**PR-Friendly Patents: 3 Strategies to Prevent Patents From Being Misunderstood, Mischaracterized and Maligned**

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Though extremely technical, patent publications are of increasing interest to the general public. In fact, there are now entire websites—such as “Patently Apple” ([**www.patentlyapple.com**](http://www.patentlyapple.com/))—dedicated to tracking the patent filings of major companies.

This trend, while usually innocuous, can be risky for patent owners, as their patents can be misunderstood, mischaracterized and maligned—a lesson Sony unfortunately learned a few years ago. Sony owns [**U.S. Pat. No. 8,246,454 to Zalewski**](https://patents.google.com/patent/US8246454B2/), which describes “converting television commercials into interactive network video games.” An [**article in Fortune**](https://fortune.com/2013/04/30/sony-patent-is-hilarious-terrifying/) called Zalewski “hilarious” but “terrifying.” Why? Zalewski, while illustrating a variety of interactive advertisements, refers to a user being prompted to “Say ‘McDonalds’ to end commercial.” As such, a single figure of Zalewski was enough for [**an article in Esquire**](https://www.esquire.com/news-politics/news/a30579/sony-patent-for-television-shouting-110314/) to assert that “life has become ’Idiocracy,’” and that Sony’s patent would read on, for example, a circumstance where “an ad for ‘The Apprentice’ may require you to pick up a motion-detecting controller and comb Donald Trump’s hair with one hand while taking his wallet with Melania’s other hand.” In other words, a one-off, isolated example in Zalewski—probably included by a drafting attorney as an easy, inconsequential example—became national news. Here are three strategies to avoid that disaster happening to your patents.

## **1. Know Your Audience**

Draft with non-technical readers in mind, as they can easily misunderstand what you think is fairly clear.

Patent attorneys and engineers are not the exclusive audience of patent publications. Given consumers’ insatiable appetite for the latest and greatest technology, it is extremely likely that journalists, bloggers and other potentially non-technical individuals will read your patents. Those individuals might not necessarily have the benefit of years of experience in the relevant field, meaning they could easily misinterpret innocent concepts as something much more nefarious.

Take, for example, the word “cookie.” In common Internet parlance, a “cookie” might refer to [**data that might be stored on a web browser, such as while a user is browsing a website**](https://en.wikipedia.org/wiki/HTTP_cookie). Cookies are often quite harmless, as they can be necessary to allow users to log in to websites. That said, some associate “cookie[s]” with infamous [**third-party tracking cookies**](https://en.wikipedia.org/wiki/HTTP_cookie#Third-party_cookie), which (prior to extensive regulation) could be used to track users’ browsing behavior. A patent publication that uses the word “cookie” might do so in the most innocuous way possible (e.g., data used as part of a process for authenticating a user), but a reader might interpret that teaching to mean that the patent publication nefariously uses third-party tracking cookies as part of an authentication process. In other words, what was meant as an innocuous, inconsequential teaching could quickly be misconstrued negatively by a reader.

One of the best ways to draft patent applications with the non-technical reader in mind is to ensure that even relatively mundane concepts are well-explained in their context. A sentence that might mislead the user may be, for example:

“After authenticating the user in step 101, the browser may then store a cookie in the web browser.”

A non-technical reader may, thinking “cookie” in this context means a third-party tracking cookie, mistakenly assume that this language suggests tracking the user after authentication. A perhaps better drafting approach may be:

“After authenticating the user in step 101, the browser may then store authentication data, such as a cookie comprising a username and/or hashed password, in the web browser.”

Here, a few words go a long way: by initially characterizing the cookie as “authentication data” and by clarifying that the cookie may “comprise[] a username and/or hashed password,” the possibility of misconstruing the cookie as a third-party tracking cookie is somewhat lessened.

## **2. Draft Figures Carefully**

A picture speaks a thousand words—make sure those pictures can’t be misconstrued by the average reader. Review your figures carefully, and draft them so they avoid any misunderstandings.

Sony’s Zalewski patent is an excellent example of how a single figure can be easily misconstrued by a reader. Figure 9 of Zalewski, explicitly reproduced in [**the Fortune article mentioned above**](https://fortune.com/2013/04/30/sony-patent-is-hilarious-terrifying/), very likely caught journalists’ attention: it depicts a user standing up, with their hands awkwardly in the air, shouting “MCDONALD’S!”

While it feels a bit unfair to judge Zalweski in hindsight, and while the figure certainly communicates its concepts well, there are numerous ways in which Figure 9 of Zalewski could have been tweaked to avoid a potential public relations blowback. For example, removing “MCDONALD’S!” and replacing it with something a bit more health-conscious (say, a prompt to stand up to promote blood flow) may have gotten a similar point across while invoking less potential ire. As another example, the manner in which the figure is drawn could be improved: rather than depicting the user standing up in front of an image of a burger with their hands uncomfortably in the air, the figure could be redrawn such that the user is responding to different content (e.g., a dancing game) and/or is in a different pose (e.g., with their arms down).

## **3. Avoid Bad Words**

Don’t use words in your patent application that you might regret using down the road.

Chances are, you know some “bad words” in your industry. For automakers, the phrase “car crash” is almost certainly unpleasant. Similarly, in the video game world, the word “microtransaction” can quickly invite controversy. It should be of no surprise that industry journalists and bloggers frequently trawl patent search engines for those words and phrases—after all, virtually any result, however inconsequential, could be worth an article.

The easiest way to avoid using your industry’s “bad words” is to maintain an industry-specific “bad words” list, which can be used to query application drafts to ensure the words do not appear anywhere in the draft. Such a “bad words” list has an additional benefit: drafting attorneys can use it as a roadmap for general concepts to avoid, if possible, during all stages of prosecution.

That said, common sense must be used with a “bad words” list. For example, an automaker might want to use the phrase “car crash” when discussing a new and novel crash prevention method. As such, don’t rely on a find-and-replace tool to implement your “bad words” list, as doing so could potentially weaken the clarity of your application.

Unfortunately, the above strategies are not a panacea for all possible public relations issues that involve patents. Companies involved in potentially controversial industries should consider taking additional steps to avoid public backlash. For example, it may be worthwhile to schedule regular meetings between drafting attorneys and internal public relations team members to permit the drafting attorneys to better understand areas of particular sensitivity. Regardless, a little effort goes a long way in these circumstances: with the right mentality and the right preparation, many patent misunderstanding-related public relations problems can be mitigated, if not outright avoided.

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