

The value of a global patent portfolio

For countless corporations across the globe, their commercial prowess and competitive edge rests upon innovation—and, along with it, upon their ability to develop and implement a successful global patenting strategy to protect that innovation.

The process of building a patent portfolio is time-consuming and challenging, although when carefully planned and executed, the long-term rewards of this effort will be well worthwhile. Global patent portfolios often represent significant assets for corporations. Yet that value does not lend itself to simple quantification, especially during the earlier stages of the patenting process. So while it may be a somewhat more straightforward matter for companies to understand what they are 'spending' in order to manage their Intellectual Property, the question of what they are 'earning' in return from their IP is complex. Answering it requires a broader and more sophisticated understanding of the benefits that accrue from having the right global patenting strategy in place, rather than simply adding up numbers.

Taking the 360-degree view

Starting with a big-picture perspective, an essential first step is thinking about the value of a global patent portfolio is to recognise that that it creates opportunities.

The stronger the global patenting strategy, the greater those opportunities and therefore the more 'valuable' that portfolio will become. Usually this is because, with the right global strategy in place, patent protection will be more significant, the competitive edge that patents deliver will be more powerful, and the commercial opportunities that result will be more lucrative.

The way this dynamic plays out in each individual situation will depend, of course, upon a variety of factors, most especially the nature of the business entity and the sector in which it operates. Consider, for example, two cross-sections of the global marketplace—the Pharmaceuticals and Telecommunication sectors—with two very different approaches to IP strategy and therefore to building IP value.

In simplest terms, in Pharma, the goal is to win blockbuster patents, so patenting strategies will be focused around that objective. In Telecoms, companies are looking for patents that will map onto industry standards so that all the players will need to navigate through their patents when pursuing their own business models.

When working on developing the strongest patenting strategy for the company, consider not only the industry but also the maturity of the technical area in question. If a company will be entering into a new area that has not been explored before from an IP perspective, then a patent can be a vital weapon in the company's effort to fight for control and carve out territory. If the area is more evolved, then the patent strategy might be called 'sifting for nuggets' – looking for the innovations and protection that stand out in a crowded landscape.

One of the benefits of a strong patenting strategy is that it builds value by 'playing defence' as well as offence. So, for example, for some organisations, the value

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of a patent is purely defensive—by stockpiling large numbers of patents, they can fend off competitive attack or encroachment into a lucrative business niche.

In other cases, corporations need to pursue global patents in order to defend at a more fundamental level their ability to do business. Engineering patents can be a good example: Sometimes a company might not be the biggest player in its market, but it has developed an innovative solution that will work around what a larger company is doing whilst evading that larger company's patent portfolio. When the smaller competitor achieves that, it and its advisors will need to protect that solution with a patent. Then, just as with any global patent portfolio, that asset might be viewed as valuable enough that it can help a company get financing from a bank, or investment from a venture capital firm.

The commercialisation connection is key

The advantages of a strong patent portfolio are recognisable to bankers, venture capitalists, potential collaborators and a company's business competitors alike.

Financial value is strongest when an organisation's global patenting strategy is closely aligned with its commercialisation strategy. That's because, regardless of any reputational enhancements that might accrue to the company or its inventors, patents are first and foremost business assets whose worth is tied to opportunities in the commercial marketplace.

One could argue that this speaks to an often overlooked truth about the patent advisors who work with corporations to develop and implement a patent-winning strategy: In order to be most effective, the advisors must be fully versed not only in patent law and the relevant areas of technology, but also in the company's business strategy itself.

Collaborating with the company's strategists (and futurologists)

For our firm, we try to get involved as early as possible, which allows us to develop a rapport and real understanding of what the company is trying to achieve. The patenting process is a journey and we want to be able to think it through with them—one year, two years, five years and more, moving forward. When we understand a client's perspective, we are best able to ensure that the global patent strategy fully supports the global business strategy.

This process is truly one of listening to a company and coming to understand its commercial goals. There may be times when we work with corporations, and perhaps the best recommendation will not be to file a patent, but instead to rely on other forms of IP protection such as confidential know-how and trade secrets. But developing the right IP strategy starts with those conversations with in-house counsel, the innovators, and maybe with the marketing team too. They know what their competitors are doing and they can help us understand where they see the value of this new technology. Key questions include, how will it help to distinguish them from the competition? What are their end goals? What might the competitors be doing? Are there market or regulatory considerations?

