

IP – A foundation for competitive advantage and growth

by Chris Hamer, a Partner of Mathys & Squire



Intellectual property is one of the most important assets of a company, whether it is a small start-up or a large multinational.

It can provide market advantage, revenue-streams through licensing, and/or a basis for outside investment. Despite this fact the role of IP in business, both how to 'obtain' and 'use' it, is generally not well understood.

Innovation sets your company apart from others, and is critical to the success of the business. IP is that innovation and can be found in many forms. It includes both technical (e.g. small improvements to existing products or processes, radical changes to existing products or processes, or the development of new products, processes or uses) and stylistic (e.g. designs of products and

brands) aspects.

Without IP protection a company will not maximise the benefits of those innovations. Patents, designs, trade marks and/or trade secrets (IP rights) provide companies with tools for protecting their innovations. However, creating an effective IP portfolio from those tools can be a serious investment in terms of time and money.

The types of protection appropriate for an innovation will de-

pend on the commercial circumstances. For example, one product or service could require protection by several IP rights. Alternatively, it may be more valuable to keep an innovation secret (e.g. a recipe or know-how).

A company's IP spend should be commensurate with the commercial value of the innovation and therefore, companies need to consider how that innovation can support their business and how it is going to be used to add value. Ideally, there will be a defined procedure for formally identifying innovation at an early stage and whether to seek protection.

In making such a decision consideration should be given to whether the innovation will become public on release of the product/service (which could prevent obtaining IP at a later date); the likelihood of competitors making (and possibly protecting) the same innovation; how easy it is to design around the innovation in terms of R&D cost; whether failing

to obtain IP protection will result in loss of profit margin; and whether it is possible to obtain revenue through licensing.

Almost inevitably, as time progresses, events will occur which affect an innovation and its IP protection. The commercial climate may change. Further innovation may occur - development of ideas can, and usually does, lead to changes in products and services.

It is imperative that companies monitor for, and protect, new innovations to avoid leaving valuable IP unprotected and thus free for competitors to adopt, and potentially protect themselves. This also includes considering whether IP rights are still pertinent to the business, and if not whether the rights can be licensed or sold to generate revenue.

As mentioned above IP rights are valuable, particularly as they can be used to prevent competitors exploiting your innovation and provide a commercial edge. It must be remembered that IP rights do

not provide freedom to exploit an innovation as other companies may have relevant IP. However, the burden of enforcing such rights falls on the IP right holder.

Time should be invested in watching the activities of competitors.

Innovation sets your company apart from others, and is critical to the success of the business.

Exclusivity over an innovation can only be maintained by, where necessary, enforcing your IP right. Where exclusivity is not essential, the possibility of obtaining revenue by licensing (or selling if no longer of value) the IP right should not be overlooked. Failure to do this can undo years of plan-

ning and sometimes waste costly investment.

IP rights are also considered highly valuable by investors, because monopoly rights allow a company to strengthen its position with customers, partners and competitors.

This in turn increases investor confidence and therefore the likelihood of investment and/or government grants. Of course, the biggest benefit to a company is the increase in its value! Companies with IP strategies which protect market-relevant IP and manage it in a cost-effective and constructive manner give themselves the best possible chance to be successful and to maximise the benefits of their investment.

• Chris Hamer is a Partner of Mathys & Squire, a firm of patent and trademark attorneys with offices in Cambridge, London, Thames Valley and York. He can be contacted with any queries or questions at ckhamer@mathys-squire.com

Scaremongering on costs of tackling climate change alive and well

A recent letter from The Alliance of Intensive Industries to the European Commission opposing reforms to the EU Emissions Trading Scheme shows that scaremongering on vested interests on the costs of tackling climate change is alive and well.

However, more enlightened parts of business have long re-

alised that a move to a low carbon economy is not only environmentally essential but brings huge opportunities.

Even the CBI in its recent report *Climate Change: Everyone's Business* called for a shift to a world where carbon becomes the new currency, and highlighted the UK's unique opportunity to prosper in these key

markets of the future.

The Climate Change Bill can be seen as the official UK launch of this new low carbon economy. A statutory framework requiring radical cuts in carbon emissions inevitably leads to policies covering all sectors of the economy - as house builders struggling to come to terms with zero carbon houses are already finding out.

The Environmental Industries Commission (EIC) has organised, on April 24 in London, a major conference 'The Climate Change Bill: Implications for Business' to help business understand the Government's climate change policies and how they will need to change in order to ensure that they exploit the opportunities of a low carbon economy.

The importance of this issue is reflected by EIC bringing together a unique line up of the top policy makers, regulators and business leaders to analyse climate change policy and how business strategies need to adapt to succeed as part of a low carbon economy.

This top level line up is headed by Rt Hon Hilary Benn

MP, the Secretary of State for Environment. The gun for the start of the low carbon economy is being fired - it's time for businesses to ensure they are in the race.

• For more details on EIC's conference on April 24: 'The Climate Change Bill: Implications for Business,' email: info@eic-uk.co.uk

MATHYS&SQUIRE is not just a firm of patent & trademark attorneys, but a firm of intellectual property experts.

We work by understanding not only your technology, but also your commercial objectives.

We use our experience to develop an IP strategy tailored to *your* business, using patents and other tools, to:

- Protect profit margins
- Create valuable assets
- Support revenue streams
- Manage IP risks

Where IP agreements are required, we can advise you on structures and royalty schemes. We are skilled in the drafting of IP agreements and in the analysis of drafts prepared by others. We have the expertise and experience to negotiate on your behalf.

Innovation & Profit

MATHYS & SQUIRE



Mathys & Squire Trinity House, Cambridge Business Park, Cambridge CB4 0WZ, UK T +44 (0)1223 393739 F +44 (0)1223 393738
also at: 120 Holborn, London EC1N 2SQ, UK T +44 (0)20 7830 0000 F +44 (0) 20 7830 0001 Plus offices in Thames Valley and York
mail@mathys-squire.com www.mathys-squire.com


MATHYS & SQUIRE
INTELLECTUAL PROPERTY