UNLOCKING THE POTENTIAL OF INNOVATION℠[1]: Caveat Inventor — *Exposing Invention Marketing Scams*[2]



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Recently, one of my graduate student interns put the following question to me: "Why doesn't our company advertise on television like other invention promotion companies?"[3] My gut reaction was one of righteous indignation. I quickly answered him defensively saying "we're not at all like those firms." But I immediately knew this explanation was insufficient. I was merely reacting to my understanding that, as a group, the modus operandi of the high-profile invention promotion companies was to defraud thousands of unsuspecting independent inventors. I had learned this fact from the patent professional trade journals. And yet, on the surface I knew these companies made the same promises to their clients as me and our distinguished thirty-year old company - to commercialize their inventions. This troubled me. I then realized this explanation was going to be much longer than I first expected. Hence, I wrote this article.

INVENTION PROMOTION COMPANIES

Since the 1920's and perhaps before, invention promotion companies have been promising much and delivering little.[4] However, the toll these disreputable companies take on inventors has recently increased due to their utilization of national media such as late-night television, radio, publications, and most recently, Internet home pages.

According to Phoebe Morse, Federal Trade Commission (FTC), "they offer to provide inventors with assistance in bringing their ideas to market, often for a substantial fee. They offer a variety of services, usually some kind of evaluation, usually attempts to generate manufacturer interest, and assistance in obtaining patents."[5] However, what they deliver is altogether different.

Over the last twenty years, Dr. Gerald Udell, Southwest Missouri State University, has studied these firms and observed "a near perfectly consistent pattern of deception, misleading, and questionable practices. These practices include bogus evaluations, questionable patent searches, worthless and misleading marketing research, and woefully inadequate invention marketing efforts."[6]

As a result of these pitiful efforts, Ms. Morse explains that "unfortunately, many if not most of these companies obtain little in the way of commercial success for their clients. Based on its investigations, the Commission estimates that over the years, tens of thousands of inventors have been victimized and lost tens of millions of dollars to ineffective and dishonest companies. In reality, few if any, inventors earn more than they pay to invention promotion companies."[7]

For example, in the *Raymond Lee Organization*,[8] one of a number of litigated cases by the FTC, only 6 of the 35,000 inventors who used the services of the now defunct Raymond Lee Organization (RLO) ever made a profit of $1 or more.[9] In other words, .107 percent (.00017) of the inventors reached or exceeded the break-even point. A dismal record indeed.

THE PROBLEM

Deceptive Practices

In the fall of 1994, Senator Joe Lieberman (Democrat, Connecticut) conducted sub-committee hearings into the fraudulent practices of the high-profile invention promotion companies. "Necessity may be the mother of invention, but some of these marketing companies are nothing more than deadbeat dads," said Senator Lieberman.[10] "They praise all inventions, even those that stand no chance of being brought to market. They paint a rosy picture of huge profits, then do little or nothing to make that dream come true. They say they will make their money from royalties off the sale of the invention, when in reality their profits come from the inventor's up-front fee. Just when the inventor thinks the company is going to get rolling on their behalf, he or she has just been rolled, and the company has moved on to the next victim."

According to Ms. Morse, invention promotion companies operate in a strikingly similar manner, and most if not all of the unethical companies have comparable fraudulent practices.[11] Fraudulent Invention Promotion Companies generally run high profile advertising campaigns, and offer two basic services:

- *Feasibility Report*: As a first step, fraudulent invention promotion firms offer inventors a "product research report" that can cost between $250 to $495 and purports to evaluate the feasibility and marketability of an idea and which contains a "projected profit analysis" of the idea. "Typically, in these cases, the research report looks quite impressive but turns out to be a mass-produced booklet with a great deal of generic information that could apply to almost anything," said Jodie Bernstein, FTC.;[12]
- *Representation Agreement*: Once the inventor is hooked, fraudulent invention promoters offer a "patent/promotion service agreement" that may cost an additional $5,000 to $12,000 under which the firm purportedly works to secure a patent for the idea and then promotes it to the industry in an effort to get a licensing agreement for the inventor. In reality, "if the firm secures a patent for the customer's idea, it's likely to be a design patent, which protects only a picture or design on the surface of the item and not the functional aspect of the invention," according to Jodie Bernstein, FTC.[13] "Many invention promotion firms actually do little or no real promotion of the invention, save sending a few blind letters to companies on mass mailing lists."

Most complaints against invention promotion companies allege that the company:[14]

- misrepresented that the inventor's idea was patentable and would be patented through the company's services;
- misrepresented that the inventor's idea would be financially successful;
- misrepresented that it would provide continuing services and then failed to answer the inventor's telephone calls and letters.

