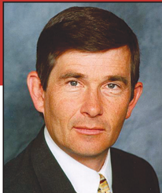

Common Patent Myth

Q Since the Patent Office issued my patent, doesn't this mean that it would now be impossible for me to infringe on someone with a similar patent?

A Having your own patent does not mean that you have freedom to operate. The Patent Office rules only in patentability, and does not consider infringement. It is entirely possible that your invention is an improvement within the scope of someone else's patent, or that you are using a component or method step patented by a third party.

Q: My competitor is doing exactly what is described in my patent, so isn't he infringing on me?
A: Infringement is measured by the patent claims, not the detailed description of the invention. Your competitor will literally infringe only if he or she does each and every thing required by at least one claim of the patent. Leaving out a single element avoids literal infringement. However, doing more than the claim requires generally does not avoid infringement.

Q: A prior patent claims something quite different from my pending claims, so why won't the Patent Office allow my patent?
A: An invention is patentable over the prior art only if it is both novel (different in some way) and nonobvious (not just an obvious modification). The entire contents of a prior patent or publication can be used as prior art, not just the claims. In addition, even if a single prior art reference does not disclose or suggest the entire claimed invention, the Examiner can combine two or more references to come up with the combination that you claim.

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