

5 Critical IP Mistakes Growing Businesses Make

The Insider's Guide to Protecting Your Company's Most Valuable Assets

Fargo Patent & Business Law

Introduction: The Hidden Vulnerability in Your Business

Dear Business Leader,

If you're reading this guide, you've already accomplished what many entrepreneurs only dream of—building a successful, growing business with innovations worth protecting. Congratulations on reaching this milestone.

But with success comes a new set of challenges. As your company continues to grow, your intellectual property becomes increasingly valuable—and increasingly vulnerable. At Fargo Patent & Business Law, we've worked with hundreds of established businesses that discovered, often too late, that their most valuable innovations were at risk due to common but costly IP protection oversights.

This guide outlines five critical IP mistakes we've seen growing businesses make. More importantly, it provides straightforward solutions to help you avoid these pitfalls and build lasting value through strategic IP protection.

Whether you're developing new products, improving manufacturing processes, or creating innovative solutions for your customers, proper IP protection transforms vulnerable ideas into secured business assets that drive real value.

Let's ensure your hard work remains protected.

Sincerely,

Tom Kading

Attorney, Founder
Fargo Patent & Business Law

Fargo, ND: (701) 566-7571 - Colorado Springs, CO: (719) 867-4004
info@fargopatentlaw.com Website: <https://fargopatentlaw.com/>

Mistake #1: The “Public Disclosure” Trap That Eliminates Patent Rights

The Problem

Many businesses unknowingly forfeit their patent rights through public disclosure before filing a patent application. In the United States, inventors have a 12-month grace period to file after public disclosure—but **this protection doesn’t exist in most other countries**. Once your innovation is publicly disclosed, patent rights in most international markets are immediately lost.

What counts as public disclosure?

- Trade show demonstrations
- Marketing materials describing the innovation
- Public presentations or speeches
- Sale of products incorporating the innovation
- Detailed descriptions in catalogs or websites
- Non-confidential discussions with potential partners

Real-World Example

An inventor developed an innovative medical protocol that significantly amplified existing treatments. Excited about their breakthrough, they shared their concept with their primary physician and public officials to gauge interest before investing in patent protection. By the time they approached us more than a year later, they had permanently lost patent rights in the U.S. and all foreign markets. They also lost the ability to protect their concept as a trade secret and ultimately abandoned all commercial pursuits.

The Solution

- **Implement a pre-disclosure review process** where innovations are evaluated for patent potential before any public sharing
 - **File provisional patent applications** before any public disclosure, trade show, or product launch
 - **Use non-disclosure agreements** when discussing innovations with potential partners, customers, or suppliers
 - **Develop clear internal guidelines** about what information can be shared publicly and what should remain confidential until protected
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Mistake #2: Timing Missteps That Cost Thousands

The Problem

In intellectual property protection, timing isn't just important—it may be everything. Many businesses miss critical filing windows or file in the wrong sequence, leading to unnecessary costs or incomplete protection.

Common timing missteps include:

- Waiting until product launch to begin the patent process
- Missing the 12-month deadline to convert a provisional application to a non-provisional
- Filing international applications too late
- Delaying trademark registration until after significant brand investment
- Publicly disclosing a concept before filing a patent application

Real-World Example

An energy technology company filed a provisional patent application for their new energy transfer system, then spent more than 12 months perfecting the design. By the time they were ready to file their non-provisional application, they had exceeded the 12-month conversion deadline. They were forced to file a completely new application, losing their original priority date and jeopardizing protection against competitors who had entered the market in the interim.

The Solution

- **Create an IP calendar** with critical deadlines and review points
 - **Align IP strategy with product development timelines** to optimize protection timing
 - **Build in buffer time** for all IP filings to avoid last-minute rushes
 - **Consider staged protection strategies** that evolve with your product development
 - **Implement regular IP portfolio reviews** to identify upcoming deadlines and opportunities
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Mistake #3: The Dangerous Myth of “Automatic Protection”

The Problem

Many business leaders operate under the misconception that their innovations are automatically protected under copyright law, or that keeping processes as “trade secrets” is sufficient. While common law copyright protection is automatic for original works of authorship, it **does not protect functionality, ideas, or methods of operation**—the very aspects that often make business innovations valuable.

Common misconceptions:

- “We don’t need patents because we have copyright protection”
- “Keeping it as a trade secret is enough protection”
- “If we invented it, others can’t legally copy it”
- “We own the IP because we paid a contractor to develop it”
- “Our innovations aren’t patentable because they’re software-based”

Real-World Example

A tech firm developed software and methodology for an add-on suite of tools, assuming their code was protected by copyright. While copyright did protect their specific code implementation, it didn’t protect the underlying methodology. A competitor was able to reverse-engineer the approach and implement it with different code, legally capturing a significant portion of the market without infringing any IP rights.