Some complaints allege that the company:

- misrepresented the scope or the value of a preliminary patent search;
- omitted from the product report necessary safety and regulatory information pertaining to an invention;
- accepted more than one submission of essentially the same idea without disclosing its conflict of interest.

THE CAUSES

Plethora of Inventors

"As long as the United States is the United States, there will be inventors out there and there will be people tinkering and coming up with better ideas," notes James Mallett, Office of Consumer Protection of the New Jersey Attorney General.[15] The statistics bear this out.

According to Dr. Udell, "the literature credits independent and small business inventors with from about one-third to two thirds of major recent inventions. Some, like the personal computer and robotics, have been highly sophisticated technological devices. Others, such as sports drinks, weed eaters, and running shoes have impacted what we eat and drink and how we work, play and dress and have created billion dollar new industries. The economic impact of these non-technical brainchildren of independent inventors has been enormous."[16] This is

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why the individual inventor is sometimes claimed as "our nations greatest natural resource,"[17] and his protection "is in the National interest if we are to be competitive in world markets."[18]

Naiveté

However, just as America has a tradition of individual inventors, it also has, as the famous circus promoter P.T. Barnum observed, "a sucker born every minute."[19] Dr. Udell explains that three factors combine to make individual inventors easy pickings for fraudulent practices. First, there appears to be a correlation between creativity and gullibility. Inventors are obviously highly creative people and therefore may be more susceptible to fast talking salesman. [20]

Inventors' Lack of Business Experience

A second factor making inventors follow the siren song of promoters is that they realize they need help to commercialize their product. A substantial majority of casual independent inventors (85 - 90 percent) have neither the background nor the inclination to develop their own inventions.[21] "Indeed, most of them hope to license their inventions to an existing business and make money off royalties for the ultimately successful product that is developed and marketed by others," as Ms. Morse observes. [22]

"Experienced practitioners in the U.S. Patent and Trademark Office, the private patent bar, state and university sponsored innovation programs, and the independent inventor community agree that independent inventors face an uphill battle under the best of circumstances, and that the odds of making a commercial success of an idea are very low. Moreover, the process of developing an idea or invention into a commercial success can be extremely time-consuming, complex, and costly."[23]

Individual Inventors' Lack of Credibility

Understandably, most inventors look for outside sources of assistance to bring their ideas to market. "But finding a company that might be interested is daunting and very few people ever attempt that on their own," according to Ms. Morse. [24] After all, independent inventors often lack the credibility to successfully approach corporations with their invention.

"The popular press frequently paints pictures of 'crazy inventors,'" as Dr. Udell explains.[25] "Oftentimes inventors are viewed as a national nuisance. In contrast, Japan often regards its inventors as a national resource. To be sure, there are enough crazy inventors to cause many corporate and professionals to avoid inventors. On occasion their ideas are silly, and re-inventions are fairly common."

"The typical corporate response for an inventor is usually a polite expression of non-interest or boiler plate protective covenants," says Dr. Udell. "Rarely are inventors provided with referrals to legitimate sources of assistance."[26]

"Unaware of sources of assistance or how to proceed, they frequently turn to the popular

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press for information," according to Dr. Udell. "Late night television, radio commercials and advertisements are oftentimes their major sources of information. Occasionally the press will carry a story about legitimate sources of assistance. These do help considerably, but for the inventor who missed the article, the only source of information are the advertisements of the invention promoters."[27]

As a result, Ms. Morse believes that "the [invention promotion] industry exists because inventors are often uneducated about how to bring a product to market and what resources are going to be required to get that accomplished."[28]

Rose Colored Glasses

A third factor that leads to inventors' susceptibility is their blinding parental pride for their invention, a character flaw reminiscent of Homer's Trojans. Casual inventors are typically highly dedicated to their cause. "They are highly prone to believe good things about their inventions and frustrated by the lack of readily apparent sources of assistance," says Dr. Udell.[29] "They, therefore, are easy prey to those who say nice things about their brainchild, and, with no other perceived source of help, sign up."

"Working independently of established companies or other organizations, these individuals often have had to overcome many obstacles to pursue their goals, sometimes sustained in their efforts only by the belief in the merit of their idea," according to Ms. Morse.[30] "Unfortunately, these same fervent beliefs can make them vulnerable to the blandishments of unscrupulous invention promotion firms, who prey on inventors by pretending to share their enthusiasm and high expectations for the success of the idea to which they have devoted so much time and effort."

