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**STEP-BY-STEP**  
**INVENTOR'S**  
**GUIDE**

**Patenting, Prototyping & Marketing  
Your Invention from Start to Finish**

**2013  
Revised  
Edition**



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## About the Author

*Russell Williams is President and Co-founder of Invention Home and Invention Home Products. He holds a Masters in Management degree from Carnegie Mellon University and a Bachelor of Science degree from West Virginia University. He possesses over 16 years of relevant business and marketing experience, including eight years with a \$40 billion Fortune 100 Company in various senior marketing roles. He is an inventor with multiple patents (pending) and an avid believer in creative thinking and product innovation. He is a father, husband and dedicated family man with a passion and vision for building his family-owned company [Invention Home] into a high quality, market leader in the product innovation industry. He co-founded Invention Home in 2003 with his creative and long-time inventor brother-in-law, Eric Zalevsky.*

*Invention Home is a company offering a unique and innovative service for assisting independent inventors through the invention process with the ultimate goal of matching and licensing inventor IP (intellectual property/patent rights) to manufacturers seeking new products and/or line extensions. [Click to view video – how they added thousands of companies to their network looking to license new inventions.](#)*

*The Invention Home concept was conceived following the co-founders' success and experience in building their own invention called the "Chilly Bone" into a multi-million dollar product line. As a result of their difficulty in finding good, quality resource options in the market, they saw an opportunity to build a reputable and credible company for helping other inventors and "re-inventing" the invention industry itself with an innovative model. Their vision is to become an "eBay" or "Monster.com" for new product innovation by providing a streamlined and efficient approach for matching inventors with relevant manufacturers and by differentiating themselves from other invention industry*

*companies based on values, reliability, reputation and success.*

*ebay provided the marketplace for consumer goods*

*Monster provided the marketplace for employment*

*Invention Home is providing the marketplace for new product innovation*

*Invention Home's primary service is to provide inventors with a mechanism for connecting with prospective companies who seek to license new products, while simultaneously providing companies with an "easy to use" and reliable service for receiving ongoing product innovation opportunities. Currently, they have thousands of manufacturers and distributors that utilize their service for licensing new inventions. This service is structured as a "free" subscription type service where new inventions are proactively **matched** and **delivered** to relevant companies for license evaluation and consideration. The primary vehicle for delivering the product information is through email "hotlinks", which enable companies to access individual product portfolio websites. The value for companies is gaining access to an ongoing source of innovative products in a streamlined and efficient system from a reputable company. In addition, they employ a team of marketing professionals to work closely with companies on product due diligence and negotiations. Invention Home utilizes an aggressive marketing approach and strategy for adding new companies to its network including: direct mail, tradeshow, telemarketing, public relations, advertising and email marketing.*

*On the inventor side, Invention Home has combined the necessary and relevant products and services under one roof as a "one stop shop" to simplify the overall process, while working to minimize the costs and risks for their inventor clients.*

*Invention Home has gained tremendous support and recognition as being a reputable and reliable industry leader with an innovative and smart model for helping inventors to succeed with inventions.*

# Introduction

After years of working with a wide range of inventors from across the United States and sharing my knowledge and experience in the invention and patent process, it became apparent that I could help inventors by simply compiling the knowledge into a quick and easy guide and making it available to interested inventors.

This guide is meant to provide an overview of the steps that should be considered when working through the invention and patent process. The information offers some practical, real-life experiences and helpful hints. The information and experience that I am sharing comes from interacting with countless manufactures, distributors, retailers, manufacturers agents, investors, patent attorneys, inventors, prototype companies, tradeshow, and developing our own product into a multi-million dollar product line. My marketing team has interacted and discussed products with hundreds of companies looking for hot new product ideas, and we have discussed and/or negotiated a long list of license agreements. We have experienced many successes and failures in various forms for numerous reasons and we have taken the time to learn from each experience. We have learned valuable lessons, good and bad, and they come from real life experiences in the world of product and invention licensing. I hope that you can find value from this information.

***Note: This information should not be construed as legal recommendations and/or advice. Individual and specific legal questions should be addressed with a registered attorney and/or agent.***

## What to think about first...

To start, let me address a common misconception with many first-time inventors who start with an idea but have little understanding of how to actually make money from their invention (i.e.: they don't understand the options for taking their idea to market). Many inventors believe that they need to spend tens of thousands of dollars developing and manufacturing their ideas on their own to succeed, which is why you read so many stories about inventors who spent their life savings chasing an invention. While manufacturing is one option for certain inventors, it is not the most common option and certainly not the least risky.

