Why Patent Pending is not ‘Patented’ but is Still Valuable

Note: This is the seventh in a series on IP for Startups. To view previous articles please click here.

**What’s the difference between patent pending and patented?** If your invention is ‘Patent Pending’, it means that you have applied for a patent relating to it. ‘Patented’ means that your application has been examined by a national Patent Office, and that you have satisfied all requirements for the Patent Office to register your patent, and that the Patent Office has published the Patent grant. See [Tip #6](https://www.jmbdavis.com/tip-6-3-things-know-patents/) for more information about “patented” status.

If you decide to withdraw your patent application, or if the Patent Office rejects your application, and you do not satisfy all the requirements for patentability, then the patent application will eventually ‘lapse’ or become ‘abandoned’, and your invention will no longer be patent pending.

**Why is it important to get my patent registered?** Let’s just say that having a **Patent** rather than a *patent pending* gives you all the rights of a property that is registered in your name, rather than an application. You must file an application to obtain patent rights. But merely asking for something doesn’t mean that you already have it (or that you will necessarily receive it).

**So if having ‘patent pending’ doesn’t give me anything, why is it so important?** Patent pending status is very important. It is your notice to the public that you have applied for a patent for your invention, and that once you receive a patent you will be able to enforce your patent rights against an infringer. In many cases, this will be enough to deter a potential competitor from copying your invention. It also informs a potential investor (and other potential partners, who may even be potential infringers) that you take your intellectual property rights seriously.

**Bonus Question:** “So if I understand correctly, having a patent application isn’t the same as having a registered patent, and I’ll only get the patent registration if my application meets the requirements of the Patent Office. If that’s the case, wouldn’t it be better to wait until I get my patent registered before proceeding with my business?”

**Answer**: That’s a reasonable question. It’s true that a patent **application** is not enforceable against someone practicing your invention, and there’s no guarantee that you’ll actually get the patent that you have applied for (or at least the claims that you would like). However, in most cases, if you wait for a patent to be granted, you may end up delaying your business launch by several years, and by that time, you may have missed your chance for business success. It’s usually better to make you initial filing so as to establish your **priority right**, and then launch your business.

Do you have questions about the above information? Are there subjects that you would like to hear about? Let me know!