Is it OK if I Can Hardly Recognize My Own Invention in the Patent Application?

This Patent Stuff and My Semiconductor Business – Part 27

Welcome to this post about patents and chips. Not a lot has been written about this combination, but there is a lot to know, especially for the innovators and entrepreneurs themselves. In this three-weekly series, I talk about various aspects, from a dual perspective of a patent agent and a semiconductor entrepreneur. If you like the article and read it on LinkedIn, give it a thumbs up, and/or click on Follow. If you like to work with us for your next patent, "contact us" info is on www.icswpatent.com. You can also subscribe/unsubscribe for short email alerts when the next post is available.

Well, it depends if it is OK. It is not OK if your invention hasn't been described and shown, or if your implementation is missing. But your invention may be described in a light that you haven't necessarily considered all that much. When you made your invention (your Eureka moment), you were probably trying to solve a particular problem, using a particular technology. You had a certain perspective, and from that perspective you suddenly saw a solution that you had never seen before.

Of course it is possible to write a patent that mentions the problem and describes your solution. The problem with semiconductors is that once you have a smart idea, there are a zillion ways to implement it. A patent doesn't have a lot of value if everybody can learn about your idea and then implement it just a bit different than you have done. You want to be in control of all different ways of doing what you did.

For this reason, when I write a patent, I put a lot of effort in finding out what exactly the invention is. What exactly is it that you do different than everybody else? And why? Then my intuition comes into play. My intuition can tell me how brilliant your idea is. You can gain a lifetime of my respect. Unfortunately, my intuition cannot tell me if somebody else who is also brilliant didn't invent the same thing 10 days or 10 years ago. So if the field is crowded, I may recommend doing a prior art search, so that we don't go into the process blindly. What has been invented before guides us how to present the invention so that it will have the best chance of being allowed without too much trouble. Or it may guide us, based on your priorities, to focus your resources elsewhere.

In some really brilliant cases, an invention can be applied much broader than for just the original problem that it solved, or in a much broader range of technologies/implementations. So, for those cases, I generalize the heck out of your

invention when I write it down in your patent application. Then I may describe a whole range of different ways of implementing it, or achieving the same thing, in different technologies. By that time, it may be that your particular implementation is just one of many, and it may not have the main focus of the patent application. But, as I mentioned, it should be there.

In some other brilliant cases, it may be that you have been able to innovate in a segment that is really crowded, and where many people have been innovating for a long time. In those cases, the scope of the patent may become quite narrow, and the focus may be really on your particular implementation. A few times, I have written a patent application in which the first claim (claim 1) was a sentence of a page and a half, basically describing a netlist, or a pseudo code listing. Even in such a case, it can happen that someone, 20 years ago, described substantially the same thing, and you're only different in a single transistor. Luckily, that doesn't happen all too often.

There are many patent practitioners who write their applications quite differently than I do. Some of them are extremely good. Some of them are not very good, at least in my opinion. What I'm very wary of is when there is a description of the invention that has essentially been written by an inventor (it shouldn't be), with some language modifications by the patent practitioner, and a list of claims that was written by the practitioner (it should be), where the claim language uses all kinds of vague terms. Yes, we should generalize, especially in claim 1; but where we use terms to generalize, those terms should be explained in the detailed description. If the terms are vague, and their meaning is unclear and not clearly explained in the detailed description, then you have a claim that can mean anything. Those claims may be rejected as not meeting the requirements set by patent law, or worse, invalidated if the patent would ever be challenged. Litigators may like those claims, though. For them, it can be a fountain of gold.

My advice: read claim 1 (and the rest of the claims). If you read nonsense or cannot recognize your invention, then pull the brake.

Upcoming:

28. CES or DAC Is within Weeks. I Got to Present and Demo There!
29. Geez, one-and-a-half page to describe my netlist in one sentence!
30. How Patents, Secrets, Open Source, and Reverse Engineering Help Humanity

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7. Woohoo! I Invented a Huge Improvement over My Competitor's Invention!

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