Robert Lougher, a reformed ex-marketing director for an invention promotion company, and now President of the watchdog group, Inventors Awareness Group, adds, "the invention marketing firms really key in on the inventor's enthusiasm. They tell them what they really want to hear. There's a good chance the product actually has no merit, but someone tells them it's a good idea and they want to believe it."[31]

THE EFFECTS

Money Stolen

The Inventors Awareness Group, a citizen watchdog group, has estimated that 25,000 U.S. inventors will be annually swindled out of approximately $180 million.[32] Although there is insufficient data to validate or invalidate this estimate, it appears to be based on conventional and relatively conservative application of ratio analysis.[33]

What makes matters worse is that "a disturbingly high proportion of inventors who fall prey have little education and few financial resources," according to Margaret Leonard, Esq., District of Columbia Department of Consumer and Regulatory Affairs.[34] "Many are older persons. Some on fixed incomes, such as Social Security disability or retirement pensions, who claim they were induced to sign contracts they could not afford, leading them into serious financial difficulty."

Hopes Dashed

"Invention promotion as it is frequently practiced in this country is not business. It is an intellectual and psychological rape of the creative minds of America," warns Dr. Udell.[35]

Unfortunately, according to Senator Lieberman, "a lot of times in society we tend to view these economic frauds not as crimes, they are. The impact on the inventor here is no different than if somebody walked up to them with a gun and asked them to empty out their bank accounts."[36]

The psychological impact of this fraud is real. As one victimized inventor emotionally stated, "I felt there was nothing I could do but learn from these con artists never trust anyone again. These kinds of people are a cancer on society and they must be stopped. They prey on people who are trying to make a better life for people around them and they pretend they will help inventors by offering false hopes. I feel betrayed, stupid, disgusted, cheated and hurt by these people."[37]

Patents Lost

The U.S. Patent & Trademark Office (USPTO) has seen instances where inventors have lost domestic and foreign patent rights due to the way fraudulent invention promotion firms operate. This may happen in a number of ways. According to Michael Kirk, Deputy Commissioner, USPTO, "for example, the original invention may be of the structure or function of a product – an invention susceptible to utility patent protection. Nonetheless, the organization may arrange for a design patent application to be filed that only discloses the surface of the product. Because it is a design patent application, it need not disclose any structural or functional details of the product."[38]

"Once the organization begins to market the invention, its disclosures frequently bar utility patent protection. This is for two related reasons. First, U.S. law bars utility patent protection to those who offer to sell their invention more than 1 year prior to filing for patent protection." According Bob Lougher, "since the normal length of a contract with an invention promotion company is two years, and during that time the invention has been offered for sale and described in a printed publication, the inventor loses all rights to his idea."[39]

Deputy Commissioner Kirk also notes that the second reason why the disclosures also frequently bar utility patent protection is because "the only patent application that has been filed – the design patent application – did not describe or claim the structural or functional details for which utility patent protection could be sought. Under most foreign systems this bar is even stricter – patent protection is barred for public disclosure of the invention at any time prior to the filing date."[40]

"As a result, customers of unscrupulous invention development companies are left with a patent that is not useful, which was not competently prepared, and for which a high price has been paid. . . Indeed, a patent application that is poorly drafted or not timely filed may result in a loss of rights in the invention not only in the United States but also abroad."

Patent System's Reputation Tarnished

According to the USPTO's Solicitor, Nancy Linck, "We are particularly concerned about the impact these disreputable firms have on independent inventor's confidence in the patent system. As a result of their dealings with unscrupulous invention developers, they come to see the system as frustrating rather than promoting the recognition and protection of their inventions."[41]

"We believe that the problem of unscrupulous invention development organizations is persistent and growing," adds Deputy Commissioner Kirk.[42] "It tarnishes the reputation of the many legitimate organizations dedicated to assisting inventors and undermines the integrity of the system for the protection and therefore encouragement of inventions. Finally, it tarnishes the reputation of the USPTO."

THE SOLUTIONS

Proposed Federal Legislation

In 1995, Senator Lieberman introduced legislation to crack down on phony invention marketing companies. The "Inventor Protection Act of 1995" adopted a multifaceted approach to the problem. The bill defines an "invention promoter" as a person who offers to perform "invention promotion services," which are broadly defined to include marketing and promotion of an invention as well as evaluations of an invention for commercial potential. The definition of an "invention promoter" specifically excludes government officials, non-profit and educational groups, and persons already registered before the USPTO.

The bill would establish standards for contracts between inventors and invention promoters to help inventors make informed decisions about the people they're doing business with. Also, the bill would give inventors who have been defrauded by an invention promotion firm the right to sue the contractor in federal court and receive treble damages. Finally, the bill establishes criminal penalties for invention promotion firms that fail to comply with the disclosure requirements in this act or that knowingly mislead or provide false statements to a consumer.

