

IP protection – a necessity for the entrepreneur

by Alan MacDougall, a partner of Mathys & Squire – a firm of patent and trademark attorneys with offices in Cambridge, London, Reading and York.

To the entrepreneur with an innovative idea that will change the world, Intellectual Property (IP) rights are sometimes the only weapon available to prevent others from copying or adopting their idea. Patents, trade marks, designs and trade secrets can all be used to protect the innovation.

The type or types of IP rights that should be used will, of course, depend on the nature of the innovation. Whilst some forms of IP rights are created automatically, such as copyright and unregistered design right, these unregistered rights generally offer limited protection to the entrepreneur seeking to make their fortune in the international markets. For them it will be essential to obtain strong registered IP rights in those markets.

The problem facing most entrepreneurs is how best to use the limited funds that are available at the start of any new venture.

The amount to budget for the protection of IP has to be commensurate with the value of that IP to the business – spending more on innovations that will provide a real commercial advantage and less on those that (although perhaps academically brilliant) will not.

When making a decision of whether or not to protect an innovation, consideration should be

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given at least to whether or not the innovation will become public on release of the product; the likelihood of someone else coming up with the same innovation; the ease of designing around the innovation with a cost effective alternative; and the likelihood of being able to licence the innovation.

As registered IP rights are territorial in nature, costs are incurred in obtaining IP rights in each desired country.

Skilled IP advisors are able, through experience, to help the entrepreneur identify the most important IP rights that will protect the revenue streams underlying the business plan. By taking

advice early in the development process, advisors may also be able to suggest creative ways to maximise the benefit of the IP to the business plan.

During the development process, further innovations will of course be made. These may also be worthy of separate protection, depending on the commercial advantages they bring and whether or not they will be covered by the existing IP rights that have been obtained.

Even if the latest innovation is covered by the existing IP rights, consideration should still be given to obtaining further protection so that it is harder for competitors to invalidate or design around your IP rights.

As registered IP rights are territorial in nature, costs are incurred in obtaining IP rights in each desired country. However, in most cases, by carefully selecting the countries in which protection is sought, entrepreneurs can maximise the impact of their protection.

For example, if Europe is an important market and the cost

involved in obtaining protection throughout Europe is prohibitive, then obtaining protection in the UK, France, Germany and Italy may be enough to prevent competitors launching a competing product in other European countries because the market in those countries is too small.

In addition to obtaining their own IP rights, entrepreneurs have to be aware of the IP rights of others and especially those of their competitors. Infringement of a competitor's IP right may be catastrophic to the business if a licence on reasonable terms can not be obtained.

Time, therefore, has to be given to identifying competitors' rights and their potential relevance. If a competitor's rights are identified early in the development process, there may be time to invalidate those rights, to negotiate a reasonable licence or to investigate possible design rounds. If left too late, however, there may be no option but to remove your product from the market or to pay an inflated licence fee.



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MATHY&SQUIRE LLP 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.

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