

The Limited Monopoly

"PIMP MY INVENTION" - If It Sounds Too Good To Be True...

by John Hammond, PE and Robert Gunderman, PE

...Then It Probably Is an Invention Scam Company.

Bill is really excited. He has been working in his garage for months on his new invention, the "SqueegeeBot." It's a little spider-like robot that can crawl over the outside of a house and clean the windows. It finally works! It's time to start looking for manufacturing and marketing assistance. But first things first. He knows that it is best to get a patent application filed before going on the road.

Bill has seen the midnight ads for InventionBling Corporation and decides to check out its web site. He soon realizes that IBC is a one stop shop. They **guarantee** a patent, AND they're wired in to a huge network of manufacturers and sellers. They can do it all! Bill signs a deal to pay IBC \$5,000 up front and ten percent of future royalties. In return, IBC will get him a patent, get him hooked up with that network, and get that royalty stream of cash flowing.

Fast forward two years. Bill is now into IBC for \$20,000. He has a fancy inventor's notebook and piles of glowing marketability studies from IBC, and a design patent for the SqueegeeBot... but no manufacturing, no sales, and NO royalties. Growing impatient, he's shopped the SqueegeeBot around himself, and has been told by three different manufacturers that they are not interested. Worse yet, after consulting with a registered United States patent agent, he learned that it is too late to apply for the U.S. utility patent that he needed in the first place, because more than a year has passed since he went public with his invention. SAY WHAT??

An Easy Mark

Bill was an easy mark, because he didn't even attempt to do the fundamental upfront business planning needed to commercialize his invention. Had he done so, he probably would have realized that the heavy lifting in bringing a product to market is in manufacturing and marketing, and that finding a "one stop shop" to do it all for him was a long shot at best. So he got scammed by a fraudulent "invention promotion" firm.

They're much akin to the snake oil salesmen of the 1800's, who peddled their "Elixers of Life" in the gold mining and oil patch towns of the West. Like their predecessors, invention scammers all promise the world, with neither the capability nor the intention of delivering. A typical invention scam company is pretty easy to spot, as they all share certain characteristics. In fact, the U.S. Patent and Trademark Office has an excellent downloadable brochure¹ that lists the "Top Ten Scam Warning Signs." A few of our favorites from the USPTO list:

- "Slick ads on radio, TV, and magazines."

Well, they're not all slick. Remember that

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cartoon Neanderthal guy rolling the stone wheel?

- "Salespersons want money right away... upfront." Then they want more for a report, and more for market research, and more for manufacturability studies...
- "You are guaranteed to get a patent or your money back." No one can guarantee issuance of a patent that has real value. But they beat the rap on that one by using this:
- "You are advised to apply for a design patent." Design patents protect how things look, not how they work. If enough "ornamental features" are added to just about any product, it can be the subject of a design patent. So the scammers load up the patent drawings with lots of superficial ornamentation (often not even being the work product of the inventor), and obtain a worthless design patent. While design



patents have their place and can be a useful way to protect intellectual property, obtaining a design patent on an invention that is best protected by a utility patent is not in the best interest of the inventor.

The USPTO's Public Forum

The USPTO does not investigate complaints or participate in any legal proceedings against invention promoters/promotion firms. However, under the American Inventors Protection Act of 1999, it does provide a public forum² for the publication of complaints concerning invention promotion firms. The Federal Trade Commission has also chimed in with the publication of a Consumer Alert, "Spotting Sweet-Sounding Promises of Fraudulent Invention Promotion Firms."³ These are great resources for independent inventors – as long as they take the time to find and study them.

Ultimately, criminal prosecution or civil

litigation is typically required at the state level to bring invention scammers to justice. And since the principals of these firms rarely see jail time, the process has aspects similar to the "Whack-a-Mole" carnival game. Once they've been driven out of business in one location, they often pack up, move their operation, and reincorporate elsewhere.

Score One For the Good Guys

Not so for agents or attorneys licensed to practice in the Patent Office. The USPTO's Office of Enrollment and Discipline will come down hard on a patent practitioner who participates in an invention promotion firm's misdeeds. Case in point: patent attorney Michael Bender of St. Petersburg FL, who was employed on a contractual basis by the American Inventor's Corporation, was recently excluded from practice in the Patent Office. In performing his \$7500/week "engagement" with AIC, Bender was found by an administrative law judge to have violated numerous rules of practice for patent practitioners that are prescribed in 37 C.F.R. 10. Bender subsequently challenged the decision, all the way up to the U.S. Court of Appeals for the Federal Circuit. On June 21, 2007, the CAFC upheld⁴ the lower courts' decisions, and Michael Bender, Esq. is out of the practice of patent law for good.

The moral of the story? Stay away from invention promotion firms – for commercialization and patent assistance. There are plenty of reputable non-profit inventor associations and public sector economic development agencies for the former. As to the latter – find a competent, ethical patent practitioner, and don't hesitate to check references when doing your shopping. As the old saying goes - reputation is everything.

1. <http://www.uspto.gov/web/offices/com/iip/documents/scamprevent.pdf>

2. <http://www.uspto.gov/web/offices/com/iip/complaints.htm>

3. <http://www.ftc.gov/bcp/online/pubs/alerts/invna1rt.shtm>

4. Bender v. Dudas, C.A.F.C. 2006-1243, 6/21/07.

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