The Solution

- **Conduct a comprehensive IP audit** to identify all protectable assets
 - **Develop a layered protection strategy** that might include patent, trademark, trade secret, and copyright
 - **Understand the distinct protection each IP type provides** and where gaps might exist
 - **Create proper contractual protections** with employees, contractors, and partners
 - **Consider patent protection for software-implemented innovations** focused on technical improvements or solutions
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Mistake #4: Incomplete Protection Creating Expensive Portfolio Gaps

The Problem

Many businesses focus exclusively on patenting their core products while overlooking ancillary innovations, manufacturing processes, potential future applications, or complementary services. This creates significant gaps in their IP portfolio that competitors can exploit.

Common portfolio gaps include:

- Protecting products but not the manufacturing processes
- Securing utility patents but overlooking design patents
- Protecting core technology but not adjacent applications
- Focusing on patents while neglecting trademark protection
- Insufficient international protection in key markets

Real-World Example

A drug manufacturer patented their innovative drug formulation but didn't protect the manufacturing method that optimized its performance. A competitor developed a similar drug using a different manufacturing process. Because the process was not claimed in the patent, the competitor was found to be non-infringing and captured significant market share by offering a lower-cost alternative.

The Solution

- **Conduct regular IP portfolio assessments** to identify protection gaps
 - **Consider the entire ecosystem** around your core innovations
 - **Protect manufacturing processes and methods** that provide competitive advantages
 - **Develop a strategic international filing program** aligned with business markets
 - **Build a balanced portfolio** of patents, trademarks, and other IP protections
 - **Look beyond today's products** to protect tomorrow's opportunities
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Mistake #5: The Critical Business Decision Most Companies Make Backward

The Problem

Many businesses approach IP protection as a legal expense rather than a strategic business investment. They make protection decisions based on legal costs alone, without evaluating the potential business value or competitive advantage each protection might provide.

Signs you're making this mistake:

- IP decisions are made solely by legal without business input
- Protection budget is determined before strategy is developed
- All innovations receive the same level of protection regardless of value
- IP strategy isn't aligned with business and product roadmaps
- ROI isn't considered when making IP protection decisions

Real-World Example

A motor sports parts manufacturer, concerned about legal costs, opted to abandon their nonprovisional patent application which claimed benefit of a provisional filing. They saved approximately \$6,000-\$10,000 in legal fees but left the door open for competitors to copy their product. Within two years, several competitors had effectively put him out of business because he had no enforceable patent rights.

The Solution

- **Align IP strategy with business objectives** and market strategy
 - **Develop tiered protection approaches** based on business value
 - **Involve both technical and business leaders** in IP protection decisions
 - **Create an IP valuation model** to help prioritize protection investments
 - **Focus protection dollars on innovations with the highest business impact**
 - **Regularly review and adjust your IP strategy** as business priorities evolve
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Your Protection Roadmap: Next Steps

Now that you understand the five critical IP mistakes growing businesses commonly make, you're already ahead of many of your competitors. But awareness is just the first step. Here's how to put this knowledge into action:

1. Assess Your Current Situation

- Which of these mistakes might your business be making?
- What immediate risks need to be addressed?
- What key innovations remain unprotected or under-protected?

2. Develop a Strategic Approach

- Create an IP strategy aligned with your business objectives
- Prioritize protection based on business value and competitive impact
- Build processes to avoid the common pitfalls outlined in this guide

3. Implement Protection Systems

- Establish internal processes for identifying and evaluating IP
- Create disclosure protocols and employee training
- Develop standardized confidentiality practices

4. Regularly Review and Adapt

- Conduct quarterly IP portfolio reviews
- Adjust protection strategies as your business evolves
- Stay informed about changes in IP law that might affect your protection



Conclusion: Transform Ideas into Protected Business Assets

Intellectual property protection isn't just about legal rights—it's about building lasting business value. When approached strategically, your IP portfolio becomes a powerful business asset that increases market advantage, builds company valuation, and gives you the freedom to grow with confidence.

At Fargo Patent & Business Law, we understand both legal and business perspectives, helping established companies transform vulnerable ideas into protected assets with inherent value. Our approach connects legal strategy directly to business outcomes, creating barriers to entry that keep competitors at bay while building tangible value in your company.

Take the Next Step

Ready to ensure your innovations are properly protected? Schedule an IP Strategy Consultation today to begin maximizing business value from your innovations.

Contact Fargo Patent & Business Law:

- Phone - ND: (701) 566-7571
- Phone - CO: (719) 867-4004
- Email: info@fargopatentlaw.com
- Website: <https://fargopatentlaw.com/>

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