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Here again, every situation will be different. In one case, we even had conversations with one company's 'chief futurologist' to ask not what the market currently wants, but what it might realise it wants when it sees it. The point is, it's about understanding a company's commercial vision and what it wants to achieve with this new technology. And just as with any relationship, the more one puts into the relationship, the more meaningful and productive that relationship will be.

What's truly gratifying is putting in the time early on to develop rapport with a corporation and seeing the results in terms of the success of the global patent strategy, the power of the product launches, the ability of the company to win financing or investment capital, and all that future growth and revenue. A global patent portfolio is part of that.

Understanding the patent journey

The patenting process truly is a journey and, because it does take time, many factors inevitably evolve. In part, that's because commercialisation prospects may become clearer as any technology develops. Meanwhile, the company's competitors will be acting and reacting, marketplace conditions are shifting, and the patenting clock keeps ticking, with costs mounting as decisions must be made about matters such as which jurisdictions to file in, which applications to persist with or abandon, when to litigate if this is an option, and more.

During the course of this journey, it may become easier to assess the worth of a patent or a patent portfolio in monetary terms. That's especially the case when it comprises a significant—or essential—element in a product that's sold on the market. Making that value assessment, of course, will still be more of an art than a science, but factors such as sales history, revenue projections, plans to enter new commercial markets, potential licensing revenue and estimates relating to next-generation products that build on the patent portfolio all provide useful input.

Of course, some decisions will be relatively straightforward: If, for example, we have a client who has what one might call a 'copy-able advantage', the IP will be priceless. So it must be protected. After all, if that does not happen, or if the patenting strategy fails to develop along with the technology, then our client would be limited in its ability to prevent others from entering the marketplace with me-too products.

Building value as patenting strategies evolve

We consider it to be fortunate that the patent system is end-loaded in terms of its costs. Companies can get two and a half years of global provisional patent protection, keep the advantage at a reasonable cost, and then decide how they want to proceed over time. If the business assessment changes, the patenting strategy will as well. Overall, however, it's important to keep in mind that costs relating to the granting process are typically a tiny fraction of the R&D, regulatory, and marketing costs involved in a product launch.

For a mature, well-established company with a big marketplace presence, external patent advisors typically will work with an in-house patenting team, and the patenting budget will likely not loom large in comparison with the overall investments in

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R&D and marketing. That can make it easier to focus on the longer-term perspective. But for smaller or growing companies, the issue of patent costs and benefits may be tougher for them to assess. After all, it's not just a simple matter of the filing costs.

Smaller or growing companies will need to consider that, if they are going to pursue the patent, they may need to file in numerous countries and will incur expenses over many years. So it's critical to work with them early on to consider all the relevant factors—there's no point in spending the money to file someplace and then dropping the application just a couple of years later because it was not fully considered whether or not the company would be able to launch in that particular market.

This is where that ongoing dialogue and relationship between company and patent advisor can be so helpful. The business needs to believe in its offering and have a clear sense of how it plans to take advantage of the commercialisation potential. Then the goal is to make certain that the patenting strategy will support the business strategy and continue to develop along with it.

From our perspective, the ideal situation is one in which, over the lifespan of a platform technology, the global strategy has evolved so that we can continue to explore every possible avenue. We want to keep fully protecting the company's competitive advantages with a strong, global patent portfolio that develops along with the company's growth. Indeed, that's where true value resides.

Key takeaways

The 360 on building patent value

- **Align closely:** Strong global patent strategies are designed to reinforce a company's commercialisation strategies and its long-term business priorities.
- **Maintain relationships:** To ensure alignment, patent advisors should get involved early—and stay involved as the technology and patent portfolio develops.
- **Accept ambiguity:** Early on, it's hard to quantify how much a patent will be worth over time. Staying focused on commercial projections will be key to making informed patenting decisions.
- **Weigh costs and benefits:** Since the costs of an initial patent application are low, companies and advisors can be proactive in protecting new technologies (and their long-term potential).
- **Fine-tune strategies:** As the technology develops and ambiguity declines, input from the marketplace will enable the company's global patenting strategy to evolve.
- **Build value:** The most valuable patent portfolios will keep evolving, along with commercial developments and follow-on innovation—supporting the company's growth and protecting its competitive advantage.
- **Continuously review the patent portfolio:** When it comes to global patenting, the goal is to spend money on IP that will stay relevant (and profitable).