The two main options that you can consider for developing your invention are:

### Option 1 - Manufacturing and marketing your invention on your own

Over the years, I have worked with hundreds of inventors and a common misunderstanding that I see is the idea that succeeding with an invention means developing, manufacturing and marketing the invention on their own. As a result, these inventors spend a small fortune developing prototypes and setting up manufacturing before they ever receive expressed interest or purchase orders from companies. When deciding how to proceed, you should first think about your ultimate goal. If you are trying to build a business around your idea and become an entrepreneur, then manufacturing may be your option; however, if you are looking for a company to pay you for your idea, then this would not be your best approach. Note: if you elect to develop and manufacture your idea on your own, I would recommend that you try and secure interest and/or purchase

commitments before you pull the trigger on manufacturing. There is a big difference between developing a prototype and setting up manufacturing.

## Option 2 - Licensing for royalties

In my experience, 98% of inventors end up going this route, which means that rather than manufacturing and marketing the invention on their own, they try to find a company to license or purchase the invention's patent rights from them in exchange for a royalty or cash payment. The idea is to have an established company develop, manufacture, and market the invention along with their existing product lines. The key to success with this approach is to adequately and professionally prepare your idea for presentation with related manufacturers or distributors to discuss license opportunities, which can range from simple designs all the way through fully developing your invention.

And, in this guide, I will review the various stages and options available to you in the invention and patent process.

Before we move on though, I'd like to reinforce that it is very important to understand that your odds of success increase as you move through the development and patent process, regardless of how good you may think your idea is. For example, if you are in the concept stage without any patent protection and no formal product designs or prototypes, the odds of success are limited if you try to approach a company; however, as your idea becomes more developed and "real" with a professionally designed virtual or physical prototype, your chances of success increase.

The same holds true with patent rights. If you have an issued patent from the United States Patent & Trademark

Office (USPTO), your odds of success are better than if you had patent pending status or no patent at all, assuming your idea is good to begin with. Unfortunately, it really will not make a difference what you have in place if your idea is bad to begin with.

Overall, the trade offs are time, effort and money. By investing the right amount of time, effort, and money into your idea, you increase your odds of success. In my view, the goal should be to minimize your cost and risk by investing enough into your idea to be able to share it safely and effectively with companies before pouring money into the idea. For example, you may be able to start out by filing a provisional patent before it becomes necessary to file a full utility patent. [If you do find a company to license your invention, it's possible that you can negotiate for the company to pay for the utility patent.] Also, you may want to start by designing your product "virtually" before you move into the expensive prototype process. Again, you can obtain interest and license the invention without investing a lot of money into prototype development. If lack of a working model becomes a roadblock and you're hearing good feedback, you may want to explore developing a working or tangible prototype later in the process if you have the financial resources to do so. The idea is to work smart through the process to reach a license agreement without spending more money than necessary on the product.

## Stage 1: Idea Conception

## What is the difference between an idea and an invention?

The dictionary defines an invention as “a device, contrivance or process originated after study and experiment.” An idea is defined as “a formulated thought or opinion.” With these definitions, you should ask yourself how much study and experiment have you really done on your idea. Is your idea a tangible solution or just the recognition of a problem that needs a solution?

How many times have you said to yourself “it would be great if there were a product that could solve this problem?” I have had that same thought many times before. Unfortunately, often times, I was not identifying a real solution but just the need for a solution. Additionally, I have seen many inventors make the same mistake confusing their “identification of a problem” for an actual solution, thus spending unnecessary time focusing on the problem and not the solution.

The real challenge with inventing is not just identifying a need, but also figuring out a solution. This may seem common sense; however, I can tell you that I have talked with hundreds inventors who thought they had an invention, when in fact they had an idea without a well-defined solution.

## Can I really sell my idea?

Yes; however, it is important to understand what you need to have in place to increase your odds of success. As you move your idea through the invention and patent process, your odds of success increase as your idea becomes more tangible and real. The notion of selling or licensing an idea without any effort or development on behalf of the inventor is a misconception

of many inventors. Although I believe anything is possible, it is important to be realistic about your odds of success with an idea. Many inventors believe that a company will license or buy their idea and pay a royalty, even though they have not taken the time to move the idea forward with a patent search, patent pending or any type of professional presentation, development or proposal. This is unlikely; to increase your likelihood of success, you should be prepared to move your idea forward beyond just a concept or thought.

Next, when it comes to royalties or payment received for licensing your idea, it's vital that you have realistic expectations. Don't expect to receive a 50/50 split on the profits from a company for licensing your idea. A company may end up spending hundreds of thousands of dollars developing, manufacturing and marketing your idea...so a 50/50 split would not be reasonable. Typically, an average royalty can range from 3-5% of net revenues received by the company for selling the product. The royalty rate is negotiable and may fluctuate based on the margin and/or sales volume of the product.

