

## Generating Wealth Through Inventions

October 28, 2016

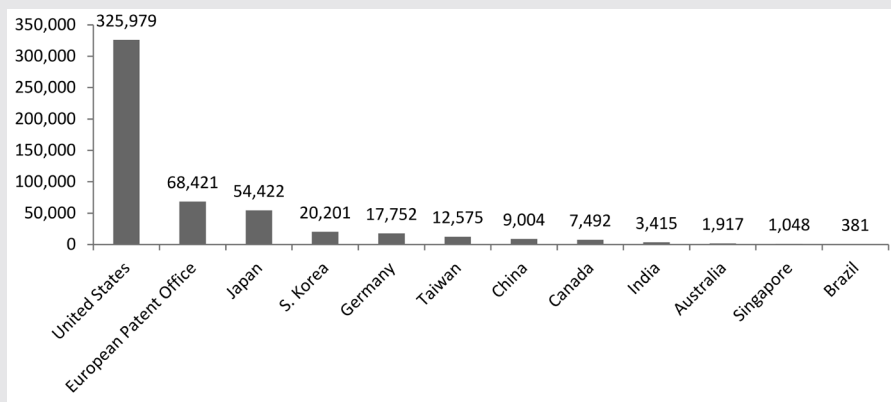
by David E. Rogers

Once the U.S. was a manufacturing powerhouse, but much of its industry has now moved overseas or south of the border to low-cost countries such as China, India, and Mexico. About eighty percent of the U.S. economy is now serviced based. But, despite the loss of manufacturing jobs, the U.S. still has the world’s largest gross domestic product (GDP) at about \$18.5 trillion. That is nearly 70% larger than China’s GDP at \$11.4 trillion, over four times larger than Japan’s at \$4.7 trillion, and over five times larger than Germany’s at \$3.5 trillion.

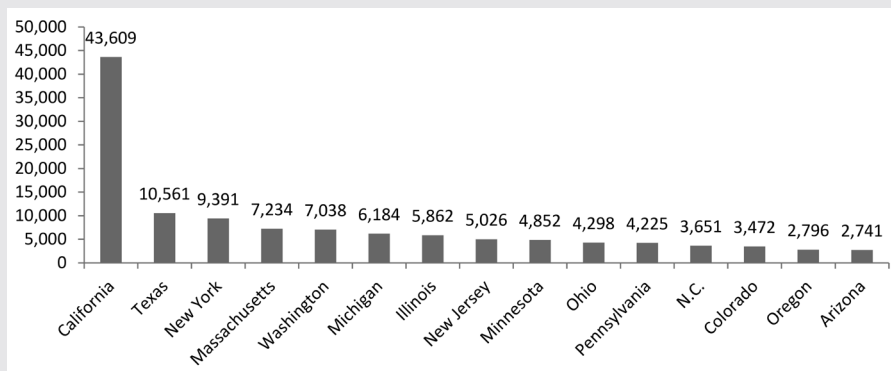
How does the U.S. maintain its economic edge? One way is through inventions, and protecting inventions using legal mechanisms, particularly patents. The U.S. grants far more patents than any other country – more than four times as many as the European Patent Office, six times as many as Japan, more than fifteen times as many as South Korea or Germany, and more than thirty times as many as China. Over 80% of the value of S&P 500 businesses is now in intangible assets. The total value of U.S. intellectual property is estimated at more than \$8 trillion, which exceeds the entire GDP of any other nation except China. According to the United States Patent and Trademark Office, intellectual property-based businesses and entrepreneurs drive more economic growth in the United States than any other sector.

Below are charts showing the number of patents issued in 2015 by select jurisdictions and states.

*Issued Patents in 2015 by Select Jurisdictions*



*Issued Patents in 2015 by Select U.S. States*



### Inventions Can Control the Marketplace

In some industries it is no longer important to be a manufacturing source because manufacturing is a commodity input provided at a commodity price. Instead, it is important to be the source of, and control, inventions. By controlling inventions you can control the product pipeline, from manufacturing, to distribution to sales. This is the new business model for businesses that cannot realistically compete, or that do not wish to compete, in commodity manufacturing.

