



Podcast Episode #46 – When not to start a startup - how to license your idea (Part 2), with Stephen Key of inventRight, USA

RAW TRANSCRIPT OF INTERVIEW

Stephen: A PPA gives you one year to put patent pending status on your particular idea or service. It allows you to shop it around and show companies you know here's my idea, it's got a patent pending. So they kind of step back a little bit, it gives them of that OK, there's maybe something new here. So that provisional patent application is a wonderful tool. Not all attorneys like to recommend provisional patent applications because they want you to spend money on a patent. So it's as simple as that. You know you'd knock on their door, they don't want you to leave, they want you to stay and spend your money. So there's a conflict a little bit here. They know if you leave, you might not come back, number one. Number two, if they tell you to study the marketplace, see if you have a marketable, idea there's a good chance you won't come back either.

But the point is a provisional patent application you can do yourself. You can have a patent attorney write it for you but I'm a big believer that you'll do a better job than a patent attorney will on a provisional patent application. The reason why is that you're going to care more than they will ever care. You can do more homework than they will ever do for you. And I talk a lot about it. And in one of my books, it is a blue book, I do a lot of videos on YouTube inventRight TV but I always and I write a lot about it as well.

But the whole... Getting back and I'm really passionate about this as you can tell because I believe you can license an idea just with a provisional patent application. And the reason why I know that for fact is that I get to see a licensing agreement every single week and no one has a patent. They don't care. Now that just really rattles everybody. I'll tell you the reason why they don't care. Number one, most ideas go in and out of the market fairly fast. Most products don't have a long lifespan anymore because of our appetite for new is so great. What's new? Every year "What's new? What's new? What's new?" So if your product has four-year lifespan, that's fantastic, that's pretty good. So short lifespan of products.

Number two, you can't stop the copycats. It's impossible. The biggest companies in the world cannot stop them. So why do you think we can? And because of Amazon it's impossible. You could have a product on a Kickstarter campaign and a month later you're going to see it selling on Amazon. You can't stop it.



OK. So what can you do? You can file a good provisional patent application that has value. It takes away risk, which these companies like. Companies can file it. Maybe you can file a non-provisional, maybe they can. The bottom line is maybe yes, maybe no. So a good provisional patent application, finding a company that really embraces us is the best protection. So I don't think companies steal especially because of the social media, especially because you know it used to be you could tell one person, now I could tell 10000 people how a company treated me wrong. So time is perfect for us right now. And you can file a provisional patent application anywhere in the world, in United States. The only one place maybe France wants you to file one there first. But basically everybody else you can file. You know, you can live in Australia, the UK, we see people filing all over the world into the U.S.

Balint: Yes, here because I live here in Switzerland, I see companies filing first here in Switzerland and then they try to go worldwide, including the U.S. Would you then turn it around this order, so first filing in the U.S. and then elsewhere?

Stephen: You could do either one, I believe, because most of the world belongs to the PCT, it's a treaty so we all abide by certain intellectual property laws that they do identify provisional patent applications and giving you that year to investigate, kick the tires, do some homework before you file a non-provisional patent application. I would always recommend anyone to look at what your country's rules and regulations because they're all a little bit different. In Australia, they've got something called an Innovation patent, which we don't have in the U.S. France want you to do something a little bit different. And most of the sites now, which are wonderful government sites they explain all that. So that's the first thing you want to do. You can always designate your particular country you know before that year is up if you file in United States first. You see I can file in the United States for 65 dollars in most situations. And then before the year is up I can file a PCT and designate Switzerland or designate Australia. So learn the rules and then go to the sites and read up about it and understand it and you'll be amazed how wonderful these tools are and they are affordable, from the standpoint you can file your own provisional patent application.

Once you start filing patents, that's a whole another game because it gets very, very expensive. But I also believe that most patents don't have value. I also believe that most people are filing patents that don't have a marketable idea. I also believe that they are filing patents out of fear. So what I'm trying to teach them says look you need to control your own destiny. You need to do your own homework. You need to do all these things so if you do want to file a patent, you're going to file one that is marketable, you're going to file one that has the benefits and you're going to file... You're going to have all this information that you supply to your patent attorney so he can really do a good job for you.



