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Building a Strong Patent Portfolio - Five Tips to Stay Ahead of the Game

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The old phrase “strength in numbers” no longer applies in the patent world – unless you happen to be a company like Microsoft®. This phrase was created by many large companies whose strategy was to file patent applications on any and all inventions developed by their engineers, scientists and even company executives. This old strategy allowed companies to flood the market with hundreds and sometimes thousands of patents directed to small incremental changes with little strategic consideration for how these patents actually add value to the bottom line.

Today – things have changed. What are companies doing to stay ahead of the curve or beat out their competition? Several new strategies are being used to win the patent wars.

1. Emphasize Quality Over Quantity

A poorly drafted patent does nothing for a company – except waste money. Companies have been changing their patent strategy to focus on high-quality patents that add value to their bottom line. No longer are companies filing patent applications on any and all inventions and executives are demanding and requiring aggressive enforcement of their patents. Poor quality or narrowly drafted patents defeat this ultimate goal and prohibit companies from successfully enforcing their patents, thus, significantly weakening their position in the market and revenues for their product.

TIP – Make sure your patent portfolio includes patents that cover your product or method and can be asserted against your competitors should they copy you.

2. Keep Track of Your Competitors’ Products

As your company continues to file and obtain high-quality patents, it is important to keep track of what your competitors are doing in terms of their products. Many new products are introduced into the marketplace due to a demand and/or request from consumers and retailers. As an example, sometimes companies are asked to develop new products that might be alternatives to products currently available. These alternative products may be similar to your products and may be taking market share away from your company. This should be recognized as soon as possible and the necessary steps should be taken to protect your company’s market position and patent rights.

TIP – Buy your competitors’ products and determine whether they have copied any of your products and/or are infringing any of your company’s patents.

3. Keep Track of Your Competitors’ Patents

Keep track of your competitors’ patents. Closely monitoring the competition may help identify any potential issues before they become big problems. For example, if your company is designing a new product, a freedom to operate analysis is prudent to make sure that your company is not hit with a patent infringement lawsuit days after the

introduction of a new product. In this situation, a freedom to operate analysis may be very beneficial in helping your company with a potential design-around and a successful product launch.

TIP – Periodically search for issued and published patents from your competitors and determine if you are infringing any of their patents. Consider whether or not you need

to modify your product to circumvent their patent or get a non-infringement and/or invalidity opinion prepared to protect your company from allegations of infringement down the road.

4. Purchase Patents from Third Parties

Sometimes the best inventions and patents don’t always come from your own company. Many different inventors and companies are

continually developing new products and methods to be more efficient, work better and faster and also cost less to manufacture. In addition, many solo inventors, doctors, engineers and scientists may think of great ideas in your industry. Therefore, a thorough search and analysis of the patents related to your field could open up many business and strategy opportunities for your company.

TIP – Identify and purchase pending applications and issued patents that can be used to strengthen and add to your company’s patent portfolio.

5. Reallocate Patent Funds

Companies generally have fixed funds to allocate to patent work. Therefore, they need to make sure to use their patent funds wisely. Foreign patent protection is very costly, time consuming, and difficult to enforce. Companies often select a number of countries for seeking foreign patent protection. However, it may be the case that by the time the patent application is examined and/or granted, the product or method is obsolete or the company decides to no longer pursue patent protection in a number of countries, thus wasting time, money and resources that could have been better allocated.

TIP – Reallocate funds used for foreign patent protection to U.S. patent protection or further research and development.

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