Senator Lieberman's bill was generally incorporated into H.R. 400, the "21st Century Patent System Improvement Act" (Coble, 1/9/97). Unfortunately, only the portion of Senator Lieberman's bill providing an inventor's civil cause of action was incorporated into S. 507, "the Omnibus Patent Reform Act of 1997" (Hatch, 3/20/97) because of concerns expressed by Senator Orrin Hatch (Republican, Utah), Chairman of the powerful Senate Judiciary Committee.

A hearing on H.R. 400 was held by the House IP Subcommittee on February 26, 1997. The IP Subcommittee favorably reported the bill to the full Judiciary Committee on March 5, 1997, and the full committee voted on March 12, 1997, to favorably report the bill to the House.[43] H.R. 400 was debated in the House on April 17, and 23, 1997, when it was passed and sent to the Senate.

The Senate Judiciary Committee held a public hearing on S. 507 on May 7, 1997. The committee marked up and favorably reported the bill

with an amendment in the nature of a substitute on May 22, 1997.[44]

Federal Trade Commission

The brightest government light in the crusade to protect unsuspecting individual inventors from the claws fraudulent invention promotion companies is the untiring efforts of the FTC. But these malefactors are difficult to prosecute. "Investigating and prosecuting invention promotion companies requires a heavy expenditure of Commission resources because of the nature of the violations and the difficulties of proving widespread oral misrepresentations to consumers who often do not discover for several years that they have been victimized,"[45] notes Phoebe Morse, FTC.

Despite this difficulty, prior to July 1997 the FTC had charged a half a dozen invention promotion firms with deceptive practices.[46] These cases were brought individually, although collectively they have generated in excess of $2 million in redress payments to inventors.[47] Past defendants include:

- International Inventors Incorporated, East;[48]
- Raymond Lee Organization;[49]
- American Institute for Research and Development;[50]
- American Inventors Corporation;[51] and
- Global Patent Research Services, Inc.[52]

"Project Mousetrap"

However, the Commission believed a more massive law enforcement "sweep" approach coupled with a consumer education campaign was necessary to curb this persistent problem.[53] Thus, last July, the FTC announced the results of "Project Mousetrap," a federal-state campaign targeting fraudulent invention promotion firms that promise to help independent inventors develop and market their ideas.

The first prong of "Mousetrap" was a law-enforcement effort. It netted actions against seven "rats," five of which were brought by the FTC, and the remaining actions brought by the Pennsylvania and Florida state Attorneys General. Jodie Bernstein, FTC, announced that the defendants in its five cases alone generated $90 million in annual sales, but provided very little value in return.[54, 55] The defendants named in the FTC cases are:

- International Product Design, Inc., The Innovation Center, Inc., and the National Idea Center, Inc., all of which were headquartered in Washington, D.C.;
- National Idea Network, Inc., doing business as The Concept Network out of Indiana and Wexford, Pennsylvania;
- Davison & Associates, Inc. of Oakmont and Indianloa, Pennsylvania;
- Eureka Solutions International, Inc., and OEM Communications, both doing business out of the West Pittsburgh Expo Mart in Monroeville, Pennsylvania; [56] and
- National Invention Services, Inc., of Cranford, New Jersey.[57]

The second prong of "Mousetrap" is consumer education. Together with the USPTO and the Department of Justice (DOJ), the FTC formed the Invention Promotion Fraud Task Force, which will explore ways in which they can gather and share information about law enforcement efforts, and develop a long-term campaign to give inventors information about invention promotion fraud at key times where they might be especially receptive to the message — for instance, when they receive information in connection with a patent application from the PTO.[58] The FTC and the PTO issued several new inventor education pieces in connection with "Mousetrap": (1) a new consumer brochure, "Invention Promotion Firms;" (2) a consumer alert, "Spotting Sweet-Sounding Promises of Fraudulent Invention Promotion Firms;" as well as, (3) an FTC brief that includes a patent search crossword puzzle, all of which can be found on the FTC's web site at *www.ftc.gov* (no final period).

Since the announcement of "Mousetrap," the FTC has obtained a preliminary injunction against National Invention Services, Inc.,[59] and reached a settlement with National Idea Network, Inc., where two senior officers agreed to pay $40,000 each.[60] If approved by the federal district court, this settlement contains a disclosure requirement typical in these cases. It would require defendants in the future to disclose in writing to potential clients the total number of clients:

- with whom they have signed agreements to research or promote the client's idea in the past five years;
- whose ideas or inventions were licensed by an unaffiliated third party; and
- who received more in royalties or sales from the licensing agreement than they paid to the defendants for their services.[61]

