: [Kickstarter FAQs](#)*

IndieGoGo

IndieGoGo's *Terms of Use* covers issues of IP theft and infringement only in the context of infringement perpetrated by inventors who post their ideas on the site. When asked how IndieGoGo protects users from idea theft, Slava Rubin, the site's CEO, said "We're not liable for any of that stuff."

Ref: [IndieGoGo Terms of Use](#)

Ref: [How to Find Funding | Raise Money](#)

GoFundMe

Like Kickstarter and IndieGogo, GoFundMe only addresses established copyrights being infringed by inventors using the site, not vice versa, and provides no IP protection or information on obtaining patents or trademarks for innovators.

Ref: [GoFundMe Terms and Conditions](#)

RocketHub

As with its counterparts, RocketHub only addresses established copyrights being infringed upon by users of the site, not vice versa.

Ref: [RocketHub User Agreement](#)

KarmaKrowd

At present, the only crowdfunding site which addresses the issue of IP protection is recent start-up, KarmaKrowd, created and run by intellectual property attorney Cindy Summerfield, and her partner, fellow patent attorney, Patrick Richards. Unlike its counterparts, KarmaKrowd assists innovators with patents, copyrights, and trademarks before launching their ideas and inventions on the site. *(Important note: We do not endorse this site but mention it here as a reference)*

Ref: KarmaKrowd

Road Map 1.2.3

What Happens When? What happens if a crowd-funding site receives an IP complaint against your project? The answer is simple. You and your project are toast and dealing with the violation is your problem, not the crowd-funding site's. If you have any doubt, read

the T&C you will be required to sign before putting up your project for funding. Crowd-funding is a two-way street when it comes to IP-related matters. Not understanding this can lead to a very unpleasant outcome. All of this leads to the obvious question: how should one go about dealing with IP-related matters before disclosing ideas to the crowd-funding machine? The rules of the road are not obvious but workable if one understands the underlying issues. Here are 4 steps to consider.

1 STOP

Rule Number One Stop and think before you toss up your project for crowd-funding without concern for protecting the ideas you have. This is not easy to do when caught up in the brand messaging of crowd-funding sites

and the general excitement to get your stuff in front of others with the hope of gaining positive feedback and funding. If you post up your ideas on a crowd-funding site without IP protections in place, two things happen.

Your Protections are Done For In most countries of the world except the US, your patent protections are toast. Yup, done for. When you disclose your

invention to the public without first filing a patent application, you give up your right to secure patent rights. You might not think of this as a big deal but today the vast majority of those who copy products are **not** US companies. For example, giving up patent rights in China may not be a good choice. This leads to the obvious question of what constitutes disclosure. My colleagues at leading law firms agree that there is no hard-and-fast definition, but for sure putting up your idea on a CF site is big-time disclosure. If you posted up your idea on a blog, gave a presentation at a conference, showed it at a trade show, participated in a pitch demo series, posted it on a portfolio site... these are all public disclosure.

Timing is Everything If you are going to be in the business of building an amazing future from your ideas, just know that timing is everything when it comes to IP. I can assure you, as one who has participated in major IP infringement cases, the first thing opposing counsel will look at is *when* you first disclosed your idea. If the litigation is years later, you may not remember when you first disclosed your product. I have seen several hundred million dollars in royalty payments lost as the result of an inventor not understanding and keeping track of when they first disclosed an idea. Keep track of when, where and how you show your stuff to the public.



The Big Clock In The Sky If you disclose your idea without first filing for patent protection in the US you have a bit more flexibility than in most other countries, but the important idea is that in the US when you disclose, a giant clock

starts ticking. From the date you disclose your invention, you have one year to file either a patent or a provisional patent application (note that a provisional

can only be filed for a utility patent). If you file a provisional (actually a misnomer) you must file the formal patent application within one year thereafter. So simply put, if you disclose you have at most two years to file for IP protection. This is not nearly as good as it sounds. The so-called provisional patent application must cover all the same subject matter as the final patent application. Therefore, the cost and time involved is essentially equal. Keep in mind that a competitor who invented the same thing first could always come forward during this process with evidence that they were first-to-disclose, which will invalidate your patent applications unless you can prove otherwise. A big waste of money. Because a provisional patent needs to be just as comprehensive as a non-provisional patent, many attorneys recommend against filing a provisional patent except in some special circumstances. (*Note: For more information about disclosure grace periods in various countries, [click here.](#)*)

Provisional Patents Are Not Provisional If you toss a weak provisional patent at the USPTO you are making your life a lot more difficult down the road when you file a formal patent application. You also make your life much more difficult if you are granted a patent and then litigate against an infringer. If that happens the entire history of your filing is open to review by opposing counsel. Aspects of your provisional patent filing that you would never think would be a problem can and do become fodder for opposing counsel sometimes with devastating outcomes. If you changed your ideas significantly during the process, all manner of complications can and will ensue. Indeed, you will only be afforded the earlier provisional application filing date if the substance of that application matches the substance of the formal patent application. In other words, if you file a provisional application containing half-baked ideas, you will only be entitled to the earlier provisional filing date for those half-baked ideas, not your finalized ideas that you included in the later filed formal patent application.



