



## Patenting For Success:

*Synopsis- Patenting involves competitive strategies in today's business world. To build a successful company through protecting its patents, one needs to develop a patent-filing strategy as well as manage their IP assets in a way that would bring revenue to the company. But above all, one should be aware of the pitfalls of the patenting system and learn to combat them efficiently by devising a wholesome, customized patent strategy.*

Abraham Lincoln's words ring true when he said that the patent system is "the fuel of interest to the fire of genius."

The concept of patenting inventions can be traced back to the 14<sup>th</sup> century. The system was introduced to encourage the inventors by awarding them exclusive rights to their inventions for a specific period of time in exchange of public disclosure of the invention once the period of protection was over. During this specific period, the inventor could reap the benefits of his hard-work by exploiting his patent in any number of ways. After such period was over, the knowledge of the invention is dissipated to the public, so that the public can utilize this knowledge.

Patenting, in today's world, is of a different ball game altogether. Though the basics of patenting remain the same, i.e. exclusive protection for a specific period; today, patents are used to give companies' leverage against its competitors. Patents can be used to enhance the competitiveness of a business. Patents are used as weapons of defense: to be ahead of others as well as to stop others from overtaking one's progress. Companies stringently protect their IPs and have IP management portfolio because they realize that a single, novel patent can be the only difference between one's company leap over others. A single example to exemplify this can be the technology of xerography developed by the Xerox Corporation that created a new industry in itself.

When such a product is invented which is a leap over the existing technologies available, then it is prudent on part of the company to protect such invention. Protection is sought to keep the company ahead of others- so that none can use the patented product/ process. Usually, in a company, the employee(s) who invents the product is the Inventor(s) and the Inventor(s) assign the rights to the company. Patent rules and rights are different in different countries, but in most countries, it includes a right of exclusive use of the patents for a limited period of 20 years.

### *Rights of the Patentee/ Company:*

During this 20 years period, the patentee gets the exclusive rights to

- Enjoy monopoly rights over his invention
- Cease others from making, using, selling, importing, offering for sale or distributing the patented invention without his permission
- Monetize his patent by selling or licensing



From the standpoint of business enterprises, these rights mean that its competitors cannot create similar products that infringe the patent; and if it does so, the patentee company can sue them. In case the competitors want to use the patented product/ process; it would need to get a license from the patentee company. During this period of 20 years, the R&D team can further improvise on the patent.

***Points to be taken care of while patenting:***

Though there are definite gains in patenting, yet a company should have a patent strategy in place. One should not patent every invention available. This is because patenting is an expensive procedure and some patents are not worth patenting. Also, as against general notion, patent protection is not international; it is a national process and one should understand the risks involved while choosing jurisdictions. One should also be aware of other's IP and respect the same to safeguard oneself from unnecessary litigation or royalty payment.

***Expensive Procedure and How to combat it:***

Although patenting is necessary to create a unique position in the market, often the costs of patenting deter companies from patenting their inventions. In US, as well as in most other countries, attorney fees are charged by the hour and it can be anywhere between \$250- \$500 per hour. To combat the cost, most foreign companies employ Indian IP firms such as Intepat IP Services to cut costs of patenting while maintaining the quality of their patent applications. Another strategy is to evaluate the inventions and separate the important inventions from the non-important ones and patent the former category only. Also, one should evaluate in which countries the future of the product lies and then file patents accordingly. Filing patents on a whole-wide basis is simply a waste of money.

***When should a product/ process be patented:***

Though there is fierce competition to patent inventions and gain exclusive rights, one should not patent each and every invention. Sometimes, the product is not worth the money to be invested in order to protect it. To estimate whether your product is worth patenting, the question to be asked is- whether the product would be successful enough that competitors would want to obtain the product. If the product would generate a meager amount of profits, it is not worth patenting. If it would be successful enough to justify legal expenses in defending the product, then you can consider patenting it. You can also consider patenting it if the product is successful enough to create revenues for your company by licensing it to others.

Once you have decided to patent it, there are very many ways of gaining revenue from it. You can license it, mortgage it or market the patent yourself.

***Patent Procedure and in which countries should a patent be obtained:***

Patents are territorial. As against general notion, a patent is protected nationally and not internationally. There is nothing called International Patent Protection. The only way of



protection patents on a global basis is to file patent in each country separately. Many have heard about the PCT (Patent Co-operation Treaty) and have a wrong notion that PCT applications are protected internationally. PCT Applications are preferred only because it gives extra time to the Applicant in deciding in which countries he wants to file national patent application. Deciding the jurisdictions in which to file patent is an important decision. The procedure for obtaining patent is expensive and jurisdictions must be chosen with utmost care. Mostly, in such decisions, countries where the product will not be launched should not be chosen. Countries where the company will be doing business should be chosen. One should realize where the future of the patented invention lies.