Overall, the key to selling your invention is having a good idea to start with, then taking some steps to protect and effectively present the idea to companies. We'll review these “next steps” in the coming pages.

## There are no guarantees...

The reality is that there are no guarantees for success. Regardless of how great your idea is there are absolutely no guarantees that your idea will ever make money. Great ideas can fail for many reasons, such as poor marketing, lack of market or scarce financial resources. Additionally, ideas

that may seem less than stellar can often make millions for example, the Pet Rock or Chia Pet. The invention process can be exciting and rewarding; however, you'll need to approach the process with realistic expectations and a willingness to do what it takes to succeed.

## Stage 2: Recording the Idea

### What is the purpose of documenting my idea?

The reason that inventors should document their ideas is for the legal purpose of proving their date of idea conception. If a scenario ever arises where other inventors/patent holders claim infringement, or in cases of invention theft, simultaneous inventions brought forth or other valid reasons, it will become very important to have documentation of dates and details of the idea conception. By properly documenting your invention up front, you will have valuable proof that you are the true inventor, along with a date of record.

### How do I properly document my idea?

The inventor can document his invention in one of the following two ways:

#### **Inventor's Notebook or Form**

Use a bound notebook or record of invention form to record your invention by clearly describing the idea and concept and signing and dating in ink. Also, have two other people sign and date the book or form as witness to your invention.

The description should include the following: consecutively numbered pages, the purpose of the invention, a detailed explanation of the invention, drawings or sketches and a list of features and advantages.

#### **Disclosure Documents**

The inventor can utilize the USPTO "Disclosure Document Program" and file disclosure documents; however, the method described above is as good or better than filing disclosure documents. The USPTO charges a nominal fee for filing these documents.

Note – documenting your invention is not a substitute for a provisional or non-provisional patent. The purpose is to establish a date of record for your invention and to provide you with the proper documentation in the event of a dispute.

## Stage 3: Basic Market Research

### What is the value of basic market research?

Market research is a critical part of the invention process and while many authors recommends research prior to moving forward with a full-blown (non-provisional) patent application, I recommend performing a basic level of research prior to doing anything else. Note: a more in-depth level of research called "due diligence" may be performed later in the process, and I'll address this later in the guide. Before you spend any money on your idea for example, using the services of a patent attorney, invention support-company, marketing agency, or consultant, it would be wise to see if other similar products are

already on store shelves at your local retailers.

Basic market research can be as simple as visiting your local Wal-Mart, Home Depot or Target to see if anything similar is already on the market. I have had many inventors come back after a quick shopping trip to tell me that they were surprised to see the exact product already on the market. Other basic research opportunities may be to look for other products on the market that offer the same solution or search the Internet.

#### What if I find a similar product?

I can tell you from experience that just because you find a similar product on the market doesn't necessarily mean you can't succeed with your idea. For starters, you should research whether the similar product is patented or not. Just because a product is on the market doesn't mean that it has received patent protection or that a patent has been filed; however, you should be aware that it may end up preventing you from receiving patent protection. Next, you should look closely at the product to see if your idea has benefits or features different from the similar product. For example, if you had an idea for a new mousetrap, I guarantee that you would find numerous mousetraps already on the market designed to do the same thing – *catch mice*. You must ask yourself questions such as, is yours better, does it function more efficiently, is it designed differently to allow for lower cost production...etc. etc. When in doubt, I would recommend consulting with a registered patent attorney.

#### What do you mean by “patentability”?

“Patentability” refers to the process of determining if your invention is eligible to receive a patent. One of the primary considerations of patentability is whether another patent already exists on your invention. This process of determining patentability involves reviewing and understanding existing patents as well as non-patented, similar products (together called “prior art”) to determine the unique qualities (“novelty”) of your invention. A USPTO examiner performs a “patentability assessment” during the patent review process. Some inventors also contract with a Patent Attorney or Agent to conduct a preliminary “patentability opinion” prior to moving forward with a patent application. This process does not guarantee that your patent application will “pass” the patent criteria followed by the United States Patent and Trademark Office, but it could be beneficial in the long run. Also, it is important to understand that this process is not an exact science. A patent attorney will do his or her best to find applicable prior art and to make a determination, but with the millions of patents that exist today, you will never receive a 100% guarantee.

#### What is a patent search?

## Stage 4: Patent Search



One of the major factors of “patentability”, as discussed above, is to consider what similar inventions are already patented. For best results, I would recommend that you hire a patent attorney or patent search firm to complete this step. A patent search is the process of searching for all previous issued patents. It may also include a search of foreign patents and printed publications. A patent search does not guarantee that your invention is or is not patentable; it is primarily focused on determining what similar or like invention(s) are already patented. Note: most companies that may consider licensing of your invention will inquire about your patent search results.

