

INTELLECTUAL PROPERTY MANAGEMENT: AN IMPORTANT TOOL FOR SMALL AND MEDIUM ENTERPRISES

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Abstract:

“An essential factor affecting a company’s success or failure is the degree to which it effectively takes advantage of intellectual property. The aim of this paper is to point out the importance of intellectual property management for small and medium enterprises, emphasizing only certain relevant aspects. The study is enriched with three examples of success SMEs, winners of or nominated to European Invented Award. Our approach demonstrates that managing the intellectual property in a good manner and possessing a strong intellectual property portfolio, are two keys factors to success.”

Keywords: *intellectual property management, strategy, small and medium enterprises (SMEs), exploitation*

JEL classification: *A12, D45, L24, M11, O32*

INTRODUCTION

Frequently, the new creations are considered to be risky and they don't get financial support to be implemented. The role of intellectual property (IP) management is essential for small and medium enterprises (SMEs) and it is necessary to develop IP strategies in order to manage effectively SME's assets. European Union (EU) defines SMEs using 3 criteria: employment (less than 250 employees), turnover (less or equal than € 50 mil.) and assets (less or equal than € 43 mil.).

Throughout the time, there appeared many ways of transferring and exploitation the IP and there were developed methods which take into account the interests of both the creator and the buyer. The licensing, the franchising, the merchandising or the joint venture agreements are some of the most popular methods of exploitation the IP.

IP is considered by many IP experts to be a valuable strategic and financial asset for every organisation. Like any other resource, IP should be carefully managed. Without appropriate management, the organisation may be unaware of its IP, its value or benefits, or may expose itself to unnecessary risks.

In this paper we treat aspects concerning the IP management and issues related to IP protection to be taken into account by SMEs when making decisions. The aim was to present concluding ideas regarding the management of IP and the exploitation of IP assets.

THE IMPORTANCE OF INTELLECTUAL PROPERTY TO SMALL AND MEDIUM ENTERPRISES

Every product or service that we use in our daily lives is the result of a long chain of big or small innovations. There are different forms of IP rights which include trade secrets, utility models, patents, trademarks, geographical indications, industrial designs, layout designs of integrated circuits, copyright and related rights, and new varieties of plants. Generally, IP allows SMEs to own their creativity and innovation in the same way that they can own physical property. The SMEs which own IP can control

and be rewarded for its use. Furthermore, this encourages further innovation and creativity to the benefit of us all.

There are several reasons that make IP protection important for SMEs. Firstly, the progress and prosperity of humanity depend on its creativity in technical and cultural fields. Secondly, the legal protection of new creations promotes further investments and leads to innovation. Thirdly, the encouragement and protection of IP stimulate growth, leading to the creation of new jobs and new industries, and improve quality of life.

In his research, Kalanje (2006) claims that in a knowledge-driven, competitive business environment, technological innovation is a principal determinant of successful firm performance. On the one hand, in theory, the IP system is considered to be absolutely necessary to encourage creative intellectual endeavour in the public interest. On the other hand, in practice, the IP system hinders competition to the extent that it is often seen to be playing a negative role in innovation.

In order to achieve their economic objectives, SMEs should focus on IP protection. It is known that IP is just another way to describe valuable knowledge, knowledge about how to do business, products, business processes, even customer list (Spruson & Ferguson, 2007). In some cases, knowledge would affect business if the closest competitor knew exactly how to make it, or had access to internal operating procedures or customer lists. Moreover, the knowledge is a source of competitive advantage and, perhaps, is a key factor in success.

All around us we can find things which are created by human mind. Almost every SME has at least one trademark or a trade name. Most SMEs have valuable confidential business information, like customers' lists or sales tactics that they may wish to protect. Therefore, each SME should consider how best to use the IP system to its own benefit.

THE EXPLOITATION OF IP ASSETS

Generally, the IP management consists in identify, protect, exploit and enforce IP rights. This part of the paper focuses on exploitation of IP assets and tries to give some examples to be followed in order to build a strong IP strategy. Failure to exploit IP assets can be categorised as a waste of business potential and investment and reduces the competitiveness of the enterprise.

