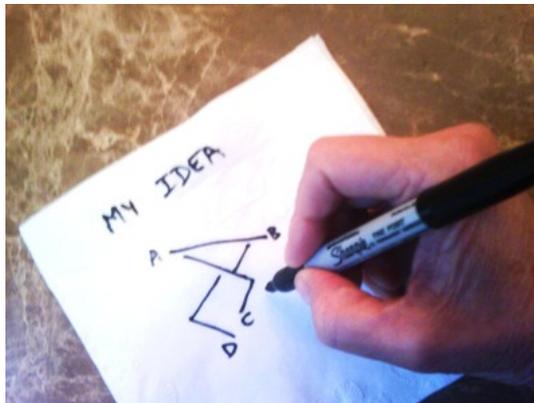


Can you patent an Idea?

Guest Author | August 30, 2012 at 4:00 pm

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This would be the first question to pop on one's mind when he wants to run a start-up. The most common fear, "what if any one copies my idea? Is there any legal protection over my idea? Can I patent an idea?"

'Patentability of an idea' is one of the common, controversial and toughest questions a patent attorney has to often reply in the first meeting with a passionate Entrepreneur. Though there is no clear answer to this question that can be replied in YES or NO, but it is worth exploring at times. The answer to this question may vary from idea to idea.

Before assessing the patentability of an idea, it is important to understand what can be patented. As per law, only inventions can be patented. But there is no express mention in **The Patent Act 1970** that ideas can or cannot be patented. The line between idea and invention is very thin because all inventions are ideas before they mature to breakthrough patentable inventions. In order to get a patent, the invention needs to be novel, industrially useful and non-obvious to a person skilled in the art. If we talk about idea, the idea can also be novel, industrially useful and non-obvious to a person skilled in the art. So where is the difference between idea and real invention for assessment of patentability?

Now let's look deeper into the provisions that form a part of the patent application. A patent application can be filed as a provisional or a complete specification. Apart from the basic requirements of patentability, **Section 10 of The Patents Act 1970** indicates certain MUST-have for filing a provisional or complete specification. Primarily, the application should begin with the title that sufficiently indicates the subject matter of invention. Further, every complete specification should fully and completely describe the invention, its operation or use and the method by which it is to be performed. Additionally, the complete specification should also disclose the best method of

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performing the invention, its operation or use and the method by which it is to be performed. Additionally, the complete specification should also disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection. Apart from this, the preamble for description of provisional application says that “the following specification describes the invention” whereas the preamble for description of complete application says that “the following specification particularly describes the invention and the manner in which it is to be performed”.

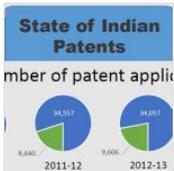
This clearly indicates that the invention should have capability of being performed practically. Now if the idea has the capability of being performed and if one has a process of how the idea works, the idea may get matured into invention and it can certainly be filed for a patent. Since the complete specification requires the best mode of performing the invention to be disclosed, one can file provisional application with idea and subsequently work on the invention to identify the best mode of working and within 12 months of filing provisional application, the complete specification may be filed.

For example, one has an idea pertaining to mobile application security system and has expertise to transform idea into an invention. With such idea provisional application can be filed and later complete specification can be submitted which fully and particularly describes the invention and its operation or use and the detailed method of performing the same. Failure to disclose the best mode of performing the invention can lead to invalidation of the patent or patent application, a result of post-grant opposition/revocation or pre-grant opposition respectively in the ground that the complete specification doesn't sufficiently and clearly describe the invention or the method by which it is to be performed. Therefore, before filing for an idea patent analyse critically whether the idea has capability to be performed or not.

Guest Author: Bindu Sharma, [Origin IP Solutions LLP](#)



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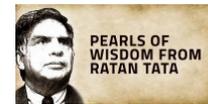
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