### Should I perform a patent search?

Along with basic market research, I recommend that you consider a patent search prior to moving forward with filing a provisional or non-provisional patent application. The last thing you want to do is waste your time and money developing an invention only to find out later that it had already been invented and patented. As I mentioned above, patent searching is not an exact science so you’ll never receive a 100% guarantee that the search found every applicable patent, which is an inherent risk in the process.

### Can I modify an existing product?

Yes. Modifications to existing products are done every day, which drives product improvements and competition. Many inventors focus purely on improving existing ideas and products, and profit from simply modifying products that are already on the market. The only caveat to this strategy is to ensure that you modify the invention in such a way that it is different from what the original patent holder has claimed. Many times, you can improve an

existing product and receive patent protection on the “new” product.

## Stage 5: Developing a Prototype

### What is a prototype?

A prototype is an original model on which something is patterned. A prototype can range from a crude mock-up developed by the inventor to professionally designed virtual prototypes and/or fully functioning working samples.

The process of taking your idea and turning it into a tangible product is called “reducing the invention to practice” and the first step in this process is the development of a prototype. When it comes to prototype development, the inventor can utilize a professional prototype company, virtual designer, model-maker or construct it on his own. I have seen many prototypes from inventors ranging from cardboard and tape to professionally designed and constructed working samples. Keep in mind that the prototype process is evolutionary, meaning that you may start with cardboard and evolve the prototype through several iterations over time, as you refine your invention.

At one time, the USPTO required that a working prototype accompany all patent applications filed. This requirement limited the number of patent applications that were filed, particularly on inventions that did not actually work or function as intended. When the USPTO removed this requirement, the patent business

exploded and we began to see countless hypothetical and theoretical inventions with issued patents on products that did not work as intended.

### Should I develop a prototype?

As I discussed on the introduction page, there are two options for going to market: manufacturing on your own, or licensing for royalties. Various decisions that you make throughout the process will be driven by which option you choose in going to market, as described below.

**Option 1 - Manufacturing on your own** - if you are planning to manufacture your invention on your own - either domestically or by utilizing overseas manufacturers - you really don't have a choice about developing a prototype. You will have to develop a prototype of your invention to prepare for manufacturing (i.e.: you can't manufacture something unless you know how it works).

As for manufacturing, if you utilize a US manufacturer it will likely be an easier process of setting up the manufacturing but it may be more expensive for setup, molds, and unit costs, yet, going overseas also has its tradeoffs. With technology, the Internet, and the boom in overseas manufacturing in the last 5-10 years, it has become much easier to connect with manufacturers in China, Taiwan, and other countries; however, many inventors do not understand that typically, you need to provide them with an exact working sample or prototype that you would like produced. Chinese and Taiwanese manufacturers are great at copying a finalized prototype that you provide for mass production but, don't expect them to be as good at figuring out how your invention works and

developing working prototypes. More than likely, you will need to do this in the US and then supply the prototype to your overseas manufacturer. Also, you should consider the language barrier of working with manufacturers overseas. We have been working with the same Taiwanese manufacturer for over eight years and I still have a hard time understanding and communicating with him.

**Option 2 - Licensing for royalties** – if you are planning on licensing your invention for royalties, it will still be helpful to develop some form of prototype; however, it is not always necessary to develop a fully functioning working sample, which can be very expensive. Depending on the particular invention, a “Virtual Prototype” may be a more cost effective solution. A Virtual Prototype is a computer-generated, animated model, which can be rotated on-screen and will enable you to showcase your invention to prospective companies. Oftentimes, this is all you need to attract interest in and to possibly license your invention; although, it is still possible that a company may ask to see a tangible prototype after a virtual prototype first raises their interest in your invention. In this instance, you could request that the company evaluate without the prototype or you could consider alternatives such as building a mock-up of your own. For example, in the case of a particular inventor of ours, we generated interest from a company based on a very professional virtual prototype, which peaked their interest initiating product conversations. Later in the process, the company asked if the inventor had a tangible prototype, which she did not. We suggested to the inventor that she construct a simple mock-up of the product using cardboard or foam board. The inventor spent less than \$10 on supplies and a few hours to construct a very nice model out of foam board and

the company was more than satisfied. The virtual prototype “sold” them on the concept and the tangible model gave them a better feel for the actual product dimensions and function while the inventor did not have to spend thousands of dollars developing a working prototype.

### Reasons to develop a prototype

Without a virtual or tangible prototype, it will be more difficult for a buyer to understand your invention. As discussed, the chance of success increases as you move your invention through the development process. A prototype brings your idea to life for the person evaluating your invention, which increases the chances of ultimately taking your invention to market.

