From idea to market – Developing an IP strategy: recognise, protect and exploit your ideas

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Outline

How to recognise an idea and what to do first
Potential commercial value of an idea
Patents: the most important dos and don‘ts
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How to recognise an idea?

• **Ideas = know-how**

  - Is know-how valuable? → consider protection using IP rights

• Most IP rights require new (undisclosed) ideas of a certain quality

• Check your recent activities:
  - Core products? → C-level decisions
  - New developments? → Activities of R&D department
  - New business activities? → Activities of marketing department

• Technical ideas? → potential invention

• Non-technical developments/activities → protection required?
First steps

• Think of establishing reporting processes
  • Employees are often obliged to report inventions

• Who owns the IP?
  • Verify contracts for transfer of IP rights

• Don’t disclose the idea
  • Stop/postpone any publishing
  • Stop/postpone any advertisements/announcements/presentations
  • If required, use NDAs

• Evaluate the idea
Strategy

• Protect your business

• Be aware of IP of your competitors

• Exploit your IP
  • Build a basis for cooperation
  • Transfer your IP
  • Enforce IP
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What is more valuable?
Fundamentals of economic theory

• The value of something is driven by its **scarcity**
• Know-how is only valuable if its scarcity can be maintained
• If know-how can be derived from product, scarcity cannot be maintained!
• In case know-how cannot be derived:
  • Examples
    • Production methods with no footprint on final product
    • Certain material compositions
    • Secret know-how secret could maintain scarcity

• All other cases → scarcity cannot be conserved
  • Protect using IP rights
Value of know-how

• Can know-how be kept secret?
  • Know-how cannot be derived from the product
  • Skills that are impossible to copy

• Identify suitable IP rights
  • Suitability of know how
    • Technical, undisclosed or recently disclosed & inventive?
    • Aesthetic, undisclosed or recently disclosed & individual character?
    • Branding, distinctive & non-descriptive?
    • Original and individual works?

• Identify potential customers, suppliers and competitors
  • Who could you license it to?
IP Rights

Use several IP rights
Unregistered IP rights

• Valuable know-how?

• Document creation/publication process

• Make sure your know-how can be identified as yours

• Ensure rights have been transferred from author, originator or designer
Registered IP rights

• Valuable know-how?

• Where to file/register?
  • There is no “worldwide IP right”: IP rights are national or regional
  • Identify countries/regions of interest
    • Competitors
    • Target market and production sites (own and competitors)
  • Costs

• How to file
  • Start in one country
  • Use priority right
  • Use regional or international filing/registration procedures
Registered IP rights: Patents

- **Idea**
- Optional: Patent attorney
- Filing a patent application
- 18 months
- Examination
- 2-5 years
- Disclosure of the patent application
- Grant of a patent
- Exploit your rights
Example of international filing

- **original patent application**
- **national or EP filing**
- **priority 12 months**
- **PCT 30/31 months**
- **national applications**
- **EPC**
- **other member states**
- **UP? FR**

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”Have you been waiting here long?”
Exploit your IP rights: Patents

• Protecting products and processes
  • Increasing turnover and profits
  • Attracting investors

• Blocking competitors

• Licensing
• Cross-licensing
• Trolling

• Building reputation & valuable assets
• Unused – deterrent effect

“My brother became a patent troll
and he now lives under one of
those billion-dollar fancy
suspension bridges.”
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Patents: DOs

- Identify inventions quickly and completely
  - Is invention novel? Some improvements? Valuable? → go for it
  - Get a complete description of the invention: you cannot add anything later on (e.g., during examination)
  - Describe potential development in the area: follow-up products
- Draft a complete patent application. In many cases, you cannot heal mistakes/errors later on.
- Generalize the invention with regard to follow-up products.
- Identify inventors
  - ensure that rights are with the applicant.

→ Consider professional advice
„The seven deadly sins of the inventor“ according to the EPO

1. The invention is more complex than the problem merits → value?

2. The inventor hasn’t fully considered the problem → value?

3. The invention isn’t new → patentability!

Source: www.epo.org/topics/patent-system/seven-sins.html
„The seven deadly sins of the inventor“ according to the EPO

4. The invention isn’t kept secret → patentability

5. No one wants it → value?

6. The inventor has an unrealistic idea of the value of his invention.

Source: www.epo.org/topics/patent-system/seven-sins.html
Further DON‘Ts

• Don‘t think about the inventiveness requirement to strictly
  • slight improvements could be non-obvious

• Don‘t get frustrated if you get a negative first opinion on novelty
  and inventiveness from a Patent Office.

• If any “don‘ts” occurred for a valuable invention

  → Get professional advice
Once again: Keep invention secret

- publish paper or advertisement
- make a presentation on a (public) conference or trade fair
- talk about it to strangers

- patent application
- save to publish
- still better

d+1
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Thank you for your kind attention

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