But what's happening today is that people are fearful, especially startups. They start up and they're doing all these things and then they say, "Well, who's going to handle the intellectual property?" and they go, "We'll just hire an attorney to do it." You cannot do that. You have to control your own destiny regardless if you're an individual or a startup.

Balint: Just to complete this picture. So you would recommend both ways. So either filing it in your home country, or elsewhere, or in the US first. Basically one should consult with the government's sites on what the best practice is. But first even if somebody doesn't look it up because maybe there is a lack of information, would you then start in the US first? Because there for sure one has the PPA, the provisional patent application case, and then you have the time of one year to file the final one or even additional ones that can be combined into a final one. Right?

Stephen: Well, I'm not a patent attorney and I cannot give legal advice. But that's what I would do. I do believe too that Open innovation it's a little bit more popular here in the United States at the moment. I'm seeing other places open their doors. It is happening. Of course, the United States is a big market. We all know that. But it's simple to do. That's what's crazy. That's so amazing how simple it is to do.

But here's the catch. You need to understand how to write a well-written provisional patent application and you need to do a few steps to allow you to have that information so it does have value. For instance, make sure your product is unique. Make sure you know that you do have a small point of difference. That's important. And you do that by doing a Google image search, you can look at all products all over the world. Make sure yours is not out there, first step. Second step, do a patent search. Go to Google Patents and look around and see if there's any prior patents that are similar to your idea. And don't panic if you do. It's actually a good sign that you find a patent that's similar. It means that you might be on to something but also recognize your point of difference.

If you want to build a prototype at that point, see I'm not against prototypes but when you build them, if you want to build a prototype and understand what works and what doesn't work, that's a great time to do it. Putting together your marketing material so your attorneys know what is the big benefit I'm going to license or bring to market, that's important too. You're really putting together all this information that your patent attorney won't do because it's not his job to do that. It's your job to do that. And I've seen a lot of people don't understand that. You can't be the expert, it takes a little bit of time. But I do believe if you follow the steps that I'm talking about, I am a big patent holder and I've defended my patents in federal court against a small toy company LEGO. I know. So I understand... People are like, "You did?" Yes.



That you know intellectual property is a great tool, understand it, I love it myself but it is available to all of us. We individuals can play the biggest game in the world if you just understand those tools that are available.

Balint: One last thing about the PPA that when you file it, it gives you a certain protection. And is the protection high enough even for let's say high tech startups to consider this as an option? And later when you want to file additional ones, do you have to scope it down, narrow it down or do you have the freedom to add to it, to its scope?

Stephen: Okay, you what's amazing? Intellectual property has a lot of value and it's not just the value of the protection. When you're a startup and you file good intellectual property that shows potential investors that you know your point of difference and you're carving out an area that reduces in their minds some risk. So it is important. You also have to understand if you're a startup and it has to do with software, maybe a method of doing business, you have to understand enough about that and you can research it of how to bring those two together in such a way that you will be issued a patent. And that's a little bit more tactical for a lot of people but all that information is available and it's all on the Internet. You can understand the subtleties of filing that intellectual property that combines apps, software with people doing physical activities.

So yes, it is important, it's important. I don't care what product you have to give yourself that perceived ownership, even to give yourself the ability to raise funds. See, most startups, most startups are not successful because of their intellectual property. They're successful because of the funding and they got the funding because they filed intellectual property. See that there is a point of difference there. So yes, I would say you can do that and yes, you cannot add to it but you can file another provisional patent application within that year. So I can file one now and maybe a couple of months from now I learned a couple of new things, I'll file another one. And I can bundle those together if I would like but I have to use the date of the first one that I filed to combine the other ones.

Balint: Yeah. So it is it is possible. Thank you for this detailed answer and also for pointing out this topic, this point which is that...For startups, the PPA gives them the ability to raise funds which is important for the company to survive or to get going even at the beginning.

Stephen: Yes, yes. I don't think enough has been written about that, to tell you the truth.

Balint: Yeah, I absolutely agree. I think it's an unexplored territory. Even though you're talking about it but you know the thing is that it's not coming from too many



outlets yet so that the people can start noticing that it makes sense or it could be even they come cross this topic because they just live in the world, of the previous world that has been in existence which is that you have to file a normal patent application.

