



Patent Intelligence for Innovators, Inventors, Makers and More – *Video Transcript*

Module 3: Patent basics for patent intelligence

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Hopefully you see opportunities for patent intelligence to be useful throughout the innovation process, but what is it about patents that makes them so useful. Additionally, should they be considered differently than other technical literature? This is where understanding some basics about patents is helpful context.

Patent basics – what are patents?

First, consider the very basics – what is a patent and what is it for? Historically, patent protection was designed to encourage innovation and the sharing of it, rather than hiding it to avoid copying.

A patent is an intellectual property right granted by a sovereign authority, usually a federal government, to the inventors. The patent provides the legal right to exclude others from making, using, or selling the invention for a limited period of time in exchange for an enabling disclosure of the invention.

There is a lot of unpack here. Let's pick this apart to some key points:

- **It's property** – a patent is property. It can be sold, licensed, it carries value as an asset. Its ownership, or assignment, can be transferred, right off the bat – typically patents are assigned to the companies the inventors work for. It's probably in your employee agreement.
- **It's an exchange** – in exchange for the patent right, in addition to meeting other patentability requirements, the invention must be enabled. That means that the disclosure must explain with enough detail to enable a person skilled in the art to carry out that invention.
- **It's an exclusive right** – if a patent is indeed granted, its owner has the right to exclude others from making, selling, or using the invention, which is very different from a right to use.

[Patentability and the extent of the patent right can vary from authority to authority.]

These basics speak to why an individual or organization would seek patents at all. Although it probably goes without saying, but it's worth noting that patents are costly – financially, some conservative estimates are around \$10,000 USD per application. Plus, you're sharing knowledge that underpins your innovation, and there is a risk the application won't be granted. So it's pretty safe to infer that if a company has filed a patent application, they meant to and probably have a reason for doing so. This is why we discussed earlier using



patent data as indication of strategy and intention, even if the exact intention isn't exactly known.

Patents provide a reason, an incentive, for inventors to share their new invention with enabling detail to the public. Even though there is a lag between the time the application is filed and the time it is published and available, it may hold information that the inventors and their organizations had no reason or desire to share, other than trying to get a patent. Some technologies may only be discussed in patent documents. Tech blog headlines often contain mentions of patent applications or newly issued patents as a jumping off point to guess what we might expect to see in the market in the near future.

Sometimes looking at patent data in this way is criticized because many innovative companies keep trade secrets instead of disclosing to the world their innovations via patents. However, when we look at gaining intel, we're looking to be best informed. Patent data provides evidence of what's there, but if something isn't found in patents data, it doesn't mean it's not there. In other words, don't look to patents as the only indication of innovation.

So while we could endlessly debate how successful the patenting system is and has been over time at fostering innovation, in terms of patent data and intelligence, the system has created an incredible source of new technologies disclosed with a lot detail, over time.

One more important point about patents – patents are legal documents. As I mentioned earlier, an inventor or her organization may not want to share their new invention other than to pursue a patent right. While enablement is a requirement, spoon feeding is not.

What patents are not

Which leads me to one more point – what patents are NOT. An idea is not a patent, and a patent is not a product. An idea may be very specific to a problem, but as that idea evolves to a new and inventive technology, that may not be clearly reflected in a patent or application. The patent application will aim to cover or protect the inventive aspects of technology, and it may seek and obtain broad coverage beyond a specific intended use.

Additionally, patents are not products. We know from earlier that patents don't grant you the right to make or use your invention – they provide exclusive rights. Also, products may be developed that utilize patented technologies, but often, the line between patent and product is not so obvious. To an outsider, the underlying patents may not be apparent, and on the flip side, an organization may think a product is protected by a patent, but it is not. When considering patent intelligence along with intel from other sources like products and research studies, it's important to remember that they are not the same.

Understanding a company's products or products in a space is important, and if you are currently analyzing products, consider looking to patents to provide different insight, that when taken together can provide a fuller understanding of the company or space. We know that patents explain technologies in great detail, and some products have very limited information available or simply information serving a different purpose. Patents can identify technologies before they hit the market. Patents reveal an investment and



potential intention commercialize a technology – at least some of which would be missed by looking to products alone.

Patent criteria

We can continue to dissect what a patent is by understanding patent criteria. Patentability can vary between authorities around the world, but we can discuss the broad basics to help understand patents as a source for intelligence.

- **Subject Matter** – what can be patented is very broad. Imagine that when the laws were first conceived, they knew they could not even imagine technology of the future, so typically subject matter that is NOT patentability is called out, rather than what is. For example, in the US, only laws of nature, natural phenomena, and abstract ideas are expressly excluded. In terms of patents as a data source, expect to find a wide range of inventions.
- **Some amount of utility or usefulness** is also a typical requirement. It may seem a very low hurdle, like subject matter, but applications are rejected because of failure pass these first two criteria.
- **Novelty** – the invention must in fact be new. Sometimes people ask the question “how new.” Well, it has to be actually new, and more accurately something that is not already publicly known. It’s not a sliding scale – the invention is deemed to be novel or not.
- **Non-obviousness / Inventive step** – the invention is not obvious and should be sufficiently inventive to warrant a patent. This is hard to judge. Little may seem obvious to a layperson, and quite a lot may seem obvious in retrospect. This standard varies a bit between authorities, and in the US, they look from the perspective of a person having ordinary skill in the art. That may or may not help make the determination easier, so this one is the cause for a lot of case law. This is a higher hurdle and the cause of many patent applications to be rejected or patents invalidated.

There are many more details to these patentability requirements, which vary country to country. Knowing these hurdles exist, even at a high-level, help to understand why a patent application may be questioned or rejected and why patents may be challenged or litigated. Failing or clearing these hurdles can speak to weakness or strength of the patents.