



IP Considerations for Technology-Based Businesses

Intellectual property (IP) has become the gold of the current economically driven technology gold rush. Compared to the California gold rush in the 1850s, when half a million people from around the world raced to stake claims for gold-bearing land, today's technology prospectors are driven to secure exclusive IP rights to new inventions and essential technologies that will position them ahead of their competitors.

As the tide of dot-com businesses has ebbed from the recent rush of e-commerce, technology still continues to drive entrepreneurs and new business enterprises, albeit in a somewhat more conservative manner. Today's successful players are avoiding emphasis on pure technology and are merging technological expertise into new applications of business decision-making principles and practices.

The Business Life Cycle

The life cycle for a business that is technology-based can be broken down into four basic phases: initial technology focus, product development, business focus and an exit phase.

During the technology-focused phase, the core invention on which the business will be built is discovered and developed. Every important technical aspect of the core invention should be thoroughly explored. Most importantly, IP rights must be developed and secured.

During the product development phase, the applicability of the technology of the core invention to one or more specific commercial needs (markets), as well as the practical aspects of commer-

cial manufacturing and cost margins, should steer the final stages of technical development. Reviewing initially filed patent disclosures and pending claims is important at this point to ensure that the commercial embodiment(s) of the core invention is protected, along with any key manufacturing processes and/or methods of use that could preclude competition by others.

During the business-focused phase, when the product is being manufactured, marketed, sold and distributed,

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the emphasis on the core technology takes a back seat to more standard business operations. Nevertheless, licensing agreements, manufacturing agreements, distributor agreements and the like that are based upon secured IP rights are often prevalent.

Finally, at some point, the founding entity of a business will exit either by acquisition or merger. The technology-based, product-oriented business in effect becomes the final product that is to be developed, marketed and sold.

Maintaining a Technological Lead

Every successful business needs to have a business plan that will guide the

development, decisions and operation from beginning to end. For technology-based businesses, it is vital to maintain a focus on the core technology, as well as related developing technologies, on an ongoing basis.

Throughout each phase of the life cycle of a business, it is important to monitor changes in all related technologies, continually reevaluate one's own technology, and monitor and evaluate competitors' attempts to enter the market or to increase their market shares.

Tools that can be used to maintain a business' technological lead include: patent watches, which monitor published patents filed by competitors; patent citation trends, which provide an indication of specific areas of technology that others are focusing on and developing; patent hit counts, which identify entities that have secured more rights in a given technology; and patent maps, which show the relative degree to which areas in a given technology are more or less developed.

Achieving Success

Years ago, business success could be achieved by producing products at lower costs and selling more products by reaching larger markets. Today's technology-based businesses, which are founded on core technologies, have to maintain their technological lead by first securing intellectual property rights and then maintaining a focus on technology throughout their business life cycle. In future issues, this new quarterly column will explore these steps in more detail. Be sure to look for my next column in the January 2004 issue. 🌐

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