

The first in a series of articles concerning invention conception and patent filing/prosecution strategy for small to large organizations from an inventor, engineer and product developer's perspective.

As the pace of business accelerates it behooves entrepreneurs of small to large producers to implement strategic steps to steer their organization's future. Having a vision of growing your business is the first step. Subsequently, setting a strategic plan and then implementing the market study, opportunity identification, product conceptualization, development, launch and trade support follow in due course. However, often neglected or discounted is the role of intellectual property, which can be in the form of trademarks and trade dress, copyright, trade secrets, design patent protection and, of course, utility patent protection.

For many producers brand recognition through creative naming and design language plays a major role in market success. Trademarks and design patents help to establish brand equity but its value begins with delivery of the product that has features that bring a real benefit to customers and users. In my experience, this delivery of a benefit is typically best achieved by solving a pain point for the customer or user. Sometimes the pain point may not even be one that the customer or user even realizes until after the solution is presented. After the inventive problem solution is presented, the solution might seemingly be very obvious.

Traditional thinking within many corporations has generally been to wait to pursue patent application filing to protect the investment made into a solution until a fully developed product or service has been created. At that point, you have invested your time, your capital and your resources without patent protection hedging of the investment.

In my career with a global 500 firm that is how we started out viewing patents. It was a time when competition was mostly national and usually those in the market behaved gentlemanly. What we took to production we decided if we would patent or not. This resulted in very limited patent activity on future technology that enabled significant performance or new feature upgrades. However, as the world continued to shift into a global marketplace and we saw competition could come as easily from US soil, across the ocean or even over the internet. I soon realized the need to apply more forethought with respect to intellectual property timing. It also took a costly court battle with a foreign competitor as a wake up. From there we slowly evolved to mapping out new product, feature and service benefits and focusing our patent spend to earlier in the process, preferably to a stage before tooling capital spend was released. This was a step in the right direction but still shy of optimal. This last point will be the focus of future articles.

Nonetheless, my team and the company as a whole began to improve the link between the marketing and technology sides of the business. Within my leadership role as cross product intellectual property coordinator and through the help of many others, we learned by doing,

gleaning insights and developing better practices on patent portfolio building. That focus over several years led me to observe the following five reasons to file patent applications asap.

Starting with the most obvious and universally cited reason;

1. Establish your ownership position of the benefit delivery before the competition.

- a. A patent provides the right to keep others from using, producing or selling your claimed invention.
- b. The claims are what you enforce.
- c. A typical US patent takes at least 3 years from filing until it is issued.
- d. Filing well ahead of launch gives you a better chance to protect your position in an evolving market space.
- e. Additional filings can and likely should be made building of the base portfolio as the product evolves
- f. Use of provisional application filings in the US to your advantage. They don't affect your patent term and allow further development to occur.

With that, the following reasons can also provide significant market position benefits.

2. A patent application or granted patent has global implications in terms of prior art.

- a. If in a crowded patent area, adding to the mix can lessen a competitors edge as rarely are all the best ideas taken, as the environment changes due to new materials, processes or regulations or market trend evolution.
- b. Your prior art contribution impacts the competition and can force them into limited claims or possibly not even entering the market.
- c. Even if late and your claims are limited or only US, the prior art it provides can provide you a path to cross-license or sell, even in other countries.

3. A patent portfolio can buy you time before entering the market

- a. You can delay to when your resources are ready then fully develop and launch
- b. You can block the competition or force them into less optimal solution paths delaying their launch.

4. Generate an asset that you can leverage in negotiation

- a. Provide an advantage with a trade partner or supplier on pricing & exclusivity
- b. Horse-trade with competition to get access to their IP and avoid infringement litigation

5. A solid portfolio paints a positive image

- a. It can draw investors that view that hedge as reason to invest with your firm. You are innovative!

TOP FIVE REASONS TO FILE PATENT APPLICATIONS ASAP

- b. Trade partners can use the portfolio to demonstrate technical prowess to customers

RECAP: 5 reasons to file patent applications

1. Ownership position
2. Global implications
3. Buy you time
4. Asset leverage
5. Positive image

Leverage you can create

We've only hit the highlights here to spur your thinking. Contact us to discuss in further detail your needs and issues. Together we will work out a plan on how best we can help you. I look forward to sharing my experiences in identifying problems and developing protectable solutions with you and your team!

The next post will be on; Generating Portfolio Roadmaps To Support Your Business Vision.

Sincerely,
[Steve Kuehl](#)