2THINK IP Y/N

Really, How Good Is Your Idea? The surprising aspect of IP that is often overlooked by early-stage inventors and entrepreneurs of all stripes is the question of whether or not they actually have an innovation that is worthy of IP

protection in the first place. It often comes as a major surprise to innovators who retain a patent attorney to review their invention for possible IP protection that almost everything they believe is wildly innovative and unique has been invented and protected before by someone else.

Keep in mind that your idea cannot be protected if there is any form of a publicly disclosed prior solution that, in the opinion of a USPTO Examiner, renders your application unpatentable. This process is a major eye-opener for most early-stage inventors. I have seen many highly talented engineers, designers, inventors walk into an attorney's office with 100 patentable features and walk out with nothing more than a recommendation to file for trademark protection on the new company's logo. To be clear I have also seen the opposite. This is another way of saying: do not fuss over what you think is protectable unless you get the opinion of a expert. There are very few truly new ideas.

If you find that your next big thing was invented 10 years ago, then you might consider not tossing it up on Kickstarter. Just remember that those who invented the same idea may well send you a cease-and-desist letter followed by all manner of time-consuming legal complaints and eventual litigation. Do not even THINK ABOUT the approach of launching on Kickstarter first and

begging for forgiveness later. I can assure you, forgiveness only comes with forfeiture of some measure of your operating capital, which is not where you want to be when creating the next big thing.

All of this is another way of saying that it is a mistake to think that, when you launch on a crowd-funding site, you are doing anything less than launching a potential business with all the upside potential benefits and downside risks. In fact, compared to VC funding (which most often operates under the cloak of confidentiality), by crowd-funding your innovation (which is completely open to the public), you are dramatically increasing your risks related to IP loss or infringement of others' IP. In this regard, before you toss your great invention into oncoming traffic you should consider taking both a defensive and offensive IP strategy. Here is what I mean.

Think Defensive IP Strategy Before Disclosure You and your colleagues should conduct a search for related products in the marketplace and identify any that appear to have similar features, functions, appearances, names and copyrighted material. The more in-depth the search, the less risk you will have of being sued by those who already have IP on your innovation or even a component of your innovation. If you come across products which have similar features or appearances, pull their patents from USPTO.gov or Google Patents and review for similarities and violations. Surprisingly, this is not as hard as it sounds at the basic level and you can use this same material in your offensive IP strategy.

The Art of Patent Search A word of warning on patent searches. The USPTO.gov patent search section of the main website is famously difficult to understand and can be off-putting in the



extreme. Usability is not a high priority for USPTO web design.

However, the USPTO is the final word on filed applications and issued patents. Google Patents is easier to use and applies a different search algorithm, so it can be helpful to use in addition the USPTO patent search.

When searching USPTO.gov for patents, always look beyond any competitive product's patents and conduct a series of broader searches by product category, topic category, and/or names of pioneering inventors in your field. However, another word of warning from someone who has searched for patents before the Internet existed (not a fun way to spend your time). Even today with most filed patents available online, the USPTO does not always have patents properly classified by product category, and entire categories of products can be missing. The most famous current example is that the USPTO does not have categories for "Robots" or "Smart Watches." If you want to search for conflicts for a new robotic technology or robot design you have to search other product categories and hope you hit on relevant prior art. On the other hand, when time is of the essence, in many cases patent attorneys will recommend that you file the patent application and forgo patentability studies. All this aside, you will not be excused if you accidentally or innocently failed to locate a relevant prior patent. The ball is in your court, it is your problem. This is why there is a large and very profitable industry that does nothing but search for patents and prior art for law firms and corporations when filing and litigating patents. Prior art search is big business but it is also your business if you want to avoid legal problems.

Do Not Tease the Big Animals If your idea appears to be present in a leading high-tech company's products and that company is known for aggressive patent enforcement, DO NOT launch on a crowd-funding platform without consulting a patent attorney. It is far better to pay an attorney to determine your risk before launching a product than to pay them to defend you later on. Furthermore, those brave souls who ante-up their credit cards in crowd-funding programs look askance at their money going to support litigation versus creating a product.