A developed prototype helps to work out the details of the invention. Identifying design flaws and weaknesses is much easier when you can actually test the invention. Engineering drawings and artwork alone cannot “prove” the concept in the same manner that a prototype can – prototypes help to ensure that the invention will work the way you intended.

Having a virtual or physical prototype helps to identify key details that should be included in the provisional and/or non-provisional patent(s). Filing a patent first before developing a prototype could lead to key details being excluded from the patent application – details that are learned only through prototype development. For this reason, I recommend that if you plan to develop a prototype, you do it first, before you file a patent.

Patent drawings will be much easier to complete if a model is available from which to work.

Developing a working prototype can also help to determine the best manufacturing materials and processes. Your original invention may be altered based on the prototype.

## Stage 6: Provisional Patent

### What is a provisional patent?

To understand the provisional patent, you must first understand the difference between provisional and non-provisional patents. The non-provisional patent is what is traditionally thought of as the “full” patent. It can be of either a “utility” or a “design” variety, and it establishes the filing date and begins the USPTO’s patent review process. On the other hand, the provisional patent provides temporary protection in that it establishes the filing date but does not start the USPTO review. The provisional patent is good for one year from the filing date. It is significantly cheaper than a non-provisional patent and provides the inventor with a 12-month period in which to market and/or develop their invention (while using the term “patent pending”) before they need to invest in a “full” non-provisional patent. The provisional patent does not require the patent claims, which are a key element of the non-provisional application. Additionally, a provisional application is not examined by the USPTO and does not convert to a regular patent. The inventor must submit the non-provisional application within one year of the provisional filing

date; otherwise, they would not be able to use the original filing date of the provisional application.

A provisional patent application should include the following elements, which are significantly scaled back from the non-provisional application:

Cover sheet – identifying the provisional application, the name of the inventor, and other bibliographic data

Description of invention – invention claims are not required, just an adequate description of the invention

Drawing – if necessary to understand the invention

Filing Fee – at the time that I'm writing this guide, the fee is \$100.

### Do I need a provisional patent?

In most cases, I believe in filing a provisional patent prior to moving forward with the non-provisional application. A provisional patent will provide you with some relatively quick and inexpensive protection for your idea. It can usually be filed with minimal effort and cost, while providing the inventor up to one year to work through the development and marketing of their invention. The primary reason I believe in a provisional application is to allow you a lower cost opportunity to seek out prospective manufactures to license your invention for royalties prior to investing in a non-provisional patent, which can cost thousands of dollars. Also, it is sometimes possible to negotiate up-front money in a license agreement, which could cover the costs of filing the non-provisional patent application, or the company may agree to cover the patent expenses itself. Note: Provisional patents are not valid with “design” materials. They can only be filed in relation to “utilitarian” inventions. More information about

“Design” versus “Utility” patents can be obtained at [www.uspto.gov](http://www.uspto.gov).

### Can I file my own patent application?

This question is a matter of opinion; therefore, I will give you mine, which differs depending on the type of application you are filing.

Provisional Application – Absolutely!

The provisional application process is not overly complicated; therefore, I believe that many inventors can file a reasonably good application if they spend the time researching and understanding the application process and writing the application. Although, if you do not have the time, the cost to have someone else prepare it is usually under a thousand dollars. In this case, it may be worth your time to hire a third party.

Non-provisional Application – Absolutely

NOT! Although there are many good books on the topic of filing your own patent application, the process is not easy. In my opinion, even with patent filing books as your guide, the process is difficult and requires a level of expertise that only comes with practice. Although you may be able to work through the components of the application, capturing the optimal language in the claims section is not trivial. This is one time that you should rely on the expertise of a registered patent attorney. If you do not have one, I would be happy to refer you to several.

## Stage 7: Marketing Due Diligence

I would recommend that you pay particularly close attention to this section because in my experience, I have found that many inventors do not fully understand this concept. In addition, as I discussed previously, this is one of those stages that will vary depending on the option you have selected for taking your invention to market: manufacturing on your own or licensing for royalties. Understanding this concept can ultimately save you thousands of dollars in the process.

### What is “Marketing Due Diligence?”

Let me explain the concept with a simple example. Think of it this way, if a manufacturer is getting ready to make the decision to develop, manufacture, and market a new product that could potentially cost \$50,000 to \$150,000 to produce plus inventory costs, they would most certainly take their time to ensure that they are making a good business decision in moving forward with the product (i.e.: have they done their homework on the product). Therefore, you can sum up “due diligence” as the process of gathering all the information necessary to make a good business decision prior to making the large financial expenditure. It can generally be assumed that the more time, effort and money (i.e.: “risk”) that a company must spend to develop an invention, the more they will evaluate the potential license. Keep in mind that even if a product appears to be simple and low cost, the process of developing and manufacturing is rarely simple and low cost. Companies will evaluate such criteria as customer feedback, retail price points, unit cost to manufacture, competitive landscape, manufacturing feasibility, market opportunity, etc.

