

Building a Smart IP Portfolio

– A New Mantra in Knowledge Economy

After the global slowdown the new economy of think-tank is about “Excel or Expire”. Globally in the last five years Patent Offices have become busier day by day as the number of patent filings is significantly increasing beyond their capacity. This trend has not been affected even during the slowdown. The courts are moving towards the pro-IP, as its legislation. The awards for damages are growing in multifold, which were a rare scene in the business world of earlier days and this is quickly spearheaded in developing countries too. So corporations are required to act quickly and align their business processes to this Knowledge economy.

Managing Intellectual property portfolio smartly is so critical that corporations are assessing their Intellectual Property (“IP”) management programs to ensure that they are deriving maximum value from this important asset. There are a number of ways in which value can be derived from intellectual property, including:

- Protecting important commercial products and processes.
- Blocking competitors from entering the market.
- Lead time for developing, manufacturing and selling products.

- Licensing assets.
- Enforcing assets for exacting royalties and damages.
- Detering competitors from enforcing their patents against you.
- Adding a negotiating tool to your tool box.

Appropriate IP management is specific to a company’s corporate culture and business objectives. Approaches to management can fall anywhere on a broad spectrum ranging from “defensive” to “aggressive,” depending on what the company wants to accomplish.

Creating Wealth and Not Risk From IP Assets

A “defensive” IP management model would lead a company to focus on generating a worldwide patent portfolio for the primary purpose of protecting royalty payments or taxes paid by foreign subsidiaries for rights to the parent’s technology. A company following a “defensive” IP management model might also be generating an extensive patent portfolio to impress investors. For startups, this could be critical to raising venture capital money. Public companies frequently tout their extensive patent portfolios to substantiate their commitment to technology in hopes of boosting or maintaining the value of their stock.

On the other end of the spectrum, companies following an “aggressive” IP management model might license out their IP rights and technology. Some companies “mine” their existing portfolios—that is, they look for unused or less important existing IP assets (such assets that don’t support a company’s businesses) to offer for licensing to others.

In addition, companies may also develop a patent portfolio to enhance their freedom to operate in a certain field of operation. Such patents act as a deterrent to competitors against suing the owner of this portfolio. As part of a pre-litigation due diligence, companies commonly study the target company's patent portfolio to identify patents that could be asserted by the target in a counterclaim. The identification of a substantial potential problem often deters a company from asserting its own patents against the target. These "freedom-to-operate" patents do not necessarily cover or relate to a company's own operations, but are based on its understanding of where its main competitors operate and its identification of areas for patenting within the competitor's field of operation.

IP As a Metric for Innovation

Anyone who is in the field of IP recognizes the value that corporations place on aggregate IP numbers - primarily the number of patent filings. However, such filings are an imperfect indicator of actual innovation for a variety of reasons. Raw numbers provide no information about the scope of protection afforded by the patent filing, thus providing the same "score" for an incremental advance in science, as it does for a ground-breaking invention. Raw numbers also fail to take into consideration other valuable information including filing strategy for a particular industry, or for that matter, a broader corporate strategy, such as patent protection versus equally, if not more valuable, trade secret protection. Despite the inherent limitations of using IP as a measure of innovation, there is certainly a correlation between patent activity and research and development (R&D). Simply put, patent-based indicators do measure the productivity of research, if one accurately measures patenting activity.

How Developing Countries Could Change to Better Compete in a Technology Market

To accurately account for the role that IP has on innovation, there are many factors that developing countries need to consider beyond the aggregate patent numbers. The result of these factors will be to increase research productivity, which will

ultimately result in an increase in patent activity. In addition, there is undeniable link between a country's IP enforcement framework and innovation. Stronger patent rights, such as better enforcement mechanisms, a lower number of restrictions on IP protection, or more patentable subject matters stimulate inventors to file more patent applications, and seek protection in the developing country.

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