Think Offensive IP Strategy Before Disclosure Using the same material gathered in conducting your defensive strategy, identify areas of IP where there are major gaps or unprotected innovations. It has always been interesting how much one can learn from examination of patents issued for competitive products or other products which are in some way related to one's invention. This is especially important when searching the patents or related IP of a competitor for possible conflicts. It is surprising what companies protect and FAIL to protect. This information can be a major source of innovation for your next big thing. How you make use of this material is up to you. Offensive use of IP filings is well understood by corporations and inventors large and small. Take advantage of this resource pool before you crowd-fund your innovation. You may end up with a far more valuable solution that you thought possible.

Think No IP Before Disclosure This is the point covered earlier whereby you disclose your invention without filing for any product-related IP simply to keep a major competitor from securing IP protection as well. Keep in mind that if you adopt this strategy, you will not be able to secure IP in most other countries of the world and that you are likely to see competitors spring up who you will have no impact on in terms of IP protections. Undertake this strategy with caution and counsel.

Consider VC Funding This is the old-world way. It is a fact that obtaining VC funding is vastly more complex and time consuming than crowd-funding. There is a reason for this. VC funding has certain advantages that make it worth



considering. This assumes you have an innovation of suitable scale and with meaningful IP already in place or planned for. Here is a basic comparison between crowd-funding and venture capital funding. The differences may surprise you.

Big Numbers In crowd-funded projects, a massive number of individuals see your work instantly as opposed to a very small group of pain-in-the-ass recent MBAs who have a vested interest in keeping your stuff confidential. As I have said before, the CF platforms, regardless of their warm and fuzzy brand positioning and save-the-world attitude, couldn't care less about whether or not you are protecting your ideas. They care only about churn: more projects, funded faster and at higher funding levels. This drives the valuations of their business and related compensation.

Not Your Friends Many of the individuals who view your project on a CF platform will not have your best interest in mind. This group includes a surprisingly large number of individuals and corporations trolling for new ideas to copy and NPEs, also known as patent trolls, scanning for any possible indication that your clever new thing infringes patents in their portfolio. This problem is not going away anytime soon as Congress failed this past session to enact protections related to the abusive practices of NPEs. If you are set upon by an NPE, a responsible VC firm is generally well-equipped to respond with appropriate (\$600 per hour) legal resources. These costs, by the way,

come out of your equity profile. If you crowd-fund your idea without IP in place you may well experience, with startling rapidity, your next big thing reproduced exactly as designed on Alibaba or Amazon. Neither of these e-com behemoths care a wit about protecting your next big thing.

Churn and Burn As I have said before, crowd-funding sites directly ignore IP protection for your ideas for a very real business reason. In fact the last thing CF sites want is for you to take the time to work out a viable IP strategy before disclosing your next big thing. Careful planning related to your IP is not conducive to high levels of churn.

On the other hand, the entire concept of VC funding is based on a highly controlled version of churn and burn but in reverse. VCs burn before they churn. By this I mean that they reject a massive percentage of ideas (burn) and flip companies at all stages of development for a profit (churn). As a result, VC funding is by its very nature brutally honest and not warm and fuzzy in the least. However, generally you know where someone who is putting a lot of his or her money into your product thinks you will end up.

All VCs are interested in your IP and will want you to make the right decisions related to protections and filings. It is their money in your idea and protection is a primary objective. As noted above, VCs factor IP directly into the asset value of your innovation. Without IP, you are going to have a rough road with VC funding just as you will with CF.

Even though I will receive a ton of negative comments about this, my experience strongly suggests that once you have conducted significant research and have formulated an IP strategy and

3 GO PLAN A/B

BEFORE you post up on a crowd-funding platform, pay the fee and meet with an experienced patent attorney. Over a long, successful career as an expert witness working many hours on difficult cases with leading patent attorneys, I have found them to be an exceptionally positive and engaging bunch. Most patent attorneys have undergraduate degrees in engineering, design or a related science. Many have worked in these professions before transitioning to patent law. It is my experience that they love innovation and design as much as you do. Yes, they make a good living but in the end that is your goal as well or you would not be inventing things of potential value to others. Based on my experience, here is a list of 10 factors to consider when seeking legal assistance before crowd-funding your next big thing. These are not in priority order.

