

Defensive Publishing Scoring Card

The purpose of this scoring card is to assist you to decide whether to file a patent application or to have defensive publishing to protect your freedom of operation.

The bottom line you need to remember is that it is a business decision whether to file a patent application or not. If you decide not to file a patent application, you basically only have two options. One is to keep the invention as a trade secret. The other one is to disclose the invention by defensive publishing.

To use this scoring card, you simply choose one of the choices for each question. Once you finish the four questions below, please go to page 2. There we will tell you how to interpret your answers.

1. What is the lifetime of this invention that can be used in a commercial product?
 - a.) >10 years
 - b.) 5-10 years
 - c.) 3-5 years
 - d.) 1-3 years
 - e.) <1 year
2. What is the likelihood that a patent will be granted with the desired patent claim scope?
 - a.) We are very confident to have a patent granted. We have conducted extensive prior-art search already and the claim scope was appropriate.
 - b.) We are confident to have a patent granted. We have conducted some prior-art search already and the claim scope was appropriate.
 - c.) We are confident to have a patent granted. Although we have not conducted any prior-art search, the inventors know what is going on in the industry.
 - d.) We hope to have a patent granted. Although we have not conducted any prior-art search, the inventors are creative.
 - e.) We are trying our luck.
3. What is your plan of commercializing this invention?
 - a.) We will develop a product line based on this invention.
 - b.) We will improve a product by using this invention.
 - c.) We will seek licensee for this invention.
 - d.) We will put it on to the shelf and wait for any opportunity.
 - e.) We will not commercialize it.
4. How much budget do you have for protecting this invention in USD?
 - a.) >\$20,000
 - b.) \$10,000 - \$20,000
 - c.) \$5,000-\$10,000
 - d.) \$3,000-\$5,000
 - e.) <\$3,000



Add the score for each question by using the scoring scheme below. The lowest score possible is 0 and the highest possible score is 38. The higher the total score you have, the more likely you should use defensive publishing. On the other hand, the lower the score you have, the more likely you should file a patent application.

Question 1:

- a - 0
- b - 2
- c - 5
- d - 8
- e - 10

Reason: The patent application process can easily take 3 years. You cannot forbid others to copy your invention until you have a granted patent. If the life cycle of your invention last fewer than 5 years, a granted patent (assume the patent office grants you one) will have very limited benefits to you.

Question 2:

- a - 0
- b - 2
- c - 4
- d - 6
- e - 8

Reason: The most common reason why a patent application is rejected by patent office is found relevant prior-arts. Without knowing what is out there, it is very likely the invention is not completely new. Even the patent examiner may not be able to find an identical prior-art for the invention, the scope of the patent claims may be reduced.

Question 3:

- a - 0
- b - 2
- c - 2
- d - 8
- e - 10

Reason: If there is no plan to commercialize the invention, why to spend money to patent it?

Question 4:

- a - 0
- b - 2
- c - 6
- d - 8
- e - 10

Reason: It takes money to have a granted patent. From experience, it would need about USD 10,000 to complete the patent process in the US. For each additional country, it will take another USD 4,000 to 8,000. It is possible to spend USD 5,000 up-front to apply for the patent application and raise additional funding later for the prosecution and international stages.