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We would be happy to schedule a visit to your facility to help you review the good and not so good IP practices you use. Sign up on our web site with the link below.

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- [EKMS, Inc.](#) A strategic IP management partner of TechRoadmap.
- [The Patent Cafe](#) An on-line portal for IP matters.
- [AlvaMed, LLC](#) A medical device consulting company we work with.
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:: bruceahz@techroadmap.com

:: <http://www.techroadmap.com>

617-243-0007

Welcome

I recently received a thoughtful and thought provoking email from a reader. The email chided me for casting Iron Grip as the bad guy in my August Directions, [The Iron Grip of an Obvious Patent](#).

In part, the email said:

Iron Grip only did what patent law and precedent told them to do: use their recently-issued patent to protect their invention. [...]

Iron Grip did not issue the patent, the PTO did, and obtaining one is pointless if you don't enforce it. They simply did what business is told by the PTO to do, protect their invention by going through the proper channels, and spending the time and of course money to get their patent issued. [...]

They were as wronged as (you indicate that) USA Sports was, maybe more so since they had to pay to get the patent issued in the first place.

There are so many questions begged by this email.

- Are you wronged if the PTO allows a later-judged-invalid patent?
- At what point in the patent process should you cut your losses?
- Should society protect the naive inventor? If so, how?
- Does your patent attorney have an ethical responsibility to save you from yourself?
- Should there be some higher standard of invention to get a patent?

Read "Victim or Victimizer" to learn more.

● [Where was I when you needed me?](#)

Okay, maybe it's a bit self-serving, but when I read the Iron Grip email I couldn't help but feel TechRoadmap could have saved Iron Grip a lot of money if we had been there to help.



Acting as your Director of Intellectual Property, TechRoadmap can help you understand what's going on in the patent system. While only your patent attorney can give you legal advice, TechRoadmap can help you get: **"The Right Patent, at the Right Time, at the Right Cost"**

● [Victim or Victimizer](#)

When I first received the email ([see full text](#)) suggesting that Iron Grip was as much, if not more, a victim as USA Sport, my reaction was not sympathetic. But the more I thought about it, the more I understood the author's point of view. **What does the IP world look like if your don't come from a high-tech background**, where IP is the lifeblood of your company?

The the email's major argument is that **Iron Grip was naively lured into the patent system** by the general hype about the value of patents and that they *"did nothing wrong, other than trust the PTO."* Furthermore, *"it was the PTO who erred if the patent was [invalid]"*, so it is **the PTO who wronged Iron Grip**, who *"had to pay to get the patent issued in the first place."*

I can accept that Iron Grip started their patent quest as naifs, but that line of defense only goes so far. Their quest was guided by patent counsel and included multiple sophisticated tactics that ultimately led to the patent issuing. **If Iron Grip remained naive, it was their patent counsel who kept them in the dark**; didn't they wonder what was going on during the 3.5 years between initial rejection and final issuance? Didn't they ask about those attorney's fees? Isn't Iron Grip responsible for the actions of their attorney?

Once the patent issued, the email says, **"Iron Grip only did what patent law and precedent told them to do: use their recently-issued patent to protect their invention."** *Your article gives the impression that Iron Grip wanted to "squeeze" other companies, and that they were strong-arming companies in the process.* *"Why shouldn't they enforce it? The PTO said it was a patentable idea, and they relied on the expertise of the PTO."*

Patents are contracts with society that give their holders certain rights; why you get a patent and **what you do with it are (or should be) business decisions and the PTO and patent law don't pretend to be giving you business advice**. I've had clients who only file an application so they can mark their product patent pending for a few years. In Iron Grip's case, it is clear **they wanted a patent to earn license fees** (as opposed to creating barriers to entry into their market or maintaining a competitive advantage over the other players) and once they had their patent that's what they went after.

If Iron Grip feels as victimized as the email writer thinks they are, then it is **their attorney who has failed them by not explaining that he was exploiting the weaknesses in the PTO (see June 05 Directions) to get them a patent that the PTO didn't think had much merit, as witnessed by the many obviousness rejections.**

It is true that Iron Grip did appear to be following recent precedent - that is, they exploited the weaknesses in the USPTO to obtain a (weak) patent and then used that patent to squeeze (yes squeeze) license fees out of competitors, who's ROI calculation is that it's better to license than to fight.

Do you think that Iron Grip is a victim (of the PTO or their attorney) or were they playing the system for what it was worth? [Let me know your opinion.](#)

● [Tip of the Month](#)

Remember the adage about the person who serves as his own lawyer having a fool for a client. When you don't have organic resources with the time, the interest, or the expertise to address an issue, outsource!

- For legal advice - hire an attorney
- For business advice - hire a management consultant
- For managing your IP - hire a Director of Intellectual Property. TechRoadmap provides Director of IP services on an outsource/part-time basis

● [Disclaimer](#)

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