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## FP MAGAZINE

### A better mousetrap

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By Av Utukuri

While 90% of patents are improvements on existing inventions, legal realities can make filing for such patents complicated because intellectual property law is designed to protect existing patent holders. If the invention you are adding something to is one to which you hold the rights, the process is relatively easy. Provided your improvement follows the Canadian Intellectual Property Office (CIPO) criteria of being new, useful and inventive, you should have very little difficulty in getting a patent.

The process becomes more complicated when the existing invention belongs to someone else. Although CIPO acknowledges that many patents are improvements to existing ones, you need to make sure you do not infringe on the rights of the patent holder of the existing invention. This means you need to be very clear in your application about why your patent is new, useful and inventive, otherwise your patent application will either be a long and drawn-out process or unsuccessful.

As someone seeking a patent for an improvement on an existing invention, you need to obtain a licensing agreement with the owner of the existing invention. In turn, the owner of the existing invention must license the improvement from you if they want to use it. Here is an example: Andrew invents and is granted a patent for a round doorknob and locking mechanism. A second inventor, Beth, then invents a handle that makes the door easier to use. Beth would need to sign a licensing agreement with Andrew if she wants to use his locking mechanism as part of the device. Andrew needs a licence from Beth if he intends to incorporate the handle in any future doors he sells.



When filing for a patent in Canada, CIPO recommends including prior art, the published body of knowledge relating to your invention. In this section, you discuss the previous problems inventors have faced in this area and how they attempted to solve them. Shortly after that, you should discuss how your invention solves this dilemma and how your invention is different than previous attempts to solve this problem.

Patent examiners will often object to one or more claims on patent applications, so you should be sure to have the means to

refute any potential objections. It is best to consult a patent agent or a lawyer who specializes in this area to ensure your patent application is successful. Additionally, your rights when it comes to improving existing inventions vary depending on legal precedents set in the different jurisdictions in which you intend to produce or market your invention. This means it is important to seek professional assistance in every one of these jurisdictions.

Av Utukuri is the CEO/CTO at Nytric, a Canadian innovations company

avutukuri@nytric.com

Posted in: Financial Post Magazine Tags: Canadian Intellectual Property Office, Intellectual Property, Patent Law

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