
PATENTLY PUSHED

1. Head Swimming Sounds

You just received notification that the patent examiner denied your client's pending patent application for a swimming cap or headband with integrated earphones for listening to music or the radio while swimming. The patent examiner found that other swimming caps included expansions at the ear to permit earbud insertions, and waterproof earbuds already exist. He concluded that putting waterproof earbuds into a swimming cap was an obvious combination. In your client's invention, the earbud mechanism is fully integrated into bathing cap's silicone – that's the primary difference - but the patent examiner was apparently unimpressed.

Prepare to give the bad news to your client.

2. Baby Dream Blues

Your client is a developer and manufacturer of household and childcare products. After recent difficulties at getting their infant to sleep, one of their team invented a device that enables a baby's car seat to simulate a car-ride experience within the home. The device is an oblong shaped base for a standard car seat or specialty recliner. Once the seat is locked into the base, it combines rocking and semi-circular swaying motions that make it feel like a car ride. Of course, there's a switch to turn on gentle ambient road sounds.

The patent examiner rejected the application on the basis of another similar device that mimics a driving experience. You believe the examiner got it wrong, missing the difference in the way the two inventions simulate a car ride motion. No competitive product includes the same type of semi-circular swaying motion.

Having taken a careful look at what the examiner wrote, you can see a way to amend the claims or construct arguments for reconsideration. While you are somewhat optimistic that the patent will issue eventually, it's not a sure thing.

You know the client has spent a lot of time and money developing the product and filing the patent application. They told you they have already seen competitors take note of their product. They wanted this patent badly and quickly.

There's no question that this is a real setback – one adds risk and will take time and add costs for your client. Prepare to give the bad news to your client,

Optional variation, even worse for a harder challenge

If you want to make the news even worse, you may assume the following:

- You had completed a preliminary patentability search before developing the new product
- The cited similar device was unbeknownst to you, was not discovered in your preliminary patentability search, and had been in the public domain for years before your patent application was filed; and
All the details disclosed in your patent application are taught (anticipated) by the cited similar device