Stephen: Yeah. What's going to happen, I'm going to write more and more about this topic and I'm going to write it from a business perspective, not from a legal one, to really how to use the tools especially if you're an individual or startup, unlimited funds, you're on a budget. How can you still do it? I'm going to write about it because you still can. So I'm fascinated by it as you can tell.

Balint: I would love to read more about this topic. So I'm one of your future readers and I can also talk on I guess on behalf of the startups and listeners, I think it would be really, really valuable.

Stephen: Thank you.

Balint: So that is one more question that I would love to ask and I ask this from every guest that I have on the show which is mistakes, or things that go wrong and not as planned. What mistakes would you highlight in your entrepreneurial career? You know, that served as lessons.

Stephen: Looking back, I think if I was going to start out and I wanted to be an entrepreneur, I would definitely work for a startup as fast as I can. And I would raise my hand on every possible thing they want me to do and learn from their mistakes. I think I was a little too determined to do it all on my own. And I think you need help. And I think you're going to need advice and I think you are going to need mentors. So work for somebody else and don't be so stubborn. I think that was a big mistake I made.

Balint: That's a very good point. I also agree. I think mentors and even reading books, valuable books, can give you the shortcut or as you highlighted it working for a startup gives you the practical experience.

Stephen: Yes, absolutely.

Balint: So now going back to our previous topic, I can't help actually before going into the last round of questions, the ultrafast round of questions, I can't help asking this special question which is that you mentioned that you need to explore more the topic, more your idea before you approach the attorney to come up with the finalized, basically the PPA, the document. So would you even try to get help from the outside, from people like freelancers? Because nowadays there are these wonderful tools, platforms like Upwork, Freelancer or Fiverr who could help you with some elements



of your idea and then you would be the one integrating the idea and thinking about the vision and creating new things.

Stephen: Well, you have to be very careful of asking people's input on your particular product because if there's intellectual property involved, there could be co-ownership. So there's a lot of smart engineers and people that can help you maybe figure some things out but make sure you have them sign a nondisclosure agreement, with work-for-hire language, meaning whatever they do or whatever they contribute to your idea you still own. I think that's very, very critical.

I also believe like I said you have to and maybe I didn't mention this, the other thing I wanted to say if you have a good idea when you're filing your provisional patent application try to steal it from yourself, meaning what other variations could someone else come up with that would possibly work around your idea. Because I said at the very beginning I don't think companies steal ideas. I think they work around your ideas. So with that mindset of trying to come up with variations you might have to get help from the outside - an engineer, electrical, mechanical. You might want to bring in a manufacturing person, say, "Look, can you manufacture this?" And they're all going to give you advice but you got to make sure that advice if you incorporate it or use it, that you still own it and you could do that with a nondisclosure, with work-for-hire language. And I would recommend that.

Balint: That's a good point – stealing your own idea. I also have a couple of firsthand experience writing patent applications as a co-author. So I know what you're talking about. I think however it's not used to the max or enough this kind of knowledge, this insight that you should attack your solution from other sides how other people, your competitors, would attack your problem, to basically crack it.

Stephen: Yeah, I don't think enough people are doing that. And I do believe that patent attorneys might help you write broad language but not maybe redesign or steal it from yourself. That's what you need to do. And you don't want them to do that. That's not their job. That's your job. And the reason why that's so important is because when I was in federal court defending my patents we argued over two words against LEGO. Two words!

And I have 20 patents on that technology and people always ask me, "Stephen, why so many patents?" Well, those are all variations to keep everybody out. So I really understand that that picket fence approach of keeping everybody out of this thing that's creating revenue for you. Someone asked me, "Why do you know so much about this?" It's very simple. When the money was coming in I had to find a way of keeping everybody out so I was thinking, "How would they get around me? How would they work around me?" And that's why that technology... One of my popular



technologies was creating income for over 20 years and there's 20 patents on one idea.

Balint: So you do have many hats, you wear many hats but I would say these are all creative hats.

Stephen: Well, it's creative in the sense of getting paid. Yes, I guess it is.

But I have to say I just thing. Because that sounds terrible. I do want to say one thing. Most creative people, I believe including myself, got into this business and it wasn't because of the money. They got into this business because of the love of creation, the love of seeing something new that didn't exist before. And if you truly do love it, the money will always follow. But then you've got to protect it.

