8 OBJECTIONS TO PATENTING

AND WHY THEY'RE WRONG

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Every CEO, management team and board of directors knows they should protect their company's inventions but they rarely make it a priority. Safeguarding their businesses' most vital assets by obtaining patents is pushed down the to-do list in favor of tasks that are more quickly completed, yet offer much less strategic value. Here are some of the reasons we frequently hear:

- It is too expensive
- We don't have the time
- We thought software isn't patentable
- We don't want our competitors to see what we are doing
- We don't believe in patents
- We use open source software
- Patents have no value because small companies can't enforce them
- We don't think we have any protectable IP

It's too expensive

This is the most frequent reason for not pursuing patents and has some merit, given that startups and mid-sized companies are often resource-constrained. Executive teams are offered the false choice of either developing their product and market or legally protecting their innovations. This is true only because traditional law firms are horrendously inefficient and the costs for drafting and prosecuting patent applications only work for large organizations.

However, modern, smarter patent approaches leverage technology and deliver patents efficiently while increasing quality. This allows forward-thinking patent professionals to employ affordable, fixed-fee structures, which allow smaller companies to develop their product/service AND protect their intellectual property.

We don't have the time

Time is a resource that is heavily constrained in lean businesses. Small teams juggle titanic amounts of work, so adding one more item to the to-do list of an already overtaxed engineering team seems like a fool's errand. In reality, the patenting process should be an integral part of the engineering process. Further, much of the documentation an engineering team already prepares is highly useful in preparing a patent application, and patents ensure that product developed by engineering are not wasted efforts.
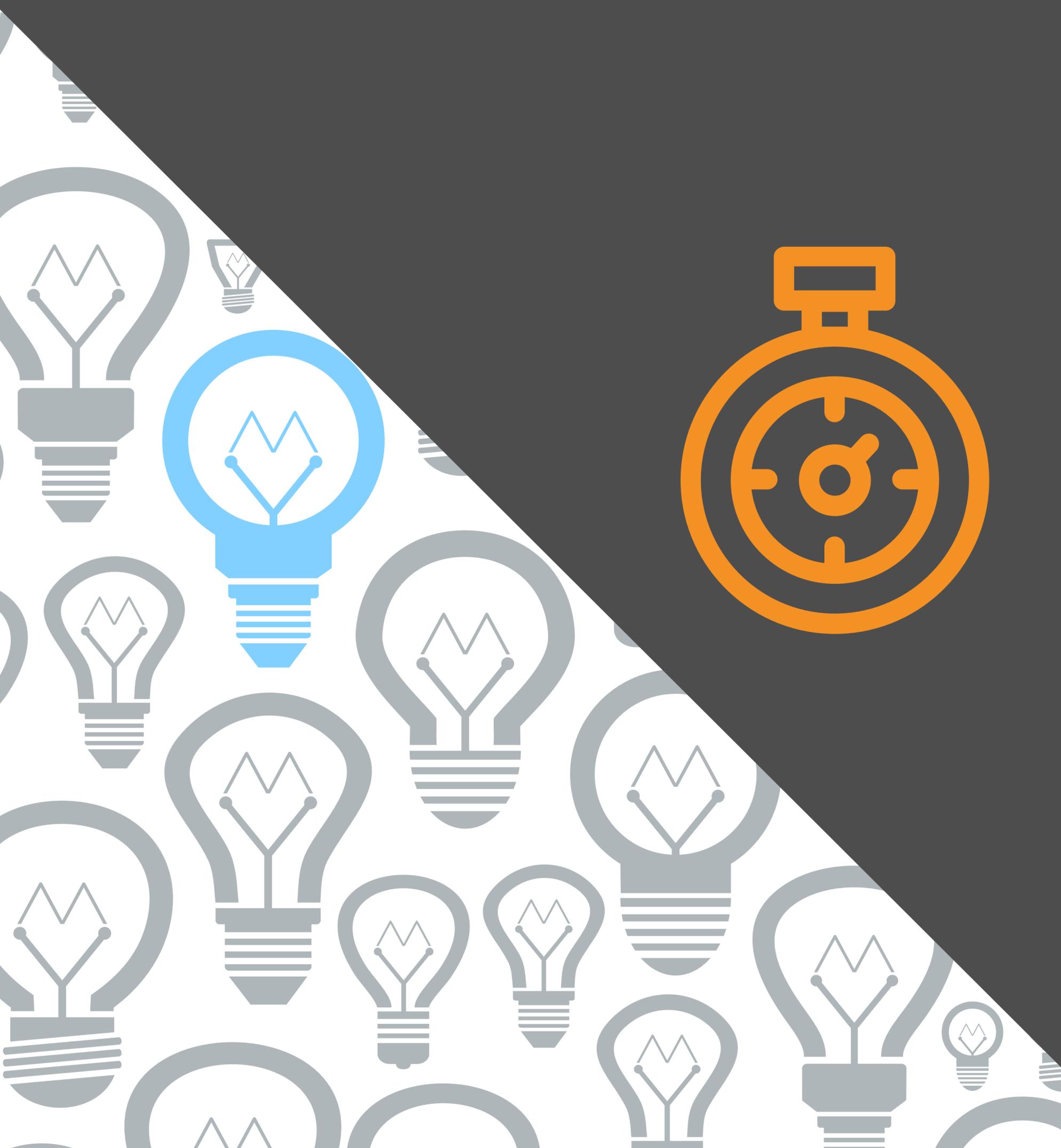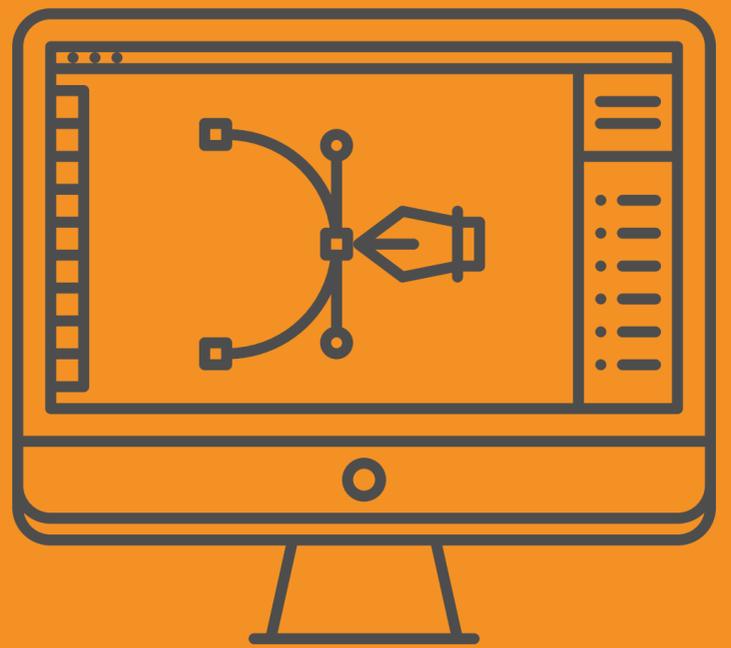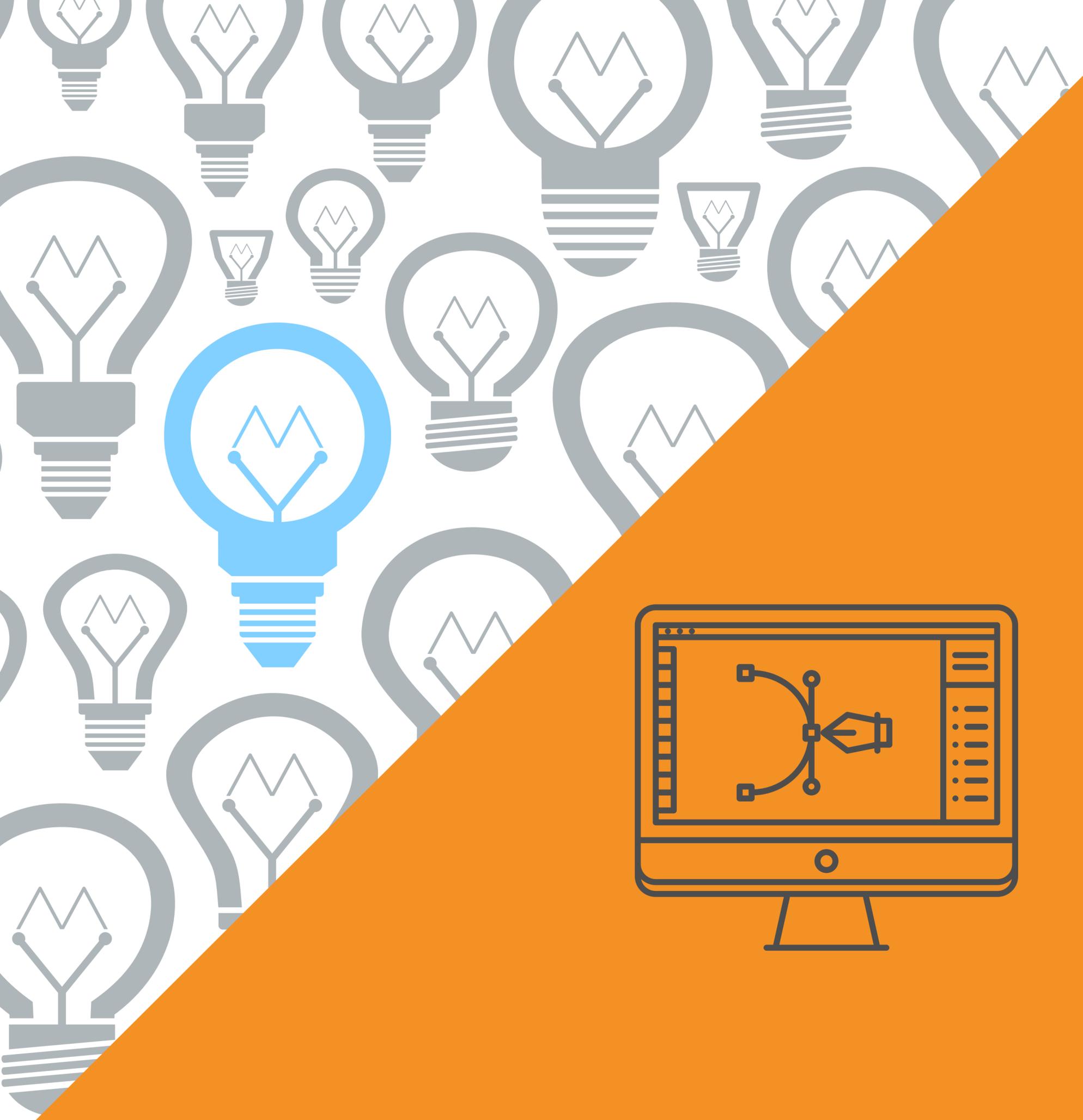
We thought software isn't patentable

