

Evaluating Patent Value



Mark J. Masterson | Tuesday, May 24, 2016

Not all patents are a good financial investment. In fact, many patents are of very limited investment value. That certainly doesn't stop people from inventing and filing patents. This may be because valuable patents provide economic leverage that can lead to an extremely lucrative payday for the owner.

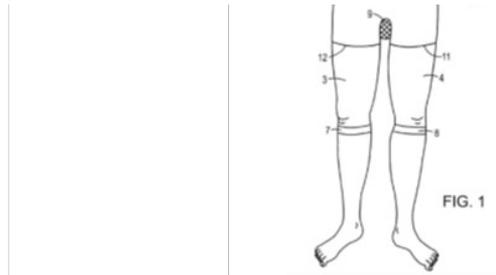
But how can one tell if a patent is a good investment?

Generally, valuable patents solve a particular problem in the industry that competitors and consumers face. Also, it may be a bit counterintuitive, but some of the most valuable patents do not cover groundbreaking technology. Rather, they provide a simple solution to a problem that others have failed to recognize.

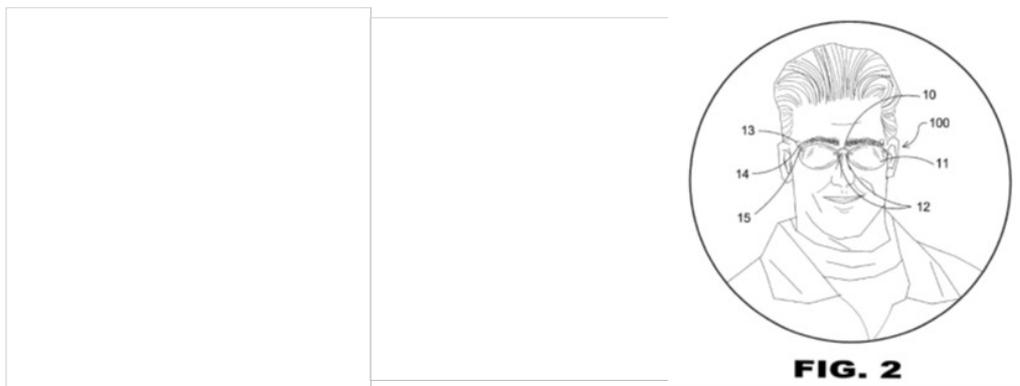
One example of a valuable patent is U.S. Patent 6,463,765 invented by Sara Blankley that covers her Spanx® pantyhose undergarment product. Undergarments may not be particularly groundbreaking, but due to the value of Ms. Blankley's patent, and some marketing assistance from Oprah, Spanx® became an extremely valuable brand. Ms. Blankley's patent provided her enough leverage to develop her company globally. An evaluation of her patent would uncover that the protected subject matter solved a particular problem in the industry faced by both undergarment manufacturers and consumers. The problem: "how to look better in white pants." Ms. Blankley identified that problem and provided a solution.



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However, not everyone is as lucky as Ms. Blankely when it comes to identifying the investment value of a patent. Some patents provide a solution to a problem that may not result in economic success. U.S. Patent 6,557,994 was issued in 2003 and covers frameless glasses that attach to body piercing studs on the face of the wearer. The problem identified by this patent was “how to secure frameless glasses to someone’s face.” The solution: attach the frameless glasses to either an eyebrow stud or a nose bridge stud. See Figures 2 and 7 from this patent below:



I would guess that the frameless glasses patent was not as successful of an investment as the Spanx® patent. These examples suggest that the valuation analysis is certainly more complex than “does the patent solve a problem?” In particular, when tasked with conducting due diligence related to patent valuation, it is important to uncover more specific facts related to the practical nature of generating revenue from commercializing the idea. To identify these facts, it would certainly help to consider the following questions:

1. Does the patent cover a product with a lot of sales?
2. Is the patent enforceable against competitors and not customers?
3. Are there design alternatives? If so, do they cost more?
4. Are others actually infringing the patent?
5. Could it be easily identified if others are infringing?
6. How novel is the subject matter?
7. Does the subject matter of the patent align with other ongoing business matters?
8. Is there freedom to use the invention without infringing someone else’s patent?

The ultimate value is what someone is willing to pay or how much a court is willing to award in patent related damages. However, providing answers to these questions would certainly be a step in the right direction for identifying or negotiating the investment value of a patent.



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Team member bio

