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The All-Important Patent Portfolio

How patents can protect your business and help it grow.



Whether a company has existed for a hundred years or is just starting out, patents can be a core strategic asset. Patents are a barrier to entry for competitors. For established companies, patents protect product lines from being copied and patents create a period of exclusivity to exploit their research and development investment. For a new venture—which typically doesn't enjoy the competitive advantages of economy of scale or well-established infrastructure, supply chains or distribution networks—an intellectual property portfolio may be the venture's only major asset.

The business strategy in an established company normally drives the patent strategy; that is, it looks to products and services in development for patentable ideas. Capturing patentable ideas should be an integral part of the company's development process or project management. For example, include a patent milestone in

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architecture or product reviews; include patent reviews in research and development projects before publication of a paper.

Generate patent ideas by creating awareness of patenting. Include patenting in the organization's mission and in the annual commitments for individuals, from engineers through senior leadership.

It is also important to maintain the quality of the invention ideas that are selected for filing. Available resources should be devoted to the inventions that provide a competitive advantage. Establish a patent review board to evaluate patent ideas and decide on filings. The board members should understand the technology, the competitive landscape and the company's strategy, and consider how the invention contributes to the company's competitiveness. Does the invention relate to a current or planned offering? Are competitors likely to use it? How difficult is it for a competitor to design around it? Can infringement be detected? How innovative is the idea? For example, is there incremental improvement (more efficient routing) or significant competitive advantage (half the cost) or a breakthrough concept (cold fusion)?

The significance of a patent portfolio is generally clear for technology-based companies. However, seemingly nontech firms may have technology that should be protected as well. A packaging company could have innovative processes for packing or superior container technology. A food company might develop valuable approaches to safety and regulatory compliance. A distributor may come up with a more efficient routing and tracking system. Patent protection for these sorts of inventions helps preserve the competitive advantage derived from them.

Patents are useful even if a company doesn't intend to sue. In a patent dispute, your patent portfolio will be an important bargaining chip in settlement or licensing discussions. The value of that bargaining chip is determined by the number and quality of patents.

Patents are often a startup company's most valuable asset. Venture capitalists examine the portfolio during due diligence and banks may secure a loan against it. It will be a value driver in an initial public offering or acquisition. Startups are often created around a new idea, so innovation isn't a challenge, but making patenting a priority is. Startups also frequently focus on getting the new offering launched rather than getting it protected. However, an invention publicly disclosed or sold before filing an application becomes public domain in important markets like Europe and China, for example, and in the United States after a one-year grace period.

Regardless of a company's stage of development, it's important to get patent applications filed early. The first to file an application is the owner of the invention. Further, an application is documentation showing possession on the date of filing of the invention, which is often useful evidence in negotiations with partners, investors or competitors.

Whether a company is small or large, new or old, a patent portfolio may be an important, if not essential, factor in its success. Make consideration of patents a strategic priority.

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