

Don't Destroy Your Corporate Asset Value by Outsourcing Responsibility for Managing Your Patent Strategy to Your Attorney

Even though you are a strategic and savvy businessperson, you may not feel entirely comfortable with the substance and value of your company's patent portfolio. In the face of this, you may believe that it is better to cede management of your company's patent strategy to your patent attorneys. You may make this decision even when you would not consider outsourcing management of any other type of valuable corporate asset. Indeed, you likely would not give a moment's thought to handing off management of any of your company's valuable assets to a non-businessperson. For example, would you put your attorneys in charge of maximizing the payback of your innovation product pipeline or your business' account receivables? Of course not.

If your company owns one or more patents that prevent others from knocking off your products or technology, your patents hold significant value and, as such, constitute important or even critical assets for your company. So why would you turn over management of such substantial company assets to an attorney? I have found that some businesspeople view patents as arcane and, perhaps, virtually impossible for them to understand to the degree necessary for them to make informed business decisions. If this is your perspective on patents, you may also believe that the opportunity costs are too high to justify your expending the time and effort to learn and engage with the strategic relevance of patents to your business. So, while you mind the business of your business, you choose to rely primarily on your attorneys to attend to patent issues.

If your business relies on patents to provide measurable competitive advantage, it is an error for you to outsource patent asset management to your attorneys. When any management function is relegated to a cost-center, like your corporate legal department, the focus of the responsible manager necessarily becomes cost control. Your company's in-house legal managers are (more often than not) incentivized to reduce costs, and they generally will work to do so. But, as a wise man once said: "You have to spend money to make money." Therefore, a cost reduction model is inappropriate when it is your responsibility to maximize return on business assets—and this includes your patent assets.

(Note that you should distinguish between patent asset management and patent procurement. The latter is what patent attorneys have been specially trained to do: write patent applications, engage in dialogue with the Patent Office so as to demonstrate that a patent is worthy of granting and provide legal opinions to clients regarding matters such as whether a competitor's patent prevent freedom to sell a product. Patent procurement is no doubt the job of a patent attorney, and ensuring that costs are kept under control in this regard is critical and in-house legal managers should of course be incentivized to keep these costs in check. In contrast, patent asset management involves the process and methodologies relating to maximizing return on your patent assets.)

You can be successful in maximizing your company's patent assets when you apply strategic business focus to their development and maintenance. However, this requires your engagement and understanding of what your patents cover and what they are worth. Therefore, even though patents may seem arcane and somewhat unintelligible to your non-legal eye, as a business leader, you should embrace patent asset management as a fundamental aspect your business strategy and decision making responsibilities. So, go ahead—pick up the phone and engage in a substantive dialogue with your attorney about your business's current and future patent strategy. Your company's shareholders will be glad you did.