

# Thwarting ‘The Great Patent Revolt’ in your Engineering Organizations

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When a patent practitioner reads an article calling on engineers to stage a patent strike within their organizations, alarm is the natural reaction. For in-house counsel, such articles and sentiments (which I have found to be rather prevalent) make filing patents a tough sell to engineers. The following are some tips for in-house counsel to encourage engineers to engage in the patent process that is often incredibly important and central to a company’s business strategy.

## Debunk the Myths

There are several myths that make the rounds in engineering organizations and generally mar the reputation of the patent process. Perhaps the most widespread is the belief that any obvious technology related idea can be patented: clicks, views, arrays, and other basic features common in today’s products. This stems from folks, through no fault of their own, not being versed in the structure of a patent - instead of the claims, most look at a figure or two, read the title or the abstract, and determine the invention based on those parts of the patent. Some inventors are, therefore, wary of filing patents as they do not want to put their names on a patent that, without a deeper delve into the claims, may come across as trivial.

*Tip: To combat the effects of this myth, consider running a seminar breaking down a patent that has received negative press as to its triviality and show how the claims in the patent, in fact, do cover more substantial concepts.*

## Let Engineers Take Ownership

To streamline the patent filing process, engineers are typically asked to fill out a generic disclosure form explaining their invention. The form is then reviewed by a committee, and the committee decides which inventions should be pursued as patents. This creates distance between the inventor and the selection process, and critical knowledge that the inventor possesses about the state of the art in the particular

field may not be taken into account during the selection. Also, inventors often feel that the inventions that eventually get selected are not as important as the ones that get left behind.

This is not to say that the selection process is faulty since many different factors other than pure novelty, including importance to the business and infringement detectability, are considered when selecting inventions for patentability. The lack of involvement in the selection process and the lack of transparency into the selection factors, however, often leaves inventors confused as to the selection process and makes them less motivated to diligently fill out disclosure forms.

*Tip: Consider meeting with teams individually to understand inventions in detail and even assist in filling out the disclosure form before the committee convenes. It would also be helpful to explain the different committee selection criteria to the inventors so that they provide the relevant details and understand the process.*

## Collective Incentives

Inventors typically receive rewards for filing patents. The definition of an inventor is limited to those individuals who conceived an idea, not necessarily those individuals who implemented it or were instrumental in the invention becoming a product and yielding revenues.

Rewarding only the inventors, therefore, fails to recognize a broad group of people who play a key role in supporting the inventors. If the aim is to encourage patent filings, then rewarding those who support the process should create a collegial atmosphere among the teams with respect to patent filings.

*Tip: Reserve a portion of the patent reward for the team or the division from which the invention emerged.*

## **Beware of ‘Gobbledygook’**

Patents are technical documents written so that a skilled person can understand and implement the invention based solely on the document. Therefore, an engineer reviewing a patent draft should easily be able to understand the structure and content of the draft. If the inventor, upon reviewing a draft, thinks that the document includes “legalese” or “patent gobbledygook,” a red flag should be raised.

Engineers are critical thinkers who appreciate clarity and structure. Therefore, it is imperative that, to gain their trust (and obtain a high quality patent), their inventions are properly and clearly described. Finding counsel who produces high quality work that the engineers can parse with minimal effort is the one of the most critical pieces of a successful patent program.

**Tip:** Vet your outside counsel and pay close attention to the feedback the engineers have about the counsel’s work. Also, encourage outside counsel to interact closely and form relationships with the engineers so that the engineers feel comfortable providing critique.

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