Increasingly, IP becomes a key factor in day-to-day business decisions. SMEs are often the driving force behind the innovations. Their innovative and creative capacity, however, is not always fully exploited as many SMEs are not aware of the IP system or the protection it can provide for their inventions, brands, and designs. Adequate protection of a SME's IP is a crucial step in deterring potential infringement and in turning ideas into business assets with a real market value.

Vector Foiltec, a German company founded in 1982 by the inventor dr. Stefan Lehnert, was nominated to European Inventor Award 2012 at SMEs category, for inventing ETFE (Ethylene tetrafluoroethylene) – based technologies for roofs. The technologies have advantages in terms of energy efficiency, resistance for hurricane, UV-stable copolymer and so others. The company is market and technology leader for foil roofing and cladding systems due to constant investment in R&D and the overall global market volume is estimated at around €130 million p.a. The company Vector Foiltec sells ETFE foil solutions under the trademark 'Texlon'. In this case, patents portfolio is a necessary component to be owned by the company, to protect technological leadership and recuperate investments in R&D. International patent protection is an integral part of the IP strategy. The company tries to patent in countries with potential competitors or infringers, and also in countries with favorable conditions

for the companies' technology applications. Until now, it has applied for 8 patent families since 2001. The patents applications have filled in both routes (European route and World – PCT route) in countries like: Germany, Denmark, Austria, the US, China and Russia.

As innovation, creativity and knowledge are becoming more important to competitiveness, SMEs are more and more faced with the need to find ways to manage their innovation, creativity and knowledge. For example, the nominee for European Inventor Award 2013 in the category SME's (EPO, 2013), Bruno Berge, encouraged by the success of his previous photo type for Canon camera-maker, decided to find his own funding instead of seeking a corporate buyer for his recent inventions: liquid lens. Liquid lens are up to 85% smaller than camera lens offering similar performance. By the instrumentality of IP and Technology Transfer Organization (France Innovation Scientifique et Transfert SA), the inventor founded his own company in order to commercialize liquid lens technology. In this case, the inventor was converted to entrepreneur and he manages his own IP asset. A research conducted by the patent search site (espacenet.com, 2013) shows that the inventor's firm, Varioptic SA from France, owns a portfolio of 30 patents.

Spruson & Ferguson (2007) identify two types of IP strategies. The offensive IP strategy aim to develop IP that an organization can use to take action against an infringing party. The defensive IP strategy intends to obtain IP to minimize the risk of being sued by others for infringement. Ideally, an IP strategy will address both fronts. The winner of the European Inventor Award in 2012, dr. Manfred Stefener for his invention portable fuel cell, used a portfolio of over 50 applications and patents granted, and he indentified and reserved trade secrets and know-how technology. Some of the patents are used just to block competitors (those involving "core" fuel cell technology), his company being dominant on the segment of the fuel cell market. Other patents relate to certain aspects of company's products. Trade secret (one of the reasons the company have no competitors) and know-how information are limited to key personnel who signed confidentially agreements. His company success, among the others, became from a good strategy to exploit a diverse IP portfolio of patents and trade secrets. His company IP strategy was developed in collaboration with an external patent attorney, who built a combination of strong patent protection (the other reason the company have no competitors) such as trade secrets and trademark usage, all completed with innovation path. Dr. Manfred Stefener Company, Smart Fuel Cell AG, tries to seek protection in those countries where it intends to sell the products: Europe, Canada, Japan, Korea and China. Furthermore, another part of his IP strategy is based on monitoring IP infringements.

There are many tools which the system of IPRs offers to SMEs, providing a large amount of options to manage their innovation, knowledge and creativity (ITC & WIPO, 2004).