### Do I need to perform Due Diligence on my invention?

As discussed, this will depend on the option you have elected for taking your product to market.

#### Option 1 - Manufacturing on your own -

If you are planning on manufacturing and marketing the invention on your own, then yes you will need to perform due diligence. Essentially, you become the manufacturer of the product and as a result you should perform the due diligence on your invention just like other manufacturers would. The problem that I have found is that many inventors who elect to manufacture their own inventions do little, if any marketing due diligence, which is a big mistake.

#### Option 2 - Licensing for Royalties - if

you are planning on licensing for royalties, then I believe you can minimize your due diligence efforts, because prior to any company licensing your invention, they will perform their own due diligence. If you are working with a company such as Invention Home, the costs to market your invention to companies can be minimal - therefore it could cost you more to actually perform the due diligence than it would to just market the invention to companies (which, is ultimately your best form of due diligence anyway). Remember, you should have taken the time to do your basic market research and a patent search earlier in the process to be assured that your product is worth pursuing in the first place (i.e.: the product is not already on the market and there is a demand).

Let me summarize. If you are planning on investing a large amount of money on your invention, then you should always analyze the opportunity first to make sure it's worth pursuing; however, if you can actively market your invention to companies with minimal cost, you can be assured that an interested company will perform their own due diligence (not

rely on yours). Note: it is always helpful to have marketing due diligence information available as you discuss your invention opportunity with prospective companies; however, it is not always easy to obtain this information so you need to balance the effort and expense of gathering the information with the real need of having it.

### Marketing due diligence tips.

As discussed, the idea of marketing due diligence is to gather as much information as possible to make a well-informed decision on investing in any invention. In a perfect world, we would have all the relevant information on sales projections, retail pricing, marketing costs, manufacturing setup and unit costs, competitive analysis, market demand, etc. However, this information is not always easy to come by.

If you are not in a position to pay a professional firm to do your marketing evaluation, it is possible to perform the research on your own; however, you need to understand that research should be interpreted and used for decision-making and on its own, it has no value. It is what you do with the information that matters. Note: I would recommend that you **DO NOT PURCHASE** “market research” from an Invention Promotion company. Often sold as a “first step” (they’ll usually approach you again with an expensive “marketing” package), the information is largely useless because it is not specific research on your invention. Rather, it is off-the-shelf “canned” industry statistics, which will not necessarily help you make an informed decision.

Before we get to the “tips”, let me clarify that “due diligence” can come under various names, but essentially they all

mean the same thing. Some of the terms that I have seen to describe the diligence process are:

- Due Diligence
- Marketing Evaluation
- Commercial Potential
- Invention Salability
- Profitably Marketable
- Market Research
- Invention Assessment

Each of these terms is basically referring to the research to assess the likelihood of an invention’s salability and profitability. The question of whether your invention will sell can never be known with certainty, but you can perform some steps to help you better understand the likelihood of success.

Again, if you are planning on manufacturing your invention on your own, you should consider performing marketing due diligence on your product. If you are planning on licensing your invention for royalties the company licensing your invention should perform this research.

Some suggestions for marketing due diligence are listed below.

### Ask and answer some basic questions

Is your invention original or has someone else already come up with the invention? Hopefully, you have already answered this question in your basic research. If not, check trade directories or the Internet.

Is your invention a solution to a problem? If not, why do you think it will sell?

Does your invention really solve the problem?

Is your invention already on the market? If so, what does your invention offer over the others?  
How many competing products and competitors can you find on the market?  
What is the range of price of these products? Can your product fall into this range? Don't forget to factor in profit and perhaps wholesale pricing and royalty fee, if any.  
Can you position your invention as a better product?

