

## NDA's

### Non-disclosure Agreements

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[5/21/2011](#)



Often, an inventor would like to rely upon a '*non-disclosure agreement*' or *NDA* to prevent others from copying their idea. This is most often a very poor choice. One important reason, an NDA is an agreement not to *disclose*. Many times, performing the invention doesn't involve disclosure of the information. However, there is a far more important reason. NDAs are very weak for the reason that they almost always fail to precisely describe the matter which is not to be disclosed. If one were to provide a rigorous definition of what precisely is the information protected, then you'd reach the level of a patent application. Instead, a few sentences about some general field is typically included. Any resulting dispute is ambiguous with regard to the material disclosed - the court cannot decipher what is the subject of the agreement.

NDAs are excellent for keeping honest people honest. When agreeing parties sit down to memorialize a promise not to disclose, then honest people tend to keep the lid on things. However, if you believe you can make an NDA operate like a patent and prevent others from taking your ideas, you will be very sad at the end of the road - as they are wholly ineffective for this purpose. If a dishonest person signs your NDA and decides to run with the idea, he'll not find it difficult to traverse the NDA and to make off with your technology. *An NDA is not a patent*. If you attempt to use on in this regard, you do so at your own peril.

It has been explained by one manufacturer:

If I were an unscrupulous manufacturer, I'd sign any NDA brought to me. I hear them out – and then kick them out. Then, I'd make their idea. First I'd make it, then I'd make it better and wouldn't pay them a dime. Just let them bring their NDA to court asking for relief. You think figuring out what is protected by a carefully prepared patent is complex? Well let me tell you, determining the **true scope** of an NDA which likely contains nary a definition of anything, let alone a detailed legal definition invention which might be entitled protection – is far more complex. No; I am not afraid to sign an NDA

The very best NDA is one you don't have to sign. You must carefully choose your partners – and do your business with good honest people. Good honest people don't steal ideas. When you are uncertain whether a person is good and honest, then you are going to need a patent to protect your idea. Using an NDA won't hurt your position when you are doing business with good honest people and it is sometimes a nice reminder to those good honest people of their agreement to you – but an NDA will do nothing at all when used to bind those persons less than 100% honest.

## Other problems associated with NDA use

Sometimes, when you propose to bind someone under an NDA, they are 'put-off' by the request. It begins negotiations on an unfriendly, or confrontational negative tone. Indeed, many companies will simply not agree to do business with persons wishing to put them under binding agreements which can subject them to unwanted litigation. When you wish to introduce your idea to a company and you ask them to sign an NDA, they will typically refuse - and sometimes even refuse to continue any talks with you. This is the reason many companies first ask whether you have a patent. If you have a patent they like to talk to you. If you have a patent, they can be sure exactly what it is you own. If you have an NDA and no patent, the company exposes itself to litigation arising from that which the inventor *thinks* he owns. That is, the NDA is ambiguous - the patent is discrete. Most companies simply will not talk to an inventor without a patent. Signing an NDA is out of the question.

## What others sometimes say (negative) about NDAs

You can visit inventor forums to find many real life stories where NDAs fell short. Inventor Spot forum includes a patent attorney 'Scrupulous' who comments about an [Amazon Kindle related case](#)<sup>1</sup>. Indeed the web is replete with negative opinions and experiences regarding NDA use. The [Business of Software](#) has a thread related to the difficulties of NDA use with respect to foreign agents. [Unity Community](#) includes an [NDA thread](#) where emphasis is placed on trust rather than an NDA and the large amount of money to defend it. Here is some really good [neutral advice on NDAs](#) from experienced patent attorney [Robert Platt Bell's blog website](#). The website [Law for Entrepreneurs](#) by [John Horn](#) similarly gives pretty sound advice on this topic and has a fairly neutral point of view pointing again to the fact that an NDA doesn't usually hurt much. That is, it doesn't hurt much unless the inventor overly relies on it for protection which it doesn't have.

## Sample NDAs

But if you insist, then here are a few NDAs from which you might start forming your one custom agreement most appropriate for your situation. [NDA2](#); [NDA3](#); [NDA4](#); [NDA5](#); [NDA6](#); [NDA7](#); [NDA8](#). While I have not considered in any regard whatsoever the quality of any of these, I do confess I am particularly fond of the [tongue-in-check version](#). Enjoy ☺.

Finally, if you are not satisfied with any of those you might look to [www.nondisclosure-agreement.com](http://www.nondisclosure-agreement.com) who seem to have every form of NDA imaginable. Please use these at your own risk and don't say I sent you. I don't recommend using any of these.

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<sup>1</sup> Inventor Spot thread: 27985 Sept 27, 2010.