Kalanje (2006) claims that SMEs are more inclined to use trade secrets rather than patents as a form of protecting their inventions to stay competitive. The main reason is due to high costs and the complexity of the patent system. Moreover, another important factor in determining the inclination to patent is considered to be the size of the firms. For example, in Australia, 35% of small firms with less than 20 employees used patents, while 75% of firms with more than 500 employees patented their knowledge.

Secară & Fântână (2010) consider that, in order to exploit efficiently the IP assets, SMEs should take into account the IP risk management. Particularly, through the IP risk management process organization consistently applies policies, procedures and

practices for the identification, analysis and treatment of risks related to IP rights. As a result, the main risk factors related to IP rights that can emerge are as follows:

- failure to supervise the market;
- sale or assignment contracts, licensing agreements, know-how contracts, franchise agreements, joint venture agreements, consultancy arrangements or contracts with employees which were wrongly negotiated or drawn;
- acts of unfair competition;
- undervaluation or overvaluation of negotiable intangible assets, which can affect the participation rates in joint venture agreements or can lead to failure to sign them;
- infringement of an IPR, either by the company, either by the competitors.

The role of IP is increasingly considered as a major issue for managers and policy-makers. For SMEs it is very important to understand the importance of IP rights. Furthermore, every SME should integrate an efficient IP management, developing an IP strategy that is tailored to the needs of the enterprise.

There are a various forms and legal arrangements through which a technology may be transferred or acquired:

a) Licensing. Licensing is a good choice in cases where there are barriers to import and investment, where legal protection is possible in the target environment, and where there is a low sales potential in the target country. The main advantages are: permits the use of IP for consideration; IP owner maintains ownership, derives revenue from licensee, may place costs of production, distribution, etc., on licensee; potentially very lucrative;

b) Joint venture. A joint venture is an organization in which two or more individuals or companies join together in a limited, temporary partnership. These groups will then combine their resources in the hopes of accomplishing a specific, profitable goal. The main benefits of a joint venture are: cooperative development and/or exploitation of IP; sharing of risks; allowing parties to bring different skills to the table; access to new markets. Regarding the disadvantages, we can enumerate: sharing of rewards; slower decision-making; potential for disagreement.

c) Franchising. Franchising is an efficient means of distributing goods and services. The franchisee gains control over operations in exchange for some type of payment and the promise to abide by the terms of the contract. The main advantages are: benefit from known brand with relatively little investment; low risk of failure as system is already developed and proven to be successful; collective purchasing by franchisees reduces costs; training and support often offered by franchisor; financing is made easier because business is known, proven and understood. There are also disadvantages: IP ultimately owned by franchisor; freedom to act an innovate is usually limited by franchise agreement; portion of profits must be paid to franchisor.

d) Merchandising. The benefits are: extends IP to ancillary products and services, increasing its value (sports jerseys with team logos or player names and numbers, toys based on popular movies or books, movie posters, etc.); very low risk for licensor; effective marketing tool for brand, product or service.

CONCLUSIONS

The examples presented in our paper confirm that a strong IP portfolio can lead a SME specialised in a specific technology, to a world market leader.

If the SMEs have an IP management, they are more determined on the defending aspects of IP strategy than on the proactive usage of IP. Also, is important to develop the value of company assets as well as the firm reputation via IP.

Managing an enterprise's IP assets is more than just acquiring the formal IP rights through the national IP office. Obtaining IP protection is a crucial initial step, but effective IP management means more than just protecting an enterprise's inventions, trademarks, designs, or copyright. It also involves a company's ability to commercialize such inventions, market its brands, license its know-how, conclude joint ventures and other contractual agreements involving IP, and effectively monitor and enforce its IPRs.

There are many methods and legal arrangements through which technology is transferred or acquired: licensing, know-how contract, franchising, joint venture agreements, consultancy arrangements, merchandising. The knowledge of these methods is necessary for each SME.

In order to achieve their economic goals, SMEs should consider the IP risk management, by which process organization consistently applies policies, procedures and practices for the identification, analysis and treatment of IP related risks.

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