The court decision in Alice Corp. v CLS Bank led to wild speculation that software might not be patentable. However, successive court decisions have reaffirmed the patentability of software, and computer-related patents continue to be a huge percentage of the patent office's total volume of work. Your competition understands that software innovation is very patentable.

If we disclose our secret sauce our competitors will copy us

People are sometimes concerned that when a patent application is filed, it will be made public and allow competitors to see what is being done. However, if the application is not going to be filed in multiple countries, an applicant may request that the application remain unpublished until it is granted.

Even if you do wish to file your patent application in countries beyond the United States, a provisional patent application is only published in conjunction with the publishing of a non-provisional patent. This process will provide about two-and-a-half years of complete confidentiality of your filed applications, which is usually long enough to create and then begin marketing your product or service.

We are philosophically opposed to patenting

Remember, just because you are a conscientious objector to the patent system doesn't mean you aren't a target. Regardless of whether or not a person believes in gravity, a fall from an airplane without a parachute will very likely result in serious injury or death. Further, just because a CEO is philosophically opposed to creating proprietary value does not absolve him or her of the duty to employees and shareholders to protect the company's assets and value.

We use open source software as the basis for our product

Despite what some people believe, open source and patenting are not mutually exclusive. Many companies that use open source software and build value on top of it create patentable material on top of the publicly shared code. Red Hat, a leading producer of open source software, reportedly has more than 10 issued patents, and 163 pending patent applications in the U.S. alone.
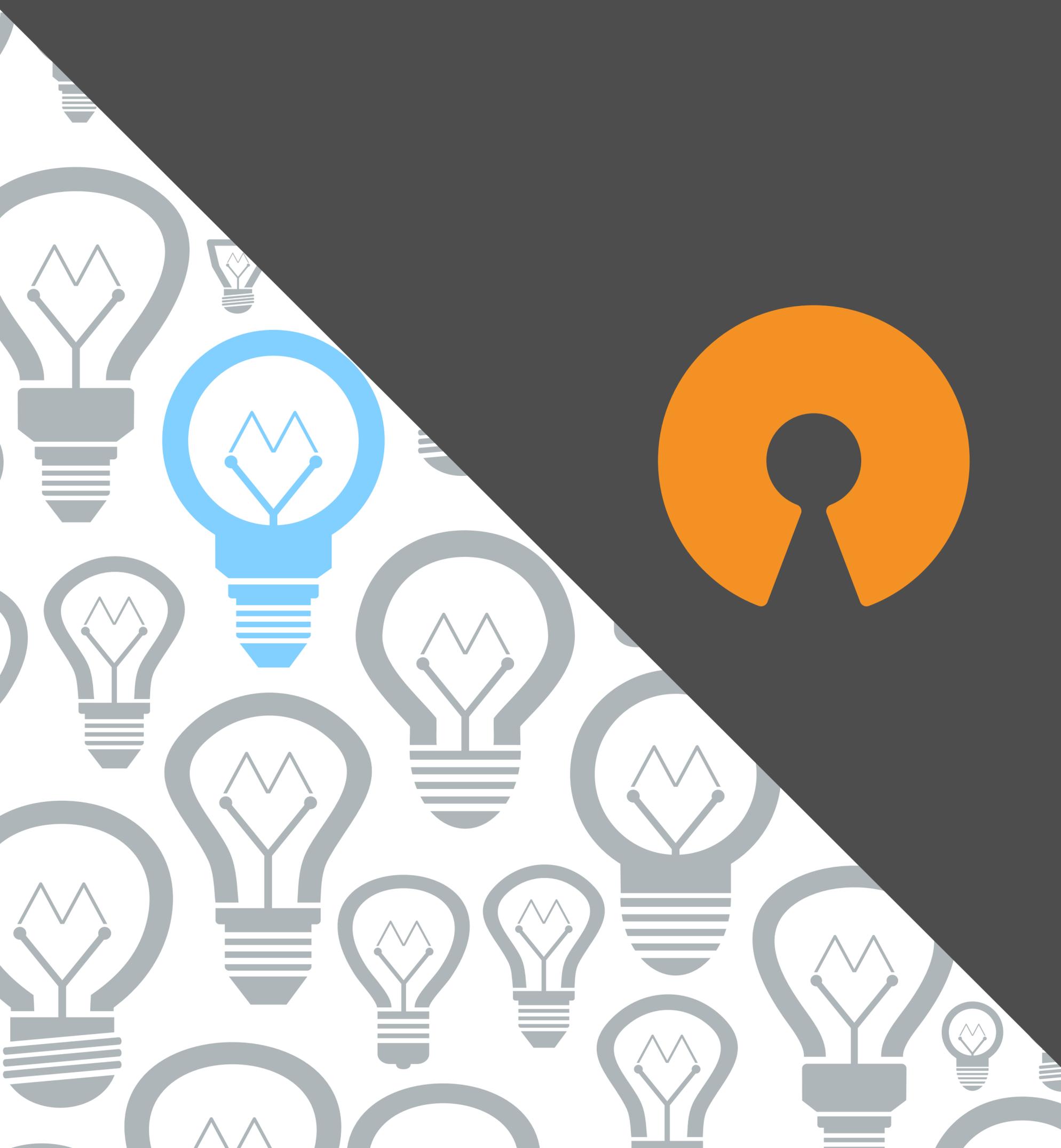
Patents aren't valuable because small companies can't enforce them

Patents are valuable regardless of the size of the company, and are likely even more valuable to a smaller company. Having strong IP increases the likelihood of success in litigation, and the stronger the likelihood of success, the more likely it is that there will be a respected law firm willing to take the case on a no-upfront-payment success-based model.

It is a common misconception that just because you "aren't doing anything wrong" you won't be sued. From a defensive perspective, a patent portfolio provides bargaining chips to play in the event that it is sued for infringement.

Our product/service doesn't contain patentable inventions

Identification of IP is something that many people struggle with, but if you have technology (hardware, software, etc.) that provides competitive advantage, it is likely you have IP. We highly recommend that you use an invention discovery tool or speak to a patent professional to help tease out any valuable IP you may have.

Have more patenting questions? We'd be happy to help.
Contact us at http://turbopatent.com/learn-more/