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The Andhra Journal of Industrial News

IP and Industry News

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Patent Myths

A common myth is that patent provides the right to sell your product. Patent rights are exclusionary. "Exclusionary" means that a patent does not give someone the right to practice the invention they have patented, instead, it gives them the right to exclude others from practicing it for a limited time--twenty years from the date of application. So, patent rights are exclusionary rights to prevent others from making, using, offering for sale, selling, or commercializing the relevant product or technology. A patent does not provide the right to commercialize a product or technology.

There is always a risk that third party patent rights could hinder your commercialization process. Managing the risks associated with third party patent rights involves patent searches known as freedom-to-operate (FTO) searches and obtaining FTO opinions from a competent attorney. Many parties also build defensive patent portfolios to provide leverage in negotiations, should a dispute arise.

A design around myth is that a certain percentage change in the product avoids patent. Some people erroneously believe that changing by 15% would do it. However, patents protect a product by defining the underlying invention in "claims." A claim defines the meets and bounds of an invention by essential features. If those essential features are present in a competing product, then the patent has been infringed, regardless of how different the patented and competing product may look. It is often possible to design

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around to avoid third party patent rights. However, that should be achieved based on a detailed analysis of patent claims. Simply redesigning a copied product to not resemble the original rarely has the desired effect. Any design-around has to consider the patent claims, so that it doesn't infringe any valid claims. Another myth is that a patent is only valuable once it is granted. Many applicants rush to have their patent application granted. However, there are advantages to a pending application. Once a patent is granted, it is possible for third parties to develop design around the granted claims with greater certainty. While an application is pending, there is an opportunity to adjust the scope of claims to capture attempted design-arounds. In many countries, damages for patent infringement backdate to publication of the patent application.

The value of a patent is often more closely linked to the quality of the patent specification than the quality of the technology. A poorly drafted specification can significantly detract from the ability to successfully enforce a patent, or otherwise use it as a strategic tool. Unfortunately, the desire to contain costs at an early stage leads many parties to skimp on the quality of an initial patent specification. This often leads to regrets in subsequent years, especially where that specification becomes the basis for a number of applications worldwide covering a blockbuster product.

Trying to obtain patent protection in too many jurisdictions is another common mistake. It is not necessary to file patent applications in every country in the world. One should be mindful of costs involved as more jurisdictions are selected. The local and international patent systems are complex, with many pitfalls for inexperienced players. Accordingly, it's always important to ensure you are receiving the best advice not only to have the applications prepared, but also in developing a good patent strategy for your patent portfolio to support your commercialization strategy.

IP Laws in Some Countries

Albania

On September 1, 2010, the Albanian government adopted the national intellectual property strategy for 2010-2015, which defines the objectives to be reached, including:

- A new copyright law to be adopted in 2011;
- Amendments to the current Albanian Penal Code recognizing counterfeiting as a criminal offense, to be approved in 2012;



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- A law regulating the establishment of the Internal Market Inspectorate related to IP protection, in 2011.

The strategy was drafted by the Albanian Ministry of Integration in cooperation with the European Patent Office (EPO) and supported by the EU's Instrument for Pre-Accession Assistance (IPA) funds.

Germany

The decision G 2/08 of February 19, 2010 (published October 28, 2010) of the Enlarged Board of Appeal (EBA) of the European Patent Office confirms that a substance or composition known as a medicament for treating a certain illness can be patented for use in a different treatment by therapy of the same disease. In particular, patentability is allowable where a dosage regime is the only feature claimed that is not disclosed in the state of the art. According to Article 54(5) EPC 2000, the patentability of any substance or composition, comprised in the state of the art, for any specific use in a method for treatment of the human or animal body by surgery or therapy and in a diagnostic method practiced on the human or animal body shall not be excluded, provided that such use is not comprised in the state of the art. The EBA indicates that the wording of Article 54(5) EPC 2000, namely "for any specific use," should not be narrowly interpreted as only referring to the treatment of a different disease. A narrow interpretation would also not be in line with the decision G 5/83 and the established case law under the EPC 1973. http://www.mondaq.com/article.asp?articleid=115976&email_access=on

Australia

AusPat is IPAustralia's online searching system for patent information, and was developed to provide an integrated solution for Australian patent searching accessed at <http://www.ipaustralia.gov.au/auspat/>.

Medicines and Devices for Heart Failure

More than 5 million Americans and 22 million people worldwide have heart failure. It develops when the heart muscle weakens over time and can no longer pump effectively, often because of damage from a heart attack. Fluid can back up into the lungs and leave people gasping for breath.

Inspira, made by New York-based Pfizer Inc., helps block water retention and is used for advanced heart failure. Spironolactone, a generic medicine that costs less than 20 cents a day, versus about \$133 a month for Inspira.



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Natrecor, approved in 2001, was the only medicine that seemed to help shortness of breath. One out of every six people hospitalized with heart failure were given Natrecor until it came under a cloud in 2005 when studies suggested it raised the risk of death and kidney problems. An independent panel recommended that its maker -- Scios Inc., a division of New Brunswick, N.J.-based Johnson & Johnson -- do a large study to resolve the issue.

Many people with severe heart failure already have defibrillators to zap their hearts if they suffer a rhythm problem. Newer combination devices also control how blood moves through the heart, improving pumping capacity. Defibrillators cost \$20,000 to \$25,000; the combos are \$5,000 to \$7,000 more.

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Om! Asatoma Sadgamaya, Tamasoma Jyotirgamaya, Mrityorma Amritamgamaya, Om Shantih, Shantih, Shantih!

(Aum! Lead the world from wrong path to the right path, from ignorance to knowledge, from mortality to immortality, and peace!)

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