### *Be aware of other's IP rights:*

If your product becomes successful, there might be companies holding patents that can drag you into unnecessary litigation or ask you to pay royalties to the tune of lakhs of rupees. There are companies who patent inventions but do not utilize them. They wait for other companies to develop similar products, and once these products become successful, the patentee companies start suing them or asking for royalties. These companies are Patent Trolls.

The Blackberry case made everyone aware of the perils of patent troll actions. NTP never made or sold anything but strived on licensing its patents to other companies. In early 1990s, it purchased patents relating to wireless e-mails. When Blackberry maker, RIM, started providing wireless e-mail services, NTP sued RIM for infringing its patents. What ensued was a legal battle that resulted in RIM paying NTP a one-time payment of \$612.5 million.

To avoid messy situations like the one illustrated above, one should be sure that the product of a company does not infringe any patent. To this end, patent search for freedom to operate can be conducted to confirm that no similar product using the same technology exists. "It is actually better to do a preliminary patent search before delving into the R&D or product developments to avoid investing money in unnecessary avenues", says Senthil Kumar, Patent Consultant/CEO of Intepat IP Services Pvt Ltd, Bangalore.

### *Patenting and Success:*

Notwithstanding the risks involved, there is a definite correlation between patenting and business success. Companies with patents are four times likely to be successful. The reasons for success, besides the exclusive rights are as follows-

### *IP Valuation- How it can be helpful in making your business a success*

Knowledge is now considered to be an asset and protected vigorously by companies in the form of IP protection. Corporate strategy includes the management and protection of IP assets. The first and foremost step in the strategy is the correct valuation of your company's IP.

Valuation is important for both licensing and investment options. Moreover, valuation is important for mergers and acquisitions (M&A). For obvious reasons, companies with



technological overlap in their patents are more likely to form mergers than ones where there is no overlapping.

Companies perform IP valuation of their assets and usually, segregate the IP assets into three categories:

1. Very valuable patents that are worth defending
2. Moderately valuable patents or patents that are not used or planned to be used, yet are valuable to others, and
3. Patents unlikely to be used and not of value

Dow Chemicals, which had 29,000 patents, classified its patents in the above three classes and the first class was segregated for business growth purposes, the second offered for licensing and the third class was donated or abandoned.

#### *Patents and Investment- How to rope in investors:*

Patents can bring in investment to the company. When investing in a company, an investor would want to be assured that his investment would be protected and that he would gain some returns for his investment. When patents are a part of the IP assets of a company, they form an assurance to the investors that the company would gain a unique position in the market due to its protected inventions and there is a possibility of financial gains from the same. Analysts have also found that companies with great patents, i.e., those cited by others in their patent applications, are likely to be a better investment than those holding patents that are never cited ["Follow the Patents," BusinessWeek, 8 January 2007]

While investing, several questions may arise in the mind of the investors- some being- When will the validity for the patent expire? Can the patent be reverse engineered or worked around to make similar inventions? Can it be proved invalid?

These uncertainties in the minds of the investor can be removed by making a patent portfolio wherein a patent search of similar products is done to evaluate your leverage against the current available/ patented products. The patent search report would consist of inventions consisting of similar products and would also cite how your product is different and advantageous from the ones available in prior art.

#### *Patents and Licenses- How it brings revenues*

After a patent is granted, the same can be licensed to others in order to create revenue for the company. Some businesses exist solely to collect revenues from the patents they license to others. Licenses can be exclusive- where there is a sole licensee who can use the patent- or non-exclusive- where there are several licensees who can exploit the patent.

The power of licensing to others may be used as a weapon to obtain royalties in cases where there is infringement of your patent. In such infringement scenarios, the patentee company usually sends cease and desist letters and obtains injunctions against the competitor who



infringes their patented product. However, if a company is not willing to defend its patents through the expensive and time-consuming process of litigation, specially when they are of the opinion that the patent is not that successful/ worth as to invest money in litigation, it can bargain with the competitor and obtain royalties for the infringing operations of the competitor. More often than not, the infringing party is willing to pay royalties than get tangled in litigation procedures.

### *Conclusion*

Patent strategy when applied in the right way can make your business leap light years ahead of others. For this, a patent-filing strategy and an IP management strategy should be customized according to the needs of the company. If properly executed, these strategies could lead your company to unprecedented success.

**Please feel free to contact us at [contact@intepat.com](mailto:contact@intepat.com), in case any queries.**