The clock is already ticking: a practical guide to turning your patent into a product

11 min read | 19 June 2026

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Securing a patent is a genuine achievement, one built on creativity, insight, persistence and massive investment of time, effort and money, all distilled into a government-issued right that recognises and protects an invention. What too few patent holders hear on the day the certificate arrives, however, is that the finish line they just crossed is actually a starting line, and the race has rules most inventors have never been taught.

The clock is already running. Under US law, a utility patent generally expires 20 years from the earliest effective filing date, not the issue date; so by the time the certificate arrives, the holder has substantially less than 20 years of enforceable rights remaining.

Unlike a trademark, which can last indefinitely through continued use, a patent is a depleting asset. It grants the right to exclude others from making, using or selling the claimed invention, but it does not fund development, build a sales channel or

generate revenue on its own. Every month without a commercialisation strategy is a month of potential value lost for good.

Ideally, commercialisation planning begins during prosecution, using the pendency period as an opportunity to identify partners, test market interest and lay the groundwork for a transaction. Whenever the planning starts, what matters is taking that first step. Many deals are structured around pending patent rights, but the strategies in this article apply equally whether the patent is still pending or already in hand.

What follows is a practical roadmap: the deal structures that move an invention from legal right to market position, the terms that drive outcomes and the preparation that separates a deal shaped by the inventor from one shaped by circumstance. Each path carries a different balance of risk, reward and retained rights, and choosing among them is often the most consequential decision an inventor will make.

I. Your patent is powerful, yet it is not a business plan

The first question after issuance is not “who might buy my patent?”. It is “how do I want this invention used going forward?”. That framing may sound abstract, but it is the decision that shapes everything that follows: the deal structure, the economics, the counterparties worth pursuing and the rights worth protecting.

The answer depends on whether the invention is a one-time asset, a broader technology platform or something the inventor may need to use again in different ways down the road. Relatedly, a shelved patent generates no revenue. Practicing the patent can take shape through enforcement and commercialisation, whether by granting rights to others, partnering on development or building a business around the invention. Only then does the patent start doing its job: deployed in commerce, generating returns and backed by a commercial presence that gives real teeth to the underlying legal rights to exclude others.

For a discrete, single-application invention, the priority is usually certainty and speed: get the deal done, maximise present value and move on.

For platform technology, where later products, improvements or derivative applications may all grow out of the same core concept, the calculus is different. The first deal should not unintentionally foreclose the next one. A broad exclusive grant may solve today’s commercialisation problem, but unintentionally impede tomorrow’s opportunities.

Narrower grants, field-of-use limits, territorial restrictions and multiple partnering arrangements may better preserve long-term value.

For many inventors, the reality is somewhere in between: monetise now but retain certain rights, whether for internal use, research, a non-competing field or a future product, that remains important to the broader strategy.

There is a path, however, that the traditional partnering conversation often overlooks entirely: going it alone. Not every inventor needs a third party to commercialise a patented invention.

If the inventor has the financial resources, technical expertise and market access to bring the product to market independently, self-commercialisation can preserve full ownership, full control and the entirety of the economic upside. There is no partner to negotiate with, no royalty to share and no risk that the invention ends up on someone else's shelf.

The catch, of course, is that self-commercialisation is expensive and demanding. Developing a product, scaling manufacturing, navigating regulatory requirements, building distribution channels and marketing to customers all require capital, infrastructure and specialised know-how that many inventors do not have.

Funding alone can be a significant barrier; product development timelines can stretch years beyond the patent's issuance date, and every month of development is another month off the patent term. Moreover, a patent only grants the right to exclude others; it does not necessarily grant the right to practice the invention. If the final product incorporates technology covered by someone else's patents, the inventor may need to secure additional licences to avoid infringement. And the finished product will almost certainly need its own intellectual property protections beyond the patent itself: trademarks for branding, trade secrets for manufacturing processes, copyrights for software and potentially design patents for product aesthetics.

The patent is the foundation, but it is rarely the entire intellectual property portfolio needed to compete in the marketplace.

This is precisely why many inventors ultimately consider partnerships, not because self-commercialisation is impossible, but because the cost, timeline and expertise required often make a licensing deal, collaboration or sale the most attractive route to value within the patent term. The key is making that choice deliberately rather than by default.

Whichever direction the inventor chooses, the commercialisation strategy should begin with the future-use question, not with whoever happens to call first.

II. Five paths from patent to payoff

For inventors who decide to work with a partner, the commercialisation landscape offers five main structures, each with distinct trade-offs among economics, control and risk.

The right choice depends on how much ownership the inventor wants to retain, how involved the inventor wants to be in patent development and how quickly the inventor needs to see a return.

(1) An outright sale is the simplest route. The buyer acquires the patent rights, the inventor receives immediate value and the relationship is largely over at closing. This works well when the inventor values certainty and simplicity over long-term participation, but the trade-off is giving up future upside if the technology turns out to be worth more than expected. Before signing, the inventor should pressure-test whether any rights should be retained or carved out.

(2) A licence keeps ownership with the inventor while granting a partner defined rights in exchange for upfront payments, milestones and running royalties. Licensing offers more flexibility than a sale because the licence grant can be tailored by field of use, geography, exclusivity and term, and it is the most common middle ground between full divestiture and going it alone. But if the grant is too broad, or if an exclusive licensee has no real obligation to commercialise, the inventor can end up with the worst of both worlds: no control and no revenue. Diligence protections, milestone requirements and termination rights are essential guardrails.

