Duck Dynasty or Patent Dynasty?

A tale of an independent inventor and his startup company

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If you are reading this because the title caught your eye, then there is a good chance that you are aware of the recently popular Duck Dynasty® television show on A&E Television Networks, which is in its 5th season as I write this article. The frequent promotion for the show states, "meet the Robertsons; they turned duck calls into a multi-million dollar empire."

On the official A&E webpage for the show[1], the back story originates with family patriarch, Phil Robertson. As the story goes, Phil was born and raised in Vivian, Louisiana in a large family with seven children and little money[2]. After some time playing college football (as a 1st string quarterback ahead of Terry Bradshaw) and earning some degrees, Phil became a teacher and a coach[3]. He also experimented with making a better duck call. Phil Robertson created the Duck Commander® duck call, and in 1973 formed the Duck Commander Company and began selling the duck call[4]. In 2013, Duck Commander, Inc. had revenue of around $40,000,000 (according to multiple sources) attributed to selling duck calls.

What you may not realize is that Phil Robertson is also a patent holder. He is listed as the inventor on at least two patents related to duck calls[5].

The cost of filing for, and obtaining, patent protection is not trivial. Independent inventors, startup companies, and small companies alike all have a common issue with which to grapple at the genesis of their own developing back stories. As a patent attorney, I repeatedly hear the same question, "Should we file a patent application to cover our invention, or should we put that money into the company for manufacturing and/or marketing or other areas to build the business?"

My job is to learn about new inventions, identify the most innovative aspects of those inventions, and prepare, file and obtain patents on those innovative aspects. As such, my answer to the above question is probably predictable. My reply goes something like, "If you have a truly innovative idea, the only way to protect your market territory and future business is to build a strong patent portfolio focused on the key aspects of your innovation in the markets where you want to build your business." Of course there are follow-on discussions as to whether a trade secret strategy may be another way to go, or whether there are other ways to defend against competitors; but the reality is that filing for, and obtaining, a patent, tends to be the final and best answer.

Because the inventor/entrepreneur is focused on their own limited resources, there is often a follow-on question like, "What is the value of a patent?" or "Why should we spend all of this money on a patent application with no guarantees that it will grant into a patent, and even if it does, it won't happen for 2 to 5 years?"

The answer is that a patent is the only tool you have that gives you the ability to prevent anyone else from making, using, or selling your patented invention. Whether your competition is another

small local competitor, or a fortune 100 multi-billion dollar corporation, your competition will be prevented from duplicating your invention and putting it into their own products if you have a strong patent, or patent portfolio. As a startup or small company with limited resources, if your innovative product or service gains some recognition in the marketplace and Giant Company X decides they are going to invest millions of dollars and a team of engineers or scientists to reverse engineer your invention, make a copycat product, and force you out of the market you created — what would you do then? If you have a patent, the answer is you enforce your patent rights against them and protect your market and your business. This might take the path of getting an injunction against Giant Company X so they can no longer make and sell the copycat product, or it might take the path of negotiating a license agreement with Giant Company X so that for every copycat product they sell, you receive a payment from them. If you do not have a patent, the answer is you come up with a new idea and start all over again.

My response to the question of "What is the value of a patent?" is, "What is the value of your idea?" If your idea is so great that it is worth your time, effort, and money to invest in making a product or providing a service encompassing your idea and selling it, then my guess is the patent is worth a whole lot more than it is going to cost you to obtain it — because without a patent you risk losing your market, and perhaps your business, entirely.

Turning back to Phil Robertson and the Duck Commander® duck call, Mr. Robertson made the tough choice early on in a market where there were a lot of competitors making duck calls. He invested in patents when he was just starting his company and making duck calls by hand in a shed in Louisiana. Two patents granted over the years. Did they protect his market and enable him to build the dynasty that exists today? That is a difficult question to answer with certainty, because it is difficult to say whether his competitors looked at those patents and opted not to make a copycat duck call that would have infringed the patents.

However, anecdotally, recently I did a quick search for competitors of Duck Commander, and I found a company with a Q & A section on their webpage[6]. One of the questions and answers went something like this:

> Question: "Can you make me a Duck Dynasty call?"
>
> Answer: "No (and yes, I was asked to do that). That is copyright and/or patent infringement. Only those holding the proper license from Duck Commander can make or sell their calls."

I'm not going so far as to say that all Phil Robertson did was invent a new duck call, obtain some patents, and the money started rolling in. Equally, if not more, important were the many years of time and effort he put into building the business into something that was worth a considerable amount. As that amount increased each year, I'm sure competitors were taking note and thinking about how to make a competing duck call. Yet Duck Commander, Inc. appears to have protected its market territory and business quite well over the years…

So what is the value of those two Phil Robertson duck call patents?

Answer: about $40 million per year.

For more information about how Morse's Patent Practice can assist you, please contact **Sean D. Detweiler**.

Footnotes.

1. Duck Dynasty website

2. Cast member Phil Robertson
3. Ibid
4. Ibid
5. US 4,151,678 & US 5,230,649
6. Final Approach Duck Calls website