Balint: I know what you mean. I also believe I'm more creative than the average person. And I do love the creation independently of the money topic.

So now, going back to the ultrafast round that I wanted to start out, that I wanted it to continue with. So I would like to ask you four questions and it would be great if I could get relatively short answers. First question. If you could time travel, go back in time when you were in your 20s, what notes would you take and give to yourself?

Stephen: Everything will be fine. You're okay. You're not crazy. Everything will be fine and keep being curious.

Balint: Yeah. So, just relaxing. The second question. If you had to name one book, which one had the biggest impact on your career?

Stephen: Recently, there's a book I read that I used all the time, even today it's very rarely to read a book and use one piece of that book every day and that's *The Obstacle Is the Way* by Ryan Holiday. And it's really simple: every day you're going to have obstacles but try to turn those obstacles into opportunities.

Balint: I heard about him. I haven't read his books yet but I know that he is pretty famous with his books and he's a young guy. So the third question. I'm amazed by habits. What kind of habits do you have?

Stephen: I'm a very structured, it's funny, I'm an extremely structured individual still being creative, very structural. I get up about every day at the same time, I walk in my office, I do the same type of researching on the Internet. That's really fun for me to learn and I do the hard work in the morning and I do the fun work in the afternoon. I try to reward myself. But it's very, very structured. Those are my habits of still always trying to be curious and you can never learn enough and you can always be a student. There's just so much to learn.



Balint: This is a unique combination because many times when I see creative people like artists they are not very well structured. You can see it on their desk that it's a mess or in their studio that it's a mess. But you are structured so you have both sides united.

Stephen: I've learned the hard way that in order to be very productive. I guess it's structured chaos a little bit. I guess someone coined that. Yes.

Balint: So you can have your high moments of creativity but also you can enjoy your free time when you're doing other things. Yeah.

So the last question. In your work, because you do have many students from all over the world, what kind of cultural differences would you highlight which you didn't know about and you learned about it when interacting with your students? And you know you could even maybe resolve such or overcome such topics, such issues?

Stephen: I didn't realize how much the weather had an attitude on people. I can see it in the way they work, the questions they ask. I can see it. In fact, we talked about it the other company-wide. I can tell a story about students from Texas to students in the UK to Australia. And I didn't realize the weather had an attitude on their entrepreneurial goals.

Balint: For example?

Stephen: And I'm amazed. I'm amazed. People up let's say in Wisconsin, in Minnesota, a lot of farming communities. They have a change of weather and they've been fixing things so they're kind of a do-it-yourself. You have people down in Florida where it's nice and sunny all the time, everybody is vacationing and so everything's kind of OK. No one is doing it themselves and everybody has a really good attitude about things. I think people in New York are pretty busy. It's pretty crowded. They want to get to those particular issues quickly and they just kind of march a little faster. So you have to kind of treat them a little differently. So in California there is the attitude "You can do anything." And so we have a culture of you're not trapped by your upbringing. You're not trapped by some of the traditional things that we're trapped by our thinking, it's more free thinking. So all over the world is very different. And I like that actually. And that kind of allows us as educators to help them maybe think differently and question some of the things that they think they cannot do.

Balint: Which culture or which region's attitude, mindset do you impersonate? And where you live, do you take on the attitude of the people?

Stephen: Yes and no. I live at 6000 feet and I live at Lake Tahoe. So I live at a destination that's a vacation destination. So it's very pretty and people come here throughout certain seasons, so some seasons it's very quiet which I really like. And



most people when they get up here they're on vacation so everybody's in a good mood. So I like that very much yeah. The problem with this most people are on vacation and I still like to work, I still love to work. I still am fascinated by having a structured day. And they're always like, "Stephen, why don't you come out and play?" So yes, it's a little unusual for me to be in an environment that everybody is kind of playing which is I am little structured.

Balint: So I would like to now close off this interview because I would like to let you enjoy the holiday surroundings maybe soon because soon it's going to be afternoon approaching.

So I love the interview that we could explore this topic, to get with the listeners further even more topics than what you discuss in the book. I believe I did learn new things because compared to the time when you published a book you've gathered some more insights as you also referred to it that you've read more about PPA provisional patent applications, how they are. So thank you very much. I appreciate it.

Stephen: No, thank you very much for having me.

Balint: Thank you.