

Developing an IP strategy for your company

“Increasingly, companies that are good at managing IP will win. The ones that aren’t will lose.”

Discovering New Value in Intellectual Property, Harvard Business Review Jan-Feb 2000

Introduction

The development of a sound intellectual property strategy begins with knowing the right questions to be asked, and with being prepared to allocate appropriate resources to pursue the desired outcomes. While IP is a tool that can assist to achieve business goals, obtaining IP is hardly ever a goal in itself. Therefore, an IP strategy needs to be developed with an understanding of how IP fits into your company’s overall commercial strategy.

Establishing your business goals

Before contemplating the development of an IP strategy for your company, you should understand the proprietary features of your technology and the nature of the competitive environment you operate in. It may be difficult to evaluate the commercial prospects of a particular technology with any certainty at an early stage, but it is important to at least understand whether a technology is merely speculative, or whether it has an identifiable and achievable path to market. To do this, you will need to identify and analyse:

- (a) the nature of the IP rights subsisting in your technology;
- (b) the “IP landscape” (i.e. the nature and extent of IP protection held by others) surrounding your technology; and
- (c) the competitive edge that your technology confers in the marketplace.

Consideration should be given to all relevant registered and unregistered IP rights and related assets of your company. These may include a range of intellectual property rights such as patents, trade marks, designs, copyright, circuit layouts, trade secrets, and rights to require that information be kept confidential. Often “soft” intangible assets, such as business skills and market knowledge, are overlooked but these may be important in establishing your position in the marketplace.

Evaluating your IP position against your business goals

Once you have mapped out your company’s business goals and its IP assets, you will need to evaluate how suitable a particular IP asset is for achieving a commercial goal. For example, what IP supports your most profitable products? Do IP rights confer a marketing advantage, in that the products are perceived as “high-tech” by consumers, or seen as valuable assets by investors?

This alignment process will enable you to identify IP which no longer fits with your business strategies; IP gaps which need to be filled to better support your current strategies; and IP that is core to your business. Once the alignment process is completed, you can develop an IP strategy that is tailored to the business needs of your company by allocating the appropriate resources to protect, commercialise or dispose of the identified IP as appropriate.

Developing your IP strategy

There is an array of strategies that may be employed to protect your IP. These range from using contractual rights (such as confidentiality and collaborative research agreements) to pursuing formal registration of IP assets. Since IP rights are territorial in nature, you will need to develop your IP strategy from a global perspective. For example, where a product includes smart technology that is only made in a few places, and also has an aesthetically pleasing design, different strategies may be adopted for the different aspects of the product. Patents may be pursued in those markets where the smart technology can be made as well as in major sales markets, and cheaper design registrations may be obtained in even quite small markets, to facilitate control of product distribution. Your IP advisors will be able to develop an IP strategy with you that is cost effective and most appropriate for your company, its products and its business goals.

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