(3) A licence paired with a collaboration goes further by adding shared development work, cost-sharing and joint decision-making. This structure is especially useful when the invention needs technical refinement, clinical development or regulatory clearance before it is market-ready. The inventor gets a more active voice in how the product evolves, but the added complexity of allocating responsibilities, funding commitments, improvement ownership and exit mechanics means both sides need to invest in the relationship, not just the technology.

(4) A joint venture offers the greatest potential upside but is much closer to building a business with someone than signing a bilateral deal. Both parties contribute assets (intellectual property, capital, expertise, market access) into a shared enterprise. That means governance, board rights, funding obligations, deadlock resolution and exit mechanics all need to be negotiated up front. A joint venture fits only when the expected long-term value justifies the complexity and both sides are genuinely prepared to manage a business together.

(5) Finally, a sale with a licence-back can be an effective hybrid when the inventor wants to transfer ownership but retain limited rights for a defined field, territory or use, preserving, for example, internal research use or a non-competing application.

The key drafting challenge is precision: the retained rights must be defined clearly enough that both sides understand exactly what the inventor may still do after closing. Without that precision, the carve-out becomes a source of future disputes rather than future flexibility.

None of these paths is inherently better than the others. The best choice depends on the inventor's appetite for control, complexity and risk, and on a clear-eyed assessment of what the inventor actually needs from the deal. The worst outcome is defaulting to whichever structure the first interested counterparty proposes.

III. The devil is in the deal terms (and the preparation)

Whatever path the inventor chooses, the quality of the outcome will depend less on the label applied to the transaction and more on the actual terms in the agreement. Two deals both called a "licence" can look entirely different depending on scope, economics and enforcement mechanisms. The provisions that matter most fall into three categories: scope, payment and performance.

(1) Scope terms define what the partner gets and what the inventor keeps. Field-of-use language is critical where the invention supports multiple markets; an inventor licensing medical applications may want to reserve industrial uses for a different partner or for self-commercialisation. Geography matters for the same reason: territorial splits can materially affect how much room the inventor has left for future transactions. Exclusivity deserves equally careful attention; a significant share of licensing deals are exclusive, and an exclusive grant can entirely shut off the inventor's ability to work with others. And the deal package is rarely limited to patent claims alone; it often includes know-how, technical data, prototypes, software, trademarks and regulatory assets.

(2) Payment terms beyond just the headline numbers shape the real economics. In many licence-based transactions, economics are built from upfront payments, milestones and running royalties. The royalty base matters: royalties are most commonly calculated on net sales, and small definitional changes can meaningfully shift actual dollars received over time. Inventors should also be attentive to less visible terms, like minimum payment obligations, sublicensing revenue shares and anti-stacking provisions. The practical lesson: never evaluate a deal by looking only at the upfront payment or the nominal royalty rate.

(3) Performance protections are the provisions that keep the invention from being shelved after the agreement is entered. A deal can look attractive on signing day and still disappoint if the partner acquires or licenses the technology and does little with it. That risk is especially acute in exclusive arrangements. Diligence obligations, milestone-based development commitments, clear cost allocation and, critically, termination and reversion rights give the inventor a path to unwind the relationship or recover usable rights if the partner fails to perform. These are not

boilerplate provisions; they are the clause set that determines whether the inventor's patent actually reaches the market.

Before any of those terms are negotiated, the inventor needs to be deal-ready, and deal-readiness starts well before the first phone call with a potential partner. The foundation is a clean chain of title: assignment records, inventor paperwork and documentation of any third-party contributions should all be complete and internally consistent, with a clear line from invention to inventor to the entity that will be at the signing table.

A potential partner who encounters gaps in ownership during diligence may slow down, reprice or walk away entirely. It also pays to distinguish early between background intellectual property and any later improvements, so both sides understand from the outset what is included in a potential deal and what stays with the inventor.

Equally important is protecting competitive advantage that lives outside the four corners of the patent. The patent disclosure itself is public, but additional value often sits in accompanying know-how: manufacturing processes, design tolerances, test data, software logic and regulatory work product.

A well-structured nondisclosure agreement should be in place before any substantive conversation begins, and the inventor should think carefully about staged disclosure, initially sharing only what is required for a counterparty to evaluate fit, and holding back the most sensitive material until the parties have agreed on key commercial terms.

This caution is especially warranted during the patent prosecution phase, when the patent's scope is not yet fixed and premature disclosure of strategy or claim direction can create unnecessary risks.

Anticipating the first term sheet, the inventor should know which deal terms are non-negotiable and which have room to move. The most expensive mistakes in patent commercialisation are not drafting errors; they are concessions made under time pressure on issues the inventor did not think through in advance. Scope, exclusivity, territory, performance obligations, economics and post-closing control over patent prosecution and enforcement are the levers that drive a deal's long-term impact, and the time to decide where to draw the line on each of them is before negotiations begin, not in the middle of them.

Conclusion

A patent is a powerful tool, but power without action is wasted. Commercial value comes from the choices made after issuance, and critically the choices made during prosecution that set the stage for what comes later. The inventors who

commercialise most effectively tend to share three habits: they decide early how the invention should be used going forward, they choose a commercialisation path that matches that objective rather than defaulting to the first deal form presented and they focus on the provisions that will actually determine the outcome.

Commercialisation is not a single yes-or-no decision about whether to do a deal. It is a structured process for aligning the invention's future with the right transaction and then documenting that transaction carefully enough to protect value, control risk and improve the odds of successful execution.

For inventors who approach commercialisation in that fashion, with experienced counsel at their side, the patent becomes more than a legal right. It becomes a practical asset that can be positioned, negotiated and commercialized with confidence.

The clock is already ticking. The question is what you will do with the time you have left.

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