

The Value of Patents

An International David and Goliath Patent Struggle

In the Beginning

No matter where you are in the world, when you open your next packet of potato crisps it is likely that you will be supporting an Australian company, TNA Australia.

In 1984 I received a call from Alf Taylor, an engineer operating out of a small unit factory in Rydalmere, Sydney. After visiting the factory and meeting Alf for the first time, I was shown the prototype of a packaging machine. Alf explained that existing packaging machines formed and filled the bags at approximately 70 bags per minute. These known machines reciprocated vertically in forming the potato crisp bags and accordingly were complex and vulnerable to wear. Being the outstanding engineer that he is, Alf discarded contemporary thinking and decided to make a machine that operates on a rotary basis, resulting in the production of 200 bags per minute.

Now in 2007, 25 years after the first machine was sold to Smiths Snack Foods in Rydalmere, TNA has factories/offices in the UK, North America, Mexico, South America, Philippines, China, with the head office being in Sydney and the primary factory in Melbourne. For the last 9 consecutive years, TNA has been named in the Australian Business Review Weekly "FAST 100 list", and is in the BRW top 500 Australian privately owned companies.

There is little doubt the average 30% compound growth per year since 1990 is directly attributable to the engineering and management skills of Alf and his wife Nadia. From the tiny unit factory in Rydalmere, TNA entered an environment dominated by large companies such as Ishida (Japan), Rovema (Germany) and Heat and Control (USA). To protect themselves TNA instructed Spruson & Ferguson to lodge patent applications in Europe, USA, Japan and Australia specifically covering their new packaging machine.

David vs Goliath

TNA's large competitors soon saw the advantages of the TNA machine. Initially the patents kept the competitors at bay,



however the first to break ranks was Rovema in Germany. At an industry exhibition in Germany, Rovema displayed an infringing machine and commenced selling. After an exchange of letters between Spruson & Ferguson and the Attorney acting for Rovema, it became apparent that Rovema were committed to a course that was to clash with TNA. Essentially Rovema were of the view the European patent was invalid arguing that the invention was not new. A German firm of lawyers were briefed with the result that Rovema was sued for patent infringement. Rovema counterclaimed for revocation and opposed the European patent in the European Patent Office (EPO). Ultimately however, despite several appeals both in the EPO and the German Courts, Rovema failed. The EPO and German courts affirmed the validity of the patent and found it infringed by Rovema.

Not being discouraged by such findings, Ishida commenced selling competing machines in the UK. Again TNA asserted its patents rights and took action against Ishida. Ishida counter claimed arguing the invention was not new. Despite several appeals, the patent was found valid and infringed, with considerable damages and court costs being awarded to TNA.

Despite further invalidity and infringement trials in the UK, USA and Japan, the TNA patents for their "ROFLO" machine survived the blow torch of international litigation. Such a result is no mean feat when one considers the relatively small size of TNA. Despite having a house

full of young children, Alf and Nadia had the confidence and the belief in the patent system to "place it all on the line".

TNA commenced the saga as David and defeated many Goliaths. Today TNA is the Goliath and dominates their industry world wide.

The Moral of the Story

The success of TNA started out with a single invention. Since then Alf has gone on to devise many improvements in the machines used by his industry. Almost 300 patents have issued for Alf's various inventions. The vast majority of these inventions being incorporated in the machines now manufactured and sold by TNA.

TNA also have a portfolio of over 30 Registered Trade Marks that are used very effectively to distinguish their product from their competitors.

Although patent infringement is reasonably rare, when it does happen at least the patentee has options to protect their intellectual property, not available to others. Used wisely, patents and Registered Trade Marks can keep your competitors at bay.



Greg Turner

Principal

Spruson&Ferguson

greg.turner@sprusons.com.au