**List the pros and cons that will impact how your invention sells and objectively evaluate your list**

Demand – is there an existing demand for your invention?  
Market – does a market exist for your invention, and if so, what is the size of the market?  
Production Capabilities – will it be easy or difficult to produce your invention?  
Production Costs – can you obtain accurate manufacturing costs (both per unit and setup/tooling)?  
Distribution Capabilities – will it be easy or difficult to distribute or sell your invention?  
Advanced features – does your invention offer significant improvements over other similar products (speed, size, weight, ease of use)?  
Retail Price – do you have a price point advantage or disadvantage?  
Life – will your invention last longer than other products?  
Performance – does your invention perform better than other products (including better, faster output, less noise, better smell, taste, look or feel)?  
Market Barriers – is it difficult or easy to enter your market?  
Regulations and Laws – does your invention require specific regulatory

requirements or are there special laws that must be followed (i.e.: FDA approval)

**Seek advice or input from others (consider confidentiality)**

Target professionals / experts in the field.  
Ask for objective feedback and advice.  
Talk to marketing professionals.  
Ask sales people in the field.  
Ask people you know in the field.  
Talk to close friends and family members whom you trust.  
Ask for input on the invention such as features, benefits, price, and if they would buy it.

During the diligence stage, existing manufactures have an advantage in that they have the ability to talk with their customers (retail buyers, wholesalers, etc.). In my experience, one of the most important factors that a company will consider is whether their existing customers would buy the product. If I took an invention to a company to discuss licensing (assuming they could produce it at the right price point), there is a very high likelihood that they would license the product if one of their top customers agreed to sell it.

Whether a retail buyer is interested in purchasing a product is a driving force for companies considering product licensing. I've seen many scenarios in which a company had interest in an invention but they ultimately decided to pass on the idea because their customer (the retailer) did not show any interest in the product. Conversely, I've seen companies with mild interest in an idea who jump at a new product when a retailer expresses interest in it.

## Stage 8:

# Non-Provisional Patent

Today, countless books and articles cover every topic from patent basics to the writing and filing of your own full patent application. One topic that I feel is missing, which costs the average inventor little time, money, and effort is using common sense on determining when to invest in a patent. The following paragraphs can save you a tremendous amount of money if you glean some of the key points contained below.

### How long does the patent application process take?

This is an important consideration for the inventor and plays into the ultimate cost of the patent. Once you submit your completed non-provisional patent application and filing fee to the USPTO, you are assigned a filing date. The waiting period typically lasts 6 to 18 months, at which point a patent examiner will review your application. Although it is not impossible for your patent application to be accepted on the first submission, it is rare. This is where the patent costs start to add up, because every time the patent office rejects one or more of your claims, your attorney will need to modify and re-submit the application. This occurrence is referred to as an “office action,” which is the official communication from the patent office outlining the objections to your patent application. It is important to understand that the initial attorney fees for preparing the application and USPTO filing fees are typically not the final costs involved when filing a non-provisional utility or design patent application. More than likely, you will incur additional

preparation and filing fees, when responding to office actions

### How “Office Actions” impact you

What this means to you is that every time the patent office rejects your application, your attorney will need to re-work the rejected claim thus costing you more time and money for the patent. Keep in mind that this process of objection and re-submission could take 2 or 3 attempts before your patent application is issued, if at all. Typically, the entire process from initial patent application submission to issued patent takes anywhere from 1.5 to 3 years and could cost from - \$10,000 and up depending on the attorney.

### When should I really file for a patent?

The first question you must answer is what type of patent application do you file? Then, there is the question of when do you file this application. As I discussed earlier in this guide, I believe that many inventors are better off starting with a provisional patent application rather than a full non-provisional patent, which can be filed later in the process after enough interest and support in the invention warrants this filing procedure. (See “Filing a Provisional Patent Application”)

Unfortunately, many inventors file a non-provisional patent too early, only to find out later that they need to make modifications to the design (thus requiring addendums to the patent) or they determine through their marketing efforts that the invention is not worth pursuing.

In the United States, the patent law gives superior rights to inventors that are “first to invent,” which does not mean the first to file a patent. Other countries in the world use the “first to



file” rule, where the first person to file a patent application is granted protection, regardless of whether or not they actually created the invention. With that said, when should you file a non-provisional patent application? I would recommend documenting your idea or filing a disclosure document as quickly as possible. Basic market research, a patent search, and development of a prototype or virtual prototype, as well as a provisional patent are all steps to consider before moving forward with a non-provisional patent. Also, remember that having a patent does not guarantee success and does not guarantee you will land a license agreement.

## Stage 9: Going to Market

### What do you mean by “going to market?”

“Going to market” refers to the process of trying to “sell” your idea. Now, if your goal is to manufacture and market your invention on your own, then “going to market” means approaching retailers to sell your finished product to them or perhaps setting up a website where consumers can place their orders directly with you. If your goal is to license your invention for royalties, then for you, “going to market” means to approach manufacturers related to the industry that your invention falls into and share with them details about your invention to see if they express any interest in the concept.

Some inventors end up doing a combination of manufacturing their invention on their own, followed by

licensing the invention for royalties. The key is to think about which option you are trying to accomplish early in the process. For example, if licensing for royalties is your option, then you do not want to spend a lot of time and money doing things that are moving you towards manufacturing your invention. Spend your time and resources preparing to license your idea.

