

## Creating Wealth Through Innovation

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Much has been made of the demise of U.S. manufacturing. 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. Seventy 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 \$23 trillion.

How does the U.S. maintain its economic edge? One way is through innovation, and protecting innovation using legal mechanisms, particularly patents. An estimated 90% of the value of publicly traded U.S. businesses is now in intangible assets. The total value of U.S. intellectual property is estimated at \$6.6 trillion, which exceeds the entire GDP of any other nation except China.

In some industries it is simply no longer important to be a manufacturing source because manufacturing is a commodity input provided at a commodity price. Instead, it is important is to be the source of, and control, the innovation. By controlling the innovation, you can control the product pipeline - from manufacturing to distribution to sales. This is the new business model for nations with mature economies, and the control of innovation through patents is critical 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 market 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 can monopolize a market segment. You need not provide products or services, or deal with vendors, customers, governmental regulations, or employees.

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<sup>1</sup> The views expressed are the author's and not necessarily those of the firm or his colleagues.

**A patent's barrier to entry provides many benefits:**

1. If you choose to manufacture your innovation, or have it manufactured, the patent provides time to establish manufacturing and marketing channels;
2. You can potentially charge premium prices within the market 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; and
4. You can simply license or sell the patent, and hence your barrier to entry, to another.

Without patent protection there is no legal barrier to entry and others are free to copy your innovation.

**Broad Scope Is Critical to Patent Value,  
Especially for Small or Medium-Sized Businesses**

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 as much on the skill of the attorney charged with those tasks as 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 particularly important for small or medium-sized businesses. Because these businesses usually have constrained resources and relatively few patents, they must depend on broad patent scope for meaningful protection and value. 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 not be important to the overall breadth or value of the patents considered as a whole.

Patent scope is sometimes too narrow because inventors and attorneys patent just a single example of the innovation conceived by the inventor, rather than brainstorming to determine and then patent the entire inventive concept.

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 worth significantly less than it could have been and perhaps lost profits, investments, or licensing opportunities.

## **Conclusion:** **Innovation Is the Wave of the Future**

The generation of wealth through innovation requires an inherently valuable innovation and a strong barrier to entry, which can be provided by sound patent protection. In today's marketplace, a strategy not founded on innovation 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 innovation and protection, competitors can and will copy every valuable 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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Dave Rogers is a registered patent attorney with over 20 years of experience. He practices patent, trademark, copyright, trade dress, trade secret and unfair competition law, including litigation and arbitration; trademark oppositions, cancellations, and domain name disputes; preparing manufacturing and technology contracts; patent and trademark preparation and prosecution; and patent and trademark clearance opinions.