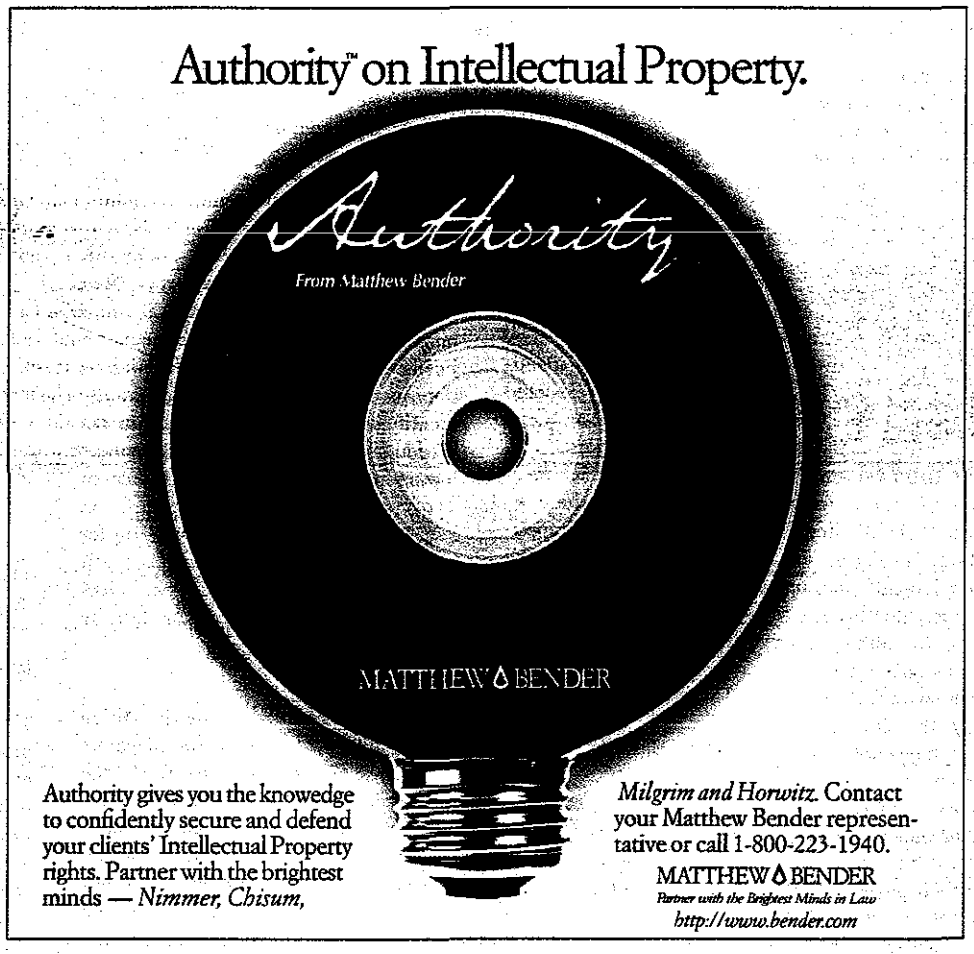
In addition, the National Invention Services, Inc., settlement contains a "cooling-off" period to limit the effectiveness of "hard-sell" sales tactics. It would prohibit the defendants from initiating any contact with the potential client until three days after providing the written disclosure. Also, the settlement would require the defendants to give potential clients seven days to cancel any research or promotion agreement they have signed.[62]

Although the FTC voted 4-0 to approve the National Invention Services, Inc., settlement, Commissioner Roscoe B. Starek, III, issued a separate statement expressing concern regarding the "cooling-off" period and rescission rights provision adopted in the settlement, suggesting that they might hamper efforts to prove deception in future enforcement actions. He further noted that, in general, adoption of cooling-off period and rescission rights may impose unnecessary costs on legitimate sellers of invention promotion services or on other legitimate telemarketers by causing a delay in closing beneficial transactions with consumers.[63]

Patent & Trademark Office

As guardians of the patent system, the USPTO is constantly on the lookout for any patent attorneys or agents who sell their souls to the unethical invention promotion companies and disregard their ethical obligations.

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According to Deputy Commissioner Kirk, USPTO, "When patent applications are filed in the USPTO on behalf of customers of invention development organizations, they are often submitted by practitioners admitted to practice before the USPTO. By statute, the USPTO registers these practitioners to practice before it. The USPTO regularly receives complaints from inventors about these practitioners, including lack of information about the prosecution and status of their applications. When complaints by customers are filed, or irregularities are identified by the USPTO, we investigate registered practitioners, some of whom have been affiliated with invention development organizations."[64]

At the Senate hearing in 1994, Mr. Kirk testified that "we have had a situation where we have uncovered the filing of design patent applications by an attorney working with one of the invention development firms . . . That attorney is no longer on our roles. He has been removed."[65]

"In fact, we have taken two individuals off the rolls and we have cases pending against four others. We have a total of about 17,000 registered patent attorneys and agents, so it is a very small percentage, but nonetheless, bad apples create very bad situations."

