# PATENTING VERSUS OPEN SOURCE - COTTON INCORPORATED PERSPECTIVE

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## Abstract

Cotton Incorporated's mission is to increase the demand for and profitability of cotton through research and promotion. Our ultimate goal in the Agricultural and Environmental Engineering Division of the company is to make technologies that will increase the profitability of growers and ginners as widely and as quickly available as possible. As a not for profit organization, our motivation to pursue a patent regarding ginning technologies would be primarily in a case where there will significant cost to bring that technology to market and it would not be worthwhile for a commercial interest to pursue unless they had some promise of exclusivity. There are several costs associated with a patent, and the biggest costs could come from enforcement. It is important to remember the sole reason to get a patent is its use to prevent others from practicing an invention and patent infringement litigation costs can be very substantial. A patent does not give you the right to practice the invention. Costs can exceed $1 million before trial with typical full litigation costs in the $5 to over $10 million range. And even if you haven't sued anyone but merely tried to get them to pay a license fee, this can lead to a Declaratory Judgment (DJ) action. A DJ is litigation brought by a party who wants the court to either declare that they don't need a license and thus there is no potential infringement of your claims and/or your patent is invalid. Defending the DJ action can cost in the same neighborhood as if you brought an infringement action on your own. If instead of court litigation, the party goes through the US Patent Office's Post Grant Review and brings an Inter Parties Review action or a Post Grant Review of your patent's claims then typical costs to defend can be from $350,000 to $500,000+. For cases where a patent is not needed, we want to see the information made broadly available to rapidly enable the technology across the U.S. and exclude others from filing patents that would limit the adoption of the technology to a single commercial entity. Examples of tools to make the technology and/or discovery public include posting software to Github, publishing in the peer reviewed literature, posting a preprint manuscript on https://www.biorxiv.org/, and publishing in other sources widely available online or in the media. We need more creative avenues to develop and disseminate new technologies that will benefit the ginning industry. With only 532 U.S. cotton gins and a very limited global market, it is hard to attract new companies to develop and market technologies just for the cotton ginning industry. Therefore, we must look for partnerships and cross applications. For example, we are currently exploring where technologies used in the grain storage industry can be applied to cottonseed storage.