### What is a license agreement?

When you are trying to license your invention for royalties, the end result of all your hard work is to secure a license agreement. A license agreement is when the inventor [licensor] agrees to let a third party [licensee] commercially use his invention for a period of time. As a result of the agreement, the inventor would receive either ongoing payment called a royalty or a one-time lump-sum payment. The likelihood of an inventor striking a license agreement would depend on the premise that the inventor “owns” the invention (i.e.: a patent). Without patent protection, any individual or company could make or sell the invention; therefore, it would be unlikely that a company would license or buy the invention.

When negotiating a license agreement, there are various items that must be addressed between the inventor (licensor) and company (licensee). Some of these items are, royalty rate, up-front payment (if any), term, territory, etc. For example, the agreement can be limited to a particular area of the country, for a certain period of time or could be structured to allow for licensing to more than one licensee.

### What is an assignment?

When the inventor assigns his rights, he is permanently transferring or selling ownership in the invention/patent. The

inventor may receive a lump sum payment or a series of payments in the form of a royalty. The difference between a “license” and “assignment” is in the transfer of rights. With a license, the inventor retains rights (i.e.: like “renting” the patent) and with an assignment they transfer their rights (i.e.: sell it).

### What are the types of payment?

**Percent Royalty** – This refers to regular payments the inventor receives for licensing his invention. Percent royalties are based on a percentage of sales. The payment frequency is negotiated and defined in the license agreement (i.e.: annual, semi-annual, quarterly or monthly)

**Use Royalty** – This form of royalty is based on number of units sold or frequency of use.

**Lump Sum Payment** – A lump-sum payment is a one-time payment for the transfer of licensing rights.

**Advance** – It’s possible that you can receive an up-front payment instead of future royalty payments or you could receive a partial advance up-front, which would then be deducted from future earned royalties.

**Guaranteed Minimum Payments** – This is a guarantee that the inventor will receive a certain minimum royalty payment each year.

### How much will I get paid?

I assume that earning money is the main reason why you are considering licensing or selling your invention in the first place. The amount of money will vary with each scenario and will be a central point of negotiation in each license agreement; however, some

basic guidelines to base royalty payments on are as follows:

**Industry standards** – the rate that is customary in the industry. You may find that the prospective licensee is looking at industry standards as a guide in determining the royalty amount. It is difficult to pinpoint a standard due to the fact that circumstances vary for each agreement; however, a rule of thumb is that rates can fluctuate between 1% and 10% (unit rates will also vary). Typically, 5% is considered a good royalty rate.

**Analysis of profit potential** – the company will back into this number based on profit potential (i.e.: sales predictions, manufacturing costs). A combination of both.

### Can I license my invention prior to receiving a patent?

Although, you are not legally prohibited from licensing your invention without a patent, it is less likely than if your invention possesses some form of protection. Two reasons are: (1) without a patent, the company is not breaking any laws or “infringing” if they just make the product on their own, and (2) without a patent, the company would not be able to stop OTHER companies from making and selling your product (this would put them at a cost disadvantage since they must pay a royalty which other companies are not obligated to pay). If your patent is “pending,” your chances are better as you do have some protection on your invention as you wait for your patent to issue. The “patent-pending” period runs from the time that the application is filed to the point when the patent finally issues, and can typically range from 1 to 3 years.

In my experience, I found that most companies are not interested in licensing products unless they have

patent protection, either issued or pending. While an issued patent is no doubt better than an invention in patent pending status, it is usually not a problem for companies if the product is patent pending.

[Additional words about licensing...](#)

### ***Do not get carried away***

Many inventors strive for the “million-dollar agreement.” Although a good product could earn millions in royalties over the life of the license agreement, it is extremely unrealistic that you will earn a million dollars up-front or even over the course of several years. Don’t blow a good deal out of greed...you need to be realistic and objective or you may possibly end up with no deal at all.

Inventors repeatedly ask me the same question, “how much will I make on my invention?”. As discussed above and throughout this guide, success and royalty payments do not come without hard work and effort, and the actual payment amount will depend on the merits of your invention and on the agreement that you negotiate.

### ***A complicated process***

The process of licensing is very complex and ultimately determines how much money you will make on your invention. Each licensing situation is different, so there really isn’t a “standard” agreement. Keep in mind, too, that a license agreement is a legal document and will include terminology and language that can get very technical and confusing. For these reasons, I would recommend that you get the advice and guidance of a lawyer or agent when it comes time to negotiate and execute a license agreement. This is true, particularly, if you have no experience in the area of licensing.