



Business Innovation and IP Strategy - Making It Work

By Peter Finnie and David Stead, Gill Jennings & Every LLP (GJE), a leading European IP Attorney firm.

"In today's knowledge economy, IP has never been more important for securing... prosperity... It is estimated that 70 per cent of a typical company's value lies in its intangible assets"

The Gowers Review of Intellectual Property

Intellectual Property (IP) can be called "the currency of innovation". Most companies recognise the growing importance of IP but many still don't have the strategy and structure in place to protect, manage and exploit it.

Good IP management starts with the company's business plan. This should contain an explicit IP strategy. But a recent study reported that less than half of the major European businesses surveyed had a documented IP strategy.

IP strategy should be formed in the context of the commercial aims of the company, including the exit strategy, where appropriate. The aim is to ensure that companies get the most out of their R&D efforts and provide a framework to manage IP risks in a robust and cost-effective manner. Too little attention is given to IP as part of innovation and business planning processes (rather than the acquisition of IP simply for the sake

of it) and the support IP can lend to attracting investment or improving revenues.

Here are some of the issues to be considered and steps to be taken when developing an IP strategy:

- Understand how IP can support the company. How is the IP going to be exploited to add value? If appropriate, how does the planned exit strategy affect this?
- Establish procedures for identifying innovation at an early stage, so a decision can be reached on whether to seek registered protection, and an internal register of company IP updated accordingly. It is all too easy to overlook the protection of innovation in the rush to get new products to the market.
- Develop a formal patent, design and registered trade mark filing strategy. What business factors dictate the filing strategy – where, when and how to file?
- Develop an IP awareness programme for key staff. Consider employee incentives to innovate, report and assist in the IP management process.
- Produce support documentation, for example invention proposal documents, inventor acknowledgements, standard agreements and assignments, patent status reports, and bibliographic summaries.

These can be very useful to inform stakeholders like board members and investors.

- Put in place a system for watching the publication of patent applications and granted patents by key competitors as a means to identify IP infringement risks and opportunities. Blissful ignorance is not a sustainable policy.
- With collaboration now such an important factor in innovation, consider third party IP issues, including contracts with suppliers and joint developers. The contracts of employment of key staff should be reviewed to ensure the terms cover the main IP issues that may arise, for example, the ongoing duty of confidentiality.
- Consider commercial risks. Simply because a commercial product technically infringes a third party's IP does not necessarily mean that it will assert its rights. This frequently depends on the company culture of the third party and its financial standing.
- Actively police the IP portfolio and look to generate return on investment. IP is a tool to prevent competitors exploiting your technology, brands, copyright and know how. If you do not maintain exclusivity by enforcing your IP, out-license it or sell it, you are squandering an often costly investment.

- Set up an IP team perhaps involving advisers, to frequently review IP matters – educating and raising awareness at Board level of IP as a strategic issue and source of value.
- Agree and monitor an IP budget. The costs of acquiring IP and considering third party issues can be significant. What impact will this have on cash flow? Some company's waste money through an inappropriate international protection strategy.

So, IP strategy should be made explicit by committing it to paper as early as possible. If IP is important, it should form part of the innovation and business planning process. IP should be reviewed regularly to ensure it is protected cost effectively and of course, fully exploited.

We'd like to hear about your business – please get in touch.

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