

I CAN'T DO THAT WITH A PATENT, CAN I?

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While most are aware of the marketplace advantage that patents afford by blocking competitors from making, using or selling the patented technology, patents can also operate to provide leverage for entering new markets, boost revenue, and increase investment and/or acquisition appeal.

Increase Demand for Your Product

Although a patent protects against copying the patented invention, patenting the space around a core technology can further increase the landscape of protection. For example, a company may invent a chair with four legs, a back, and a seat, and take the common approach of patenting the chair. A forward-thinking company may go further and patent alternative seating solutions such as a chair with three legs and/or a stool with four legs and no back. This expanded seating patent portfolio will prevent competitors from selling alternative seating devices, thereby ensuring a broadened marketplace advantage and increased demand for the company's chairs.

Surprise the Competition

Companies may also use patents as a "smoke screen" to hide their true intentions from competitors, allowing them to make an unexpected splash when a core product is released. For example, a company may wish to secretly enter the bicycle market. The company may not only file patent applications for bicycles, but also for surfboards, skateboards, and scooters in order to mask the company's true intentions. Furthermore, if the company only desires U.S. patent protection, the company may request non-publication of the bicycle patent application(s) to further hide their intentions until the patent issues.

Expand Your Product Offerings

A company may develop a patent portfolio for the purpose of entering a new market by patenting key improvements in the new market with the intent of cross-licensing. For example, a company in the business of manufacturing containers may develop a patent portfolio directed to key advances in cabinets, intending to enter the cabinet market. Although existing cabinet companies may own patents restricting the container company from using base cabinet technology, the container company may enter a cross-licensing deal with competitors in the cabinet market. In such a deal, the container company would grant licenses for their key cabinet advances in exchange for licenses directed to the base cabinet technology, thereby anticipating and avoiding possible patent infringement issues associated with entering the new market.

Increase Cash Flow

Marketable patent portfolios may be developed by entities not intending to make or sell the patented technology themselves, for the purpose of licensing the patents to spin-offs or to existing companies having an interest in marketing the patented technology. Such licensing ventures reward both sides, with the patent holders receiving money and the licensees receiving the exclusive rights to make, use and sell the patented technology.

Some companies may develop advancements in technologies unrelated to their core business, either purposefully or incidentally. These advancements may be patented with the intent to license the patents to companies who deal with the patented technology, providing a secondary stream of income. Also, some companies may occasionally change focus from an old technology to a new technology. Although these companies may no longer utilize patents from the old technology, they may license these patents to other companies that still focus on the old technology.

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Increase Company Value for Investment or Acquisition

Patents can make or break investment or acquisition opportunities. A company that has not protected their key technologies will often not receive a second glance from investors or potential acquirers. Conversely, a strong patent portfolio can attract investors and make a company more attractive for acquisition, and may be used as a basis for company valuation.

Many companies monitor recently published patent applications to follow advances by competitors. Occasionally these companies identify a published patent application or patent that they believe will grow their business and may in turn make an offer to the patent holder to acquire the patent-holder's company.

Important Reminder

Although patents can be used to add value in numerous ways, you may lose the benefit of patent protection by publicly disclosing your invention without first filing a provisional or non-provisional patent application.

For more information about Intellectual Property services, visit <https://www.swlaw.com/services/intellectual-property-and-technology>.



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