- 1. Never go to your family's lawyer for IP recommendations. They may have had a course in patent law 30 years ago, and yes, they are going to be cheerful and positive, but they are not going to be helpful. Forget friendly, go for experienced, even if Mom and Dad agree to pay the bill for the family lawyer.**
- 2. Before the initial meeting with a patent attorney make it clear that you are considering launching your product on a major crowd-funding platform and that you need their opinion on how to proceed. Confirm that they have a working understanding of crowd-funding and related issues.**
- 3. Never go see a lawyer who does not practice patent law covering your specific type of invention or product category. If you're seeking guidance on patenting a new GUI design, do not consult with a patent lawyer who**

does automobile utility patents.

- 4. Always get a reference from a previous client who is an early-stage inventor like yourself. If a lawyer has not dealt with your type of problem and related budgets, they are going to cause you no small amount of anxiety over costs and schedules.**
- 5. Do not automatically write off a bigger IP firm. Lawyers need to nourish new clients just like the rest of us. Sometimes, IP-focused, established law firms with good reputations have options for taking on a limited number of start-up clients. No harm in asking. If your college roommate's mother or father is a partner in the patent law practice of BigLawFirm, go for it. Get a meeting any way you can.**
- 6. Do not visit a patent lawyer without having already done your homework in terms of defensive and offensive research. You should also have a very clearly defined version of your idea in nearly complete form or in a form that describes exactly what you intend to crowd-fund and produce.**
- 7. Be prepared with a formal written list of features and functions which you believe are truly innovative and patentable. This should be in a numbered list with a description of what the feature does and why you think it is unique and patentable. At the top of the page before the list is a simple description (one paragraph) of your big idea and why it is innovative.**
- 8. If your product has a specific visual appearance, make sure you have a model or drawings of how it will appear to the consumer. The more detail you have, the better. Design patent protection is an absolutely critical IP protection with very high value in an increasingly complex world.**
- 9. Bring a copy of your company name and logo and your product name and logo.**
- 10. Money invested in a quality patent application pays off. Before you visit an**

attorney, confirm their billing policy, rates and whether or not they will be billing you for the initial consultation. If they are billing you for the initial consultation, do not take that as a negative sign. Pay the freight and get their opinions. As a new client, you should expect to pay a retainer based on the scope of the work expected to be done. Do not leave without a clearly defined next step.

In The End Crowd-funding is a new phenomena made possible by loosening governmental controls on how we invest in companies combined with web-based delivery of ideas in a compelling and easy to access format. The current crop of crowd-funding platforms can be thought of as the early days of a totally new form of capital formation which will hopefully lead to new funding models for early-stage companies. Like bankers in the Wild West, they tend to run fast and loose with formal procedures and have minimal regard for the little guy. This will change.

The Old and the New World It is a fact that the current IP systems (on a global basis) were not designed for such a fast moving and broadly distributed presentation of new ideas and funding models. In this regard, IP systems are as outdated as the crowd-funding platforms are advanced. This does not remove from either process the requirement to nourish an ecosystem in which protection of intellectual property can be respected and maintained.

Charles L Mauro CHFP

About the Author

Charles L Mauro is President of MauroNewMedia, a New York-based consulting firm founded in 1975 specializing in professional usability engineering and man-machine systems design. He has received awards and

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[User Interface Design and UX Design: 75 Important Research Papers Covering Peer-Reviewed and Informal Studies](#)

[Recent interview on Bloomberg TV: Why Games Like Candy Crush are So Addicting \(King World IPO Analysis\)](#)

IP related resources

[USPTO.Gov](#)

The United States Patent and Trademark Office (USPTO) is the federal agency for granting U.S. patents and registering trademarks. Their mission is to provide high quality and timely examination of patent and trademark applications, guide domestic and international intellectual property policy, and deliver intellectual property information and education worldwide.

[Google Patents](#)

Google search engine that indexes patents and patent applications from the United States Patent and Trademark Office (USPTO).

Blogs related to IP matters

Patently-O

A patent law blog run by American patent attorney, Dennis Crouch, which features analysis on current Federal Circuit law and other subjects. Cited by BusinessWeek as being the most widely read blog on patent law.

Foss Patents

A blog run by award winning intellectual property activist-turned-analyst Florian Mueller, which covers software patent news and issues with a particular focus on wireless, mobile devices.

Special Interest Groups Related to IP Matters

[IDSA Design Protection Section LinkedIn](#) (membership by request)

Resources and other points of view on crowd-funding and IP

[Using crowdfunding sites could destroy your nascent business idea](#)

[Technology: Caution before you crowdfund!](#)

[How to protect your ideas on crowdfunding sites](#)

[Crowdfunding with a twist: Intellectual property work comes with fundraising at this startup](#)

Reviewers and Contributors

I would like to thank the following leading IP attorneys who have reviewed this article and provided valuable and insightful clarifications. They are all terrific IP lawyers. I know from first hand experience.

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