Small and Medium Size Enterprises and the Patent System
A Brief Economic Analysis

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The patenting process is a long, complicated, and expensive process. Thus when IP (Intellectual Property) owners commit resources to develop their inventions and protect them with duly issued patents, decisions regarding allocation of resources must be addressed. The nature of the IP owner and the objectives or expectations regarding use of the patents should first be considered.

For example, is the IP owner a university, a small private start-up company, a large public company, a non-profit organization, or a single individual inventor? This is an important question because the type of IP owner may dictate what percentage of available resources should be allocated to IP development. In the case where the prospective IP owner is a small- or medium-sized enterprise (SME) with very important new technology, the percentage of allocation of resources should be relatively high. For this type of IP owner to be successful in a competitive world relative to larger established companies, the strength and integrity of the IP portfolio is of paramount importance. In contrast to the SME, large established multinational companies with substantial market share, goodwill, and proven technology may need to direct more resources to business operations not found in the start-up SME. Such operations include advertising, customer service and support, as well as maintaining distribution channels. The large established company must, of course, still keep an eye on its in-house R&D advances relative to competitors to stay current with industry trends when competing primarily on the basis of technological innovation.

Because of their established resources, however, other methods employed by larger companies to stay current with technological innovation include direct investments in, joint ventures with, or mergers and acquisitions of emerging SMEs with promising new technologies. In these situations, the strength of the SME's patent portfolio is often one of the primary assets considered by the large company to determine whether it will invest in the SME, form a joint venture therewith, or make an offer to acquire all or a part of the SME. This is particularly true when the SME is a high-tech start-up organization that has focused its resources on R&D and product development, rather than post-development activities such as establishing distribution channels, sales and marketing, customer support, or advertising.

Why is the SME motivated to initiate the patenting process? This question should also be addressed by the prospective IP owner in determining allocation of resources. Take, for example, the SME high-tech company, does it intend to manufacture its products, is its goal to be purchased by a larger company, or will it license its technology? These strategic issues should be addressed in determining allocation of resources to IP development. In the case where the SME start-up intends to do its own manufacturing to satisfy eventual market demand, a substantial portion of available resources must then be directed to establishing manufacturing capabilities. On the other hand, if the SME start-up is focused on being an R&D and product development company with the ultimate business objective of licensing its technology to established manufacturing companies, then a substantially higher percentage of available financial resources should be directed to IP development.

Other issues to be addressed in determining the amount of resources dedicated to IP development should include whether the patents, copyrights, and trademarks will be used offensively or defensively. If a company is well established and competes in the market place on the bases of non-technical advantages, then defensive patents on only the most important product embodiments may be necessary. On the other hand, if the company believes its technical innovation is very valuable and it intends to aggressively assert its patents against others either by licensing or court action for infringement, then a strong, robust portfolio of IP
protection is necessary and increased resources should be directed to the IP development program.

To initially engage the patent system in an efficient and cost-effective manner, the SME may turn to various established patent databases, for example, the USPTO or EPO web sites, to conduct preliminary in-house investigations of current or expired patents. A review of current patents will give insight into the strategic position of competitors relative to proprietary technology. On-line searches may be formulated to retrieve patents within certain technological classifications, or patents from specific companies and assignees, or even patents having individual inventors who are known within an industry for being principal contributors to technological innovation.

In the case of patents due to expire, the inventions therein once protected by the patent system enter the public domain upon expiration. Thus the information disclosed in expired patents is free for public use. In this manner, the SME may utilize the technical disclosures in expired patents for purposes of solving production and product quality problems which have been previously addressed by other organizations. Even though the technology disclosed in expired patents might be considered dated, it may still be useful to the SME for developing in-house expertise and an understanding of the historical trends of technological development in a particular industry. Furthermore, techniques and technological know-how from expired patents may be properly incorporated into an SME's products or manufacturing methods without the risk of being accused of patent infringement or the need to pay a licensing fee.

In conclusion then, the SME is better positioned to make prudent decisions regarding the allocation of financial resources when it has engaged the patent system in a defensive manner to verify that its products and methods do not infringe the patents of others, and is even better positioned to compete in the global market place when it has engaged the patent system to protect its technological innovations with duly issued patents.

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