A PRIMER ON PATENTS

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Most Americans are well aware of the existence of a patent system in the United States that "protects" inventions. It is the nature of that "protection" that is widely misunderstood. My intent, over the course of these articles, is to provide you with the information necessary to allow you to make an informed decision on whether you should seek a competitive advantage by investing in the patenting of your inventions, or forgo the cost and expense of patenting and compete on price, quality and/or service.

CHAPTER 1: WHAT IS A PATENT?

A patent is essentially a territorially restricted, limited term monopoly. Once issued, a United States patent provides the owner with an ***exclusive*** right to manufacture, use, sell, offer for sale, or import the claimed invention ***in the United States*** for seventeen years from issuance or twenty years from the earliest effective filing date of the patent (details on patent terms will be provided in a future article). For example, a United States patent is not infringed by a competitor who manufactures the invention in China and imports the invention into Canada where it is sold and used. However, that competitor would infringe if the invention were imported from China into the United States instead of Canada, or if any of the inventions imported into Canada were to eventually find their way into the United States where they are used.

There are several widespread misconceptions regarding the rights imparted by an issued United States patent that need to be dispelled.

THE GOVERNMENT DOES NOT ENFORCE PATENTS: The United States government does not enforce patents. The task of locating and suing infringers – and paying the costs associated therewith – is left to the patent owner.

PATENTED INVENTIONS DO NOT NECESSARILY WORK: An issued patent does not indicate that the claimed invention actually operates or functions as described in the patent. The United States Patent Office does not require a patent owner to establish functionality of a claimed invention unless the claimed invention clearly contradicts a well established law of nature (*e.g.*, claims to a perpetual motion machine) or is so incredulous as to contradict well-established scientific principles (*e.g.*, claims to a bracelet that cures all types of cancer).

PATENTING DOES NOT GUARANTEE COMMERCIAL SUCCESS: An issued patent does not indicate that the claimed invention will be a commercial success. Even when operable as described, market forces (*i.e.*, cost of production, undesired side-effects, public perception, etc.) may prevent the invention from becoming a commercial success. The United States Patent and Trademark Office does not assess marketability.

An issued United States patent means ***only*** that the United States Patent Office has been convinced by the patent owner that the claimed invention provides some benefit, and is sufficiently different from things previously known (details on the standards for patentability will be provided in a future article).