

## Guarding the Mousetrap

It is one thing to daydream about a great idea, a new and better mousetrap that will make you millions, but quite another to turn it into a profitable venture. If you are trying to license the rights to your improved mousetrap you run the risk that some rat may steal your idea. Here are a few ways to guard your mousetrap and avoid being caught in your own snare.

If you've developed a potentially marketable mousetrap, you are faced with a dilemma. To make money from your invention -- you must generally license the rights to it to another business, often a manufacturer or distributor. But in promoting the mousetrap to potential licensees, you run the risk of disclosing so much information that the invention may be stolen or no longer protected by law.

If you truly believe that you have built a better mousetrap, you shouldn't disclose this information to anyone, except an intellectual property attorney. Any patent may be deemed worthless if it can be proven that your idea was already in the public domain and others will be free to exploit your new means to snare undesirable rodents.

Under a new law recently enacted in the United States Virgin Islands, the "Uniform Trade Secrets Act", if you reveal your secret to the public, you lose your rights to the secret. In other words, once you've disclosed the secret, you can no longer claim that you have exclusive rights to it.

Under patent law, if you disclose details of an invention to the public before obtaining a patent, you must apply for patent protection within a year of making the disclosure. If you don't, the invention will no longer be patentable and anyone can use it. If you have filed a provisional patent application, you still must file a regular patent application within a year.

So how can you discuss your new mousetrap with potential business partners without jeopardizing your rights? If your new mousetrap potentially qualifies for a patent, it may be worth while to file a provisional patent application and obtain "patent pending" status. Most often, this will deter those that may try to copy your mousetrap.

However, if you determine that your new mousetrap is probably not patentable, the best way to protect yourself is to have prospective licensees sign a nondisclosure or confidentiality agreement before you disclose any secrets. If someone signs a nondisclosure agreement and later uses your secret without authorization, you can sue for damages.

Nondisclosure agreements vary in format, but are generally signed by two parties, acknowledging that an idea is being disclosed to one party by the other, with the understanding that the party being shown the idea will not use it or disclose the information to another, without the written approval of the other party.

Every nondisclosure agreement provides a definition of the confidential information. Every nondisclosure agreement also specifically excludes some information from protection, meaning that the receiving party has no obligation to protect that information. Information is not protected if it was created or discovered before or independent of any involvement with you.

The person you're sharing confidential information with generally must hold the information in confidence and limit its use. The "Uniform Trade Secrets Act" provides that the receiving party cannot breach the confidential relationship, induce others to breach it or induce others to acquire the confidential information by improper means. Most companies accept these obligations without discussion.

It's always safest to get a prospective licensee to sign a nondisclosure agreement, but you may not always be able to convince them to do so. When that happens, you are left in a vulnerable position. If you disclose crucial information without the agreement, you risk losing your rights to the mousetrap. If you don't disclose it, you risk losing a business opportunity. Probably the most important factor to consider is the reputation of the person you're dealing with. If they have a poor reputation, the dangers of losing your secrets outweigh the business opportunity.

The best advice to any potential inventor for guarding the mousetrap is to be wary of the rats and consult with an attorney experienced in intellectual property law who can advise you as to best means to solicit business partners for their new venture in rodent extermination.

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