"In these situations, these individuals did indeed file design patent applications rather than utility applications and the inventors were not getting what they thought they were getting, if indeed they got anything at all. In addition to that, the attorneys or someone working with the company actually added features to the ornamental aspects of these products so that the inventor himself was not truly even the rightful inventor. So there are all kinds of questions about whether or not all this was wasted money."

Department of Justice

"There is a danger that people in these rip-off businesses take civil sanctions, penalties, fines, frankly, as just another element of the cost of doing their business. But when you get into the area of criminal prosecution and the fear of actual imprisonment, then you are creating a very powerful deterrent," observed Senator Lieberman, formerly the attorney general of Connecticut.[66] "Enforcement brings visibility, negative visibility, and hopefully that is not only a deterrent to promotion companies but also a warning to would-be inventors."[67]

However, Dr. Udell testified that, "the real question here is will criminal acts be allowed to continue because the perpetrators wear white collars and their victims are unappreciated inventors and uninformed in the wiles of the industry?"[68]

Unfortunately, the Department of Justice has not yet chosen to prosecute any invention promoters, even though it could do so under the mail and wire fraud statutes, which are sections 1341 and 1343 of title 18.[69] According to Robert Litt, Esq., U.S. Department of Justice, a crime is committed under these mail and wire fraud statutes only when the individual under investigation acted with the intent to defraud.[70] This intent is generally proven by circumstantial evidence of the behavior of the person under investigation. These types of evidence include false representations about a company's activities, and actions by fraudulent operators to avoid investigation such as salesman using false names and frequent re-incorporations of shell companies.

Tips for Spotting Frauds

According to the inventor education materials published by the FTC and PTO, inventors should realize that, while many ideas are patentable, very few have real commercial potential.[71] Also helpful are tips included in the materials to distinguish between reputable licensing professionals and fraudulent invention promotion companies. Inventors should identify and protect themselves from fraudulent invention promotion firms by keeping the following in mind:[72]

- Be realistic. Few inventions make it to the marketplace; fewer still are commercially successful. You face staggering odds trying to market an invention.
- Beware of any firm that is enthusiastic about your idea, but insists on charging a substantial up-front fee.
- Beware of any firm that offers to evaluate your invention, but refuses to disclose details about its review criteria, its system of review, or qualifications of its evaluators.
- Beware of any firm that refuses to disclose its success rate (the % of clients who make a profit) and its rejection rate (the % of ideas its reviews and finds unacceptable).
- Beware of any firm that claims special access to manufacturers looking for new products, but refuses to document such claims.
- Avoid firms that use high-pressure sales tactics.
- Ask up-front what the total cost of a firms services will be, and get it in writing.

Tips For Finding Reputable Licensing Professionals

Reputable licensing companies and professionals generally have the following characteristics and observe the following professional practices:

- *Royalty Based Fee*: Reputable companies typically work on a contingency basis, and they rarely rely on large upfront fees;
- *Discriminating Clientele*: Even though few inventions achieve commercial success, reputable companies make money because they are extremely choosy about which ideas they pursue;
- *Numerous References*: Reputable companies and licensing professionals often have a long and distinguished track record, and have the ability to provide many high caliber references;
- *Low Profile Client Solicitations*: Like venture capitalists, reputable licensing firms generally do not openly solicit inventors as clients through the mass media. Instead, they market their professional services by publishing articles of interest in professional journals, presenting speeches to targeted audiences, and building a professional referral network of patent attorneys, engineers, scientists and business people;
- *Impeccable Credentials*: Reputable technology licensing professionals almost always have medical, science or engineering degrees, have years of industry experience, and in addition are usually either Ph.D.'s, M.D.'s, M.B.A.'s, or patent attorneys. Also, they are generally active members of professional society's like the Licensing Executives Society (LES) and the Association of University Technology Transfer Managers (AUTTM).

CONCLUSION

I have to admit, I've wanted to expose the world of deceptive invention promotion companies ever since I began writing this column one-year ago, and I'm grateful that my intern's question finally rallied me to action. After all, last year I wrote in this space that, as active participants in the patent system, "we can take satisfaction from the vital role we play in 'promot[ing] the progress of science and the useful arts'."[73] This is why the con-artists that run fraudulent invention promotion firms piss me off. Unchecked, they're base actions threaten to undermine confidence in the system of innovation that this nation's founding fathers sought to Constitutionally protect. They're actions also diminish the professional reputation of the highly qualified, and highly ethical licensing professionals like my colleagues and myself whom, through their efforts every workday, are dedicated to helping American innovation flourish to everyone's benefit.[74]