### How Patents Generate Wealth

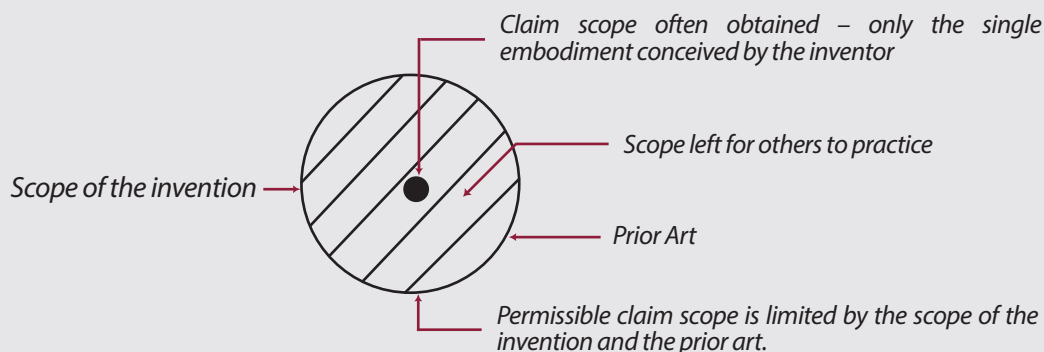
A patent creates a legal barrier preventing entry into the technology segment it defines. The patent owner has the right to operate exclusively within that segment and to stop any trespass (called an “infringement”) into the segment, which means the patent owner can exclude others from making, using, selling, offering to sell or importing the products or services covered by the patent regardless of whether the patent owner ever provides the products or services. That is the power of a patent — its mere existence monopolizes a technology segment. You need not provide products or services, or deal with vendors, customers, governmental regulations or employees. A patent’s barrier to entry provides many benefits:

- (1) If you choose to manufacture the invention, or have it manufactured, the patent gives you time to establish manufacturing and marketing channels.
- (2) You can potentially charge premium prices within the technology segment protected by the patent.
- (3) A patent is a tangible asset to attract business partners, investors, and potential buyers to your product/service or company.
- (4) You can simply license or sell the patent, and hence your barrier to entry, to another.

### Broad Scope Is Critical to Patent Value

A patent is a document that uses words, usually accompanied by drawings, to define a piece of “intellectual property.” Like a parcel of land, the value of this intellectual property is based largely on its location and size. A patent’s “location” is the inherent value of the concept it protects. For example, a new broom handle likely would not have the same inherent value as an integrated circuit that enables computers to run faster.

A patent’s “size” is often referred to as its “scope.” Patent scope is ultimately determined by the words used to prepare and prosecute the application that matures into the patent, and depends on the skill of the attorney charged with those tasks and on the actual breadth of the inventive concept. The inclusion or exclusion of just a few words can sometimes mean the difference between a patent worth millions and a worthless piece of paper. Patent scope is sometimes too narrow because inventors and attorneys patent just a single example of the invention, rather than brainstorming to expand upon and patent the entire inventive concept. This is illustrated in the following diagram:

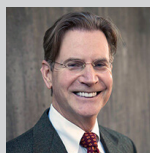


Patent scope is particularly important for small or medium-sized businesses. Because these businesses usually have constrained resources and relatively few patents, they must depend on broad scope for meaningful protection. Large businesses, in contrast, often have large budgets and obtain numerous patents covering incremental technological improvements. Using this procedure, they capture broad overall patent scope through the sheer number of patents obtained, and the scope of any single patent may be a small piece of the overall breadth of the entire patent portfolio.

If a patent fails to capture the entire scope of the inventive concept, competitors will be free to practice, and potentially even patent, the scope not protected. The result for the original inventor is a patent potentially worth significantly less than it could have been and perhaps lost profits, investments, or licensing opportunities.

### **Conclusion: Invention Is a Key Metric for Long-Term Success**

The generation of wealth through inventions requires an inherently valuable invention and a strong barrier to entry, which can be provided by solid patent protection. In today's marketplace, a strategy not founded on invention and consisting solely of, for example, getting to market first and developing brand recognition may be unrealistic and suboptimal, particularly for a start-up company or any business in a highly-competitive market. Product information is often easy to obtain, consumers are sophisticated, and competitors nimble. Assume that without meaningful inventions and protection, competitors can and will copy every aspect of your product or service. You will be left to compete mainly on price, delivery time and service, and potentially not have the opportunity or resources to develop market penetration or brand awareness. Not only will profit opportunities be lost, but so will the ability to attract investors and buyers to your business.



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David Rogers practices patent, trademark, trade secret and unfair competition law, including litigation, patent and trademark preparation and prosecution; trademark oppositions, trademark cancellations and domain name disputes; and preparing manufacturing, consulting and technology contracts.