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IP Strategy for Start-Ups: What's in it for them?

A guest article written by Alexander Ford and Philip Horler, Withers & Rogers LLP

Potential uses for intellectual property (IP) are wide ranging and long lasting. Beyond offering the opportunity to enforce monopoly rights, intellectual property can also be used to add value to a business and open up new revenue streams. Putting in place a sensible IP strategy at an early stage can benefit start-ups for years and even decades to come, but is something that many businesses fail to act on.

In this article, we shall explore some of the ways in which IP can be used and why it is sensible for start-ups to give careful thought to an IP strategy as early as possible.

Intellectual property and strategy

Broadly, intellectual property is an intangible property owned by a company or individual, and is usually the result of research or creativity. Intellectual property can take many different forms depending on what is being protected. The most common types of intellectual property are patents, trademarks, copyright and trade secrets.

These means of protection each have their own benefits and drawbacks. For example, patents provide an opportunity to enforce a monopoly right in a particular geographical area for 20 years, meaning no one else can work the patented invention without the consent of the proprietor. However, a patent must also provide a sufficient description as to how to carry out the invention. Therefore, after the 20 year period has expired, the knowledge of how to work the invention will be free to use and in the public domain. Even within a decision to protect intellectual property through patents, there is a decision to be made about how many patent applications to file. Some companies file relatively few, targeted patent applications - each providing good protection to a specific, important invention. Others operate a thicket - filing high numbers of patent applications covering several overlapping inventions and thus may look to prevent any competitor from entering the market by something of a brute force approach.

This can be contrasted with a scheme of protecting intellectual property by maintaining trade secrets. This provides a competitive advantage by preventing competitors from having the same know-how for an indefinite amount of time. Perhaps the best known trade secret is the recipe for Coca-Cola, which has been kept secret since 1891 and remains secret. The most important potential downfall for trade secrets is reverse engineering. In the Coca-Cola case, if someone were to work out how to produce the drink by themselves, then the Coca-Cola Company would have no rights to prevent it from being produced and sold.

A sensible IP strategy should be decided upon early, as once information is lawfully put into the public domain it might cease to be protectable. This means that companies with potentially valuable intellectual property should make a conscious decision on how best to protect it. For some, a relatively short-term monopoly might be best, whereas for others keeping long-term trade secrets might be preferable. The amount of money to invest in protection also needs to be considered and may help to determine the best IP strategy to use. To help with this decision, it is worth companies thinking about what they might expect to receive in return for their investment in protecting intellectual property.

Monetising IP

Intellectual property can be monetised in many ways similar to physical property. Patents can be mortgaged, sold, purchased and licenced. Trade secrets and rights associated with copyright and trademarks can also be transferred to some extent.

Licensing of IP represents an opportunity to open a long-term source of income. Licensing is a popular option, particularly amongst SMEs where the potential cost of enforcing IP against competitors and the alternative prospect of being barred from working in an area is just too much of a risk.

For some businesses, patent licensing can form an important, or even core, revenue stream. One well-known example is ARM Holdings - a microprocessor company with revenues of around $1 billion each year, almost all of which comes from licensing agreements with microchip manufacturers. For these companies, it is possible to recoup the cost of their R&D without investing in manufacturing and without exposure to the risks associated with making and selling products directly.

For other businesses, IP transactions can be used to create a secondary revenue stream, sometimes from unexpected places. For example, as the business model of a start-up evolves, their patented invention may no longer be of use to them. However, having already secured the IP in the invention, it is possible to sell or license the invention to other companies, thereby realising an unexpected return from their innovation. In a further example, a company may patent an invention and sell related products in one particular area of technology. However, additional revenues may be generated by licencing the invention to companies operating in other technology areas where the invention is found to have unexpected applications.

A new way to assess patent portfolios

In 2016, ARM Holdings were acquired by Softbank for $32 billion. Ordinarily, one would expect that an acquisition of this size of company whose main assets are IP would require considerable time and legal fees to review the vast portfolio. Not in this case though; using new AI tools from UK-based start-up Aistemos, the due diligence on ARM's patents was completed in a matter of days.

Aistemos are not alone either. Other companies like PatSnap, Citation Eagle and PatBase are all looking to provide ways to help companies navigate through the reams of data associated with intellectual property and to use it to their advantage. When finding prospective licensees or looking to see whether a patent is worth taking a licence on, these sorts of companies may provide a commercial advantage and help reduce costs.

However, some care should be taken when using these tools. They are designed to operate on large portfolios and to give good overall impressions in a much shorter time than an attorney could manage. In this way they appear to be largely successful. However, when reviewing smaller portfolios, or portfolios with unusual filing strategies, the results may be less useful.

Whilst such tools are not a complete solution to IP licensing and acquisition, they nevertheless represent developments that are taking place to simplify the handling of IP in commercial agreements. As a result, the potential benefits of IP transactions may become increasingly accessible to businesses of all sizes.

The benefits of implementing an IP strategy

By securing their IP, businesses of all sizes may benefit from additional revenue opportunities. Failure to secure IP for a particular area of your business can mean that those opportunities disappear for good. This is especially true in the case of technology, where failure to apply for a patent before the invention is made public may prevent that invention from ever being patented. This can be particularly significant for start-ups whose core business relates to one or two particular pieces of technology.

Filing for patents and other forms of IP is not necessarily right for every business. For some businesses, the costs involved outweigh the potential benefits. For other businesses, keeping trade secrets may be the best approach. However, these are decisions that are best made carefully and consciously with consideration to short, medium and long term value as their consequences may be significant and long lasting.

In conclusion, it is sensible for start-ups to develop an IP strategy as early as possible and keep that strategy under review. By doing this, whatever strategy is chosen, the business may be given the best chance of accessing a range of long term intellectual property benefits.