

# Why patenting doesn't make economical sense anymore

work in progress...

---

## Table of contents

[Knowledge is becoming abundant.](#)

[Technology advances very fast.](#)

[Difficult to protect](#)

[Knowledge cannot be treated as physical property!](#)

[It becomes more and more difficult to patent something and to maintain the patent.](#)

[We'll see a clash between patent holders and open communities of design and innovation.](#)

[There is a strong tendency to outsource innovation and design.](#)

[Protecting knowledge means slowing down collaboration, which is counter-productive.](#)

## Knowledge is becoming abundant

Anyone in the world can aggregate massive amounts of information with the help of the Internet. Knowledge is not scarce anymore. The Internet acts as a huge repository of information, which gets structured and turned into knowledge. Web 2.0 applications have turned the Internet into a massive, never ending brainstorming session. If you can't find some information on the Internet ask a question on a few specialized forums and you'll get your answer in no time.

## Technology advances very fast

Today, a technology can become obsolete even before the patent is granted, which can take anywhere from 3 to 8 years. By the time you get a patent you can launch a newer version of the product or your competitors can come up with a better idea. It doesn't make sense to invest in protection when that protection becomes useless even before you get it.<sup>1</sup>

Patents are increasingly used as defensive mechanisms, to insure a monopoly on consumables, for example. HP would sell you a very cheap printer for which you need to spend a ton of money on disposable ink cartridges. They include a few cartridges with the printer not to make you realize their plans to lock you in for years on their proprietary ink cartridges, when you make your decision to purchase the printer. That ink cartridge, which is actually a low tech device, is protected by a patent. Not because the knowledge that goes in it is so valuable, but because HP wants a mini-monopoly on ink. They want you to buy ink only from them. Their business model relies on revenues from consumables.

Open products based on open standards are becoming increasingly popular, because they are more generative and they can create ecosystems around them, which tend to enforce every product that belongs to it. Economists call that **network effects**. Moreover, open products and open standards offer a greater continuity for the customer and lower switching costs, which is a great value proposition, making the product more attractive.

## Difficult to protect

We are living in a strongly interconnected global economy. It becomes almost impossible to protect commercial rights over a product-idea or a design, on a global scale. New products are copied now within months after their first release.

## Knowledge cannot be treated as physical property!

---

<sup>1</sup> there is a limitation to technological advancement, which is the adoption speed by the market.

The patenting system is an extension of the notion of private property, as it applies to land ownership. There is this notion of knowledge domain, which is the analogous of a piece of land, delimited with a fence. Owning the commercial rights over a domain of applied knowledge relies on the factually false assumption that everything within that domain “belongs” to the patent owner. All our inventions rely on knowledge produced by other individuals before us. Philosophically speaking, knowledge and applied knowledge can only belong to humanity. Only **know how**, the thing that resides in you, and that enables you to do something useful, belongs to you, and only you.

In order to make something be considered something else, which it is not, you need to create an institution. The *unnatural* needs to be maintained. *Natural* things sustain themselves. If you decide to force people to treat knowledge as individual property, which is not, sooner or later, as the context shifts, the true nature of knowledge will resurface, and you will face problems. The institution that you create to insure that knowledge is treated as individual property will simply collapse. The patent was created for economical reasons, which are removed from the true nature of knowledge itself. The parallel between knowledge and physical property is only artificially maintained by this institution, and can be maintain so only in some circumstances. The world is changing. The Internet affects how knowledge is produced and shared, and it affects the way knowledge is turned into wealth.

## **It becomes more and more difficult to patent something and to maintain the patent**

The Internet is a huge repository of ideas and a huge brainstorming place. That makes it harder to be original and to delimit the domain of some “intellectual property”. One can always find bits of a “new” idea if one searches the Internet long enough. Once information is on the Internet it should be in the public domain, therefore it should NOT be patentable.

Patenting will soon become a joke, unless we’re talking about a new synthetic molecule, never imagined before. It becomes almost unjust to patent something on grounds of originality, because there is a good chance someone else on this planet has thought about something similar. Before the Internet age it was almost impossible to scan the entire planet for bits of an idea. This lack of information was actually the ground on which originality was claimed, because not finding something is often confused with its non-existence. What happens when more and more people put their thoughts and ideas on the Internet and make that accessible to the entire population of our planet?

This is NOT a moral argument as for why we should or shouldn’t patent. It is an economical argument, because once the grounds on which a patent is claimed are destroyed the entire system becomes unstable. Patent holders become more vulnerable to attacks, which makes it more costly to maintain a patent.

## **We’ll see a clash between patent holders and open communities of**

## **design and innovation**

Read this short blog post: [The collapse of the patent system](#).

### **There is a strong tendency to outsource innovation and design**

The [Fiat mio](#) was created by the crowd. We are now realizing that creativity doesn't grow in a box. The Internet gives us access to practically the entire world's population. We can ask everyone out there to participate in the design of a new product. There is no technical problem in doing that, we can use social media. What is difficult though, is to craft a message powerful enough to spread virally and to make people wanting to respond. There is no problem in getting feedback from millions of people responding to the call. What is still difficult, but not impossible, is to filter and to structure the massive input from the crowd. If you master these processes, you can rest assured that no box (vertically integrated company) can take you out on innovation and design.

When ideas come from the crowd, when your innovation and your design relies on the crowd, how can you claim commercial rights for it? You cannot! The very process by which you are collecting and distilling the intelligence of the crowd is incompatible with patenting. What comes from the crowd must belong to the crowd, otherwise the crowd will simply not participate in your silly game.

In other words, if you want to stay innovative you need to open yourself to the crowd, you need to open your design and innovation, and therefore you need to abandon the patent.

### **Protecting knowledge means slowing down collaboration, which is counter-productive**

Collaboration is becoming very important today, because the new technology allows us to take it to higher scales. Using modern tools of communication, coordination, and automated logistics enables us to form massive collaborative networks, able to amass tremendous amounts of resources and to focus them on particular problems. Whoever masters the art of creating and maintaining these networks of innovation, production, and distribution will definitely play an important role in the world's economy. But one needs to realize that the modular, flexible and inclusive architecture of these massive networks leaves no room for rigid structures and overly defensive mechanisms. Value must flow freely within these self-organizing systems in order to sustain them.

Instituting exclusive commercial rights on some applied knowledge can affect the internal dynamics within these networks in a fundamental way. This would lead to the creation of rigid bodies within the network, because exclusivity acts as a powerful incentive, and will certainly

attract individuals to it. All these individuals that benefit from these exclusive rights will form a distinct group, with a well defined common cause. This introduces a separation, which is a movement against the trend of openness and inclusiveness proper to collaboration.