In short, technology licensing is a very difficult, yet very rewarding profession. It requires mastery of skills in business, law, and engineering. In my opinion, Deputy Commissioner Kirk described the licensing process very accurately when he testified that, "assuming there is some commercial possibility for an invention, the process of licensing or selling the invention can be difficult – and time consuming. It requires research to determine appropriate organizations to contact, making contacts in an effective, professional manner, and following up on the contacts. Once an interested company is identified, a period of negotiation ensues to set the terms for the license or sale of the patent. All of this may take a long time to complete, depending upon the technology and how complicated the deal is likely to be."[75]

Herein lies the gist of my explanation to my intern of why we don't advertise on television like those "other" companies. As my intern may quickly realize through his first hand observation of the complexities of the licensing process, it would be foolish for our company to solicit inventors through the mass media. The reason is simple. Because it would be impossible for our company to adequately represent the thousands, let alone hundreds of individual inventors who would deluge us as a result. Moreover, instead of wasting money on soliciting numerous clients, our operating funds primarily go into the development and marketing of new products from a select number of clients.

Understandably, as a patent attorney and a licensing professional I have met more than my fair share of overzealous independent inventors. Unless they can demonstrate valuable technical expertise or a string of commercially successful

inventions, I, too, am often guilty of looking upon their inventions with more than a healthy dose of skepticism. At least if I decide against becoming the licensing agent for their invention, I will offer them my opinion why. Then, I will either refer them to someone else who may help, or direct them to literature so they may educate themselves. [See especially, this column, Intellectual Property Today from May 1997 (Vol. 4, #5) and January 1998 (Vol. 5, #1)]

In closing, "we're not at all like those firms" because we strictly adhere to the ethical and professional licensing practices mentioned above. Over the last thirty years, our publicly held company, Competitive Technologies, Inc. (CTI), has succeeded in the difficult business of licensing by trying to wisely choose its select group of clients. It primarily represents inventors, including noble laureates, at the world's leading Universities and R&D Corporations. When it comes to representing individual inventor clients, not only must their invention be impressive, but also so should their professional experience and track record. Finally, our company takes on new clients only if it has the ability and capacity to service them properly. That is why we're different from disreputable invention promotion companies. We, and other licensing professionals, have a long and distinguished history of getting results by working hard every day to deliver on our promises.

ANNIVERSARY EPILOGUE

This month's column marks my first anniversary writing for *Intellectual Property Today* magazine. Despite the numerous midnight writing sprees this entailed to meet my editor's deadlines, I would commend this rewarding task to anyone. I thank you for your continued readership and constructive comments. I also thank my publisher, the enthusiastic Doug Dean for suggesting the idea for this column; my editor Steve Barnes and my meticulous secretaries, Jeanne Hancock and Noreen Rando for all their patient help; my friends and colleagues for their advice; and my boss, the indomitable yet human Mick Stadler, for his constant support and encouragement. Finally, I especially thank my family — my father, Professor John Zotos, also the father of computer metallurgy, for encouraging me to learn, and my mother, the eloquent Freda Ann Zotos for encouraging me since childhood to read and write well. Happy Birthday, Mom! IPT

ENDNOTES

1. Servicemark of Competitive Technologies, Inc.
2. "Caveat Inventor: Invention Marketing Scams," Hearing before the Subcommittee on Regulation and Government Information of the Committee on Governmental Affairs United States Senate, 103rd Congress, 2d session (September 2, 1994) (Inspiration for the present article's title).
3. Nico Borsum, University of New Haven, Graduate School of Business Administration.
4. "Testimony of Gerald G. Udell, Ph.D., Director, Center for Business and Economic Development, Southwest Missouri State University," Senate Hearing, *supra* 55.
5. "Testimony of Phoebe D. Morse, Regional Director, Boston Regional Office, Federal Trade Commission," Senate Hearing, *supra*. at 23 (Ms. Morse has since left the FTC, and is now Clerk, U.S. Court of Appeals for the First Circuit, Boston, MA).
6. Udell, *supra* at 19.
7. Morse, *supra* at 24.
8. Raymond Lee Organization, Inc., 92 F.T.C. 489 (1978), aff'd, 679 F.2d 905 (D.C. Cir. 1980)(per curium).
9. Udell, *supra* at 51.
10. "Opening Statement of Senator Lieberman," Senate Hearings, *supra* at 2.
11. Morse, *supra* at 59.
12. "FTC Targets ... 'Reformed Marketer'," *infra*.
13. *Id.*
14. "Testimony of Margaret M. Leonard, General Attorney, District of Columbia Department of Consumer and Regulatory Affairs," Senate Hearings, *supra* at 73.
15. "Testimony of James A Mallett, Investigator, Office of Consumer Protection of the New Jersey Attorney General," Senate Hearing, *supra* at 39.
16. Udell, *supra* at 50.
17. Lougher, *infra* at 48.
18. Udell, *supra* at 18, 49.
19. P.T. Barnum.
20. Udell, *supra* at 50.
21. *Id.*
22. Morse, *supra* at 24.
23. *Id.*at 58.
24. *Id.* at 24.
25. Udell, *supra* at 49.
26. *Id.* at 52.
27. *Id.*
28. Morse, *supra* at 23.
29. Udell, *supra* at 50.
30. Morse, *supra* at 58.
31. Appendix, Senate Hearing, *supra* at 90 (J. Gangloff, "$ marks the spot," Waterbury Republican-American, 2D (April, 1994)(quoting Mr. Lougher))
32. "Testimony of Robert Lougher, President, Inventors Awareness Group," Senate Hearing, *supra* at 15.
33. Udell, *supra* at 53.
34. Leonard, *supra* at 37.
35. Udell, *supra* at 55.
36. Lieberman, *supra* at 33.
37. "Testimony of Lorraine E. Leiner, Inventor," Senate Hearings, *supra* at 9.
38. "Testimony of Michael K. Kirk, Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks," Senate Hearings, *supra* at 65 (Mr. Kirk has since left the USPTO and is now Executive Director, The American Intellectual Property Law Association (AIPLA), Arlington, VA).
39. Lougher, *supra* at 47.
40. Kirk, *supra* at 65-66.
41. "FTC/State 'Project Mousetrap' Snares Invention Promotion Industry," FTC Press Release, July 23, 1997.
42. Kirk, *supra* at 67.
43. H. Gregory, "Washington Legislative Report," American Bar Association Section of Intellectual Property Law, Newsletter, Vol. 16, No. 2 at 32 (Winter, 1998)(citing H. Rept. 105-39).
44. *Id* (citing S. Rept. 105-42).
45. Morse, *supra* at 62.
46. B. Bowers, "Patent Nonsense: Naïve Inventors Fall For Optimistic Pitches Some Marketers Make," Wall Street Journal. at 1, A10, col. 3 (September 11, 1991) ("About ten years ago, a law-enforcement push closed some invention marketing companies and curbed some abuses. But other firms simply changed their names or locales and kept on selling.").
47. "FTC/State 'Project Mousetrap'," *supra*.



48. "For Your Information," FTC Press Release, October 11, 1995.
49. Raymond Lee Organization, Inc., 92 F.T.C. 489 (1978), aff'd, 679 F.2d 905 (D.C. Cir. 1980)(per curium).
50. "FTC Charges Massachusetts Companies With Running Nationwide Invention-Promotion Fraud," FTC Press Release, October 26, 1995.
51. *Id.*
52. "FTC Targets Invention Promotion Firm: Firm's President Had Testified At Hearing Last Year as 'Reformed Marketer'," FTC Press Release, May 23, 1996.
53. "FTC/State 'Project Mousetrap'," *supra*.
54. "Opening Statement of Jodie Bernstein, Director, Bureau of Consumer Protection," FTC Press Conference, July 23, 1997.
55. D. Segal "FTC Warns Inventors of Promotion Scams, Launches Crackdown," Washington Post, at E1 (July 24, 1997).
56. "FTC/State 'Project Mousetrap'," *supra*.
57. "New Jersey Invention Promotion Firm Subject to Preliminary Order Obtained by FTC Following Fraud Charges," FTC Press Release, September 9, 1997.
58. Bernstein, *supra*.
59. "New Jersey Invention Promotion Firm," *supra*.
60. "FTC Settlement with Pennsylvania Invention Promotion Firm Requires $80,000 Payment, Disclosures, and Cooling Off Period," FTC Press Release, November 17, 1997.
61. *Id.*
62. *Id.*
63. *Id.*
64. Kirk, *supra* at 66.
65. *Id.* 27.
66. Lieberman, *supra* at 32.
67. *Id.* at 40.
68. Udell, *supra* at 55.
69. "Testimony of Robert S. Litt, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice," Senate Hearings, *supra* at 33.
70. *Id.* at 31.
71. "Invention Promotion Firms," FTC Brochure, July 1997.
72. "FTC Charges Massachusetts Companies," *supra*.
73. F. Zotos, "Unlocking the Potential of Innovation: Patent Law Turns Sexy and Let's Keep It That Way," Intellectual Property Today, Vol. 4, No. 4, 38 (April 1996) (quoting United States Constitution, Article 1, Section 8).
74. Lieberman, *supra* at 40.
75. Kirk, *supra* at 64.