

Patent protection – advantages of trend analysis

Patent Attorney Oliwia Czarnocka of PolSERVICE discusses the utility of analyzing trends to protect your patents.

Monitoring trends in the patenting of inventions may bring many advantages to entrepreneurs, such as the ability to foresee market changes in the areas of the entrepreneur's interest. It is one of the elements of effective market competition.

We are seeing the intellectual property of enterprises making up an increasingly larger percentage of their assets. Likewise, their exclusive rights protected by the law become more and more valuable. These rights include industrial property rights, copyrights, rights to domain names and company secret.

Limits of protection

Industrial property rights include patents for inventions, protection rights for utility models and trademarks, and registration rights for industrial designs and topographies of integrated circuits.

Patents are granted for solutions that are new, involve an inventive step and are industrially applicable. The applicant may choose between a national, regional or international procedure. The national procedure is obviously the cheapest solution, but it ensures protection in the territory of a specific country only. The other procedures entail higher costs but make it possible to obtain protection in a larger territory. A patent enables its owner to prevent others from making, offering and selling the patented product on the market. A patent is granted for 20 years and is territorial, which means that it is only valid in the territory in which it was granted.

In the case of copyrights, rights to databases and company secrets, the protection is not limited by country borders thanks to international agreements.

Competition under control

Information that can be found in the collections of patent literature allows entrepreneurs to obtain valuable data which may be used for monitoring the activity of their competitors. It is thus possible to watch trends in the research work and development of other entities. Such information also makes it possible to gain the knowledge of new technologies emerging in the areas where a rapid growth in the number of applications can be observed. For example, a 20% yearly increase in the number of applications concerning graphene has been recently noted, whereas the number of applications concerning paper processing has decreased by 20%.

When a specific solution is of crucial importance for the inventor or entrepreneur, he will seek its protection in a greater number of countries or regions. Less important inventions may be protected in a smaller territory. This geographical aspect differs considerably depending on the branch and even type of goods within one branch. The territorial extent of protection reflects the business potential of a specific solution; the bigger it is, the greater profits are expected by the owner of the exclusive right.

It is important to remember, however, that individual countries guarantee different levels of enforceability of patent protection. For example, the USA, Japan and the European countries are important sales markets and they ensure high enforceability of protection rights, whereas in countries like India and China, although they offer numerous business opportunities, the enforcement of patent protection on the grounds of binding regulations is difficult and costly.



The patent activity of entities competing in a specific territory allows one to get information on trends in the development of given technology, e.g. by monitoring the number of relevant applications. An increase may indicate more options to use the technology and thus a higher value of solutions in that area. Analyzing patent activity in various countries also allows one to draw conclusions on the potential development of future products and services of competing enterprises, which in turn may provide a basis for estimating the likelihood of disputes. Monitoring the markets of developed countries and their needs and emerging products makes it possible to foresee similar phenomena in less developed countries.

On the other hand, a great number of patent applications in some areas of technology may mean a high likelihood of infringement proceedings or high due diligence costs. A rapid growth in the number of applications may also result from a dynamic development of a specific investment-worthy area.

Protection of specific technologies or the lack of such protection may indicate possible market opportunities or problems that may arise when products are introduced on the market. For example, in less developed countries potential problems may include the necessity to grant a compulsory license for pharmaceuticals or government price controls on specific products.

Important element of strategy

Every patent or patent application is important for given enterprise in a specific geographical area and is usually part of its general IP protection strategy. Business entities protect their patents in order to

maximize own profits and prevent other entities from maximizing their profits. Some patents are used to block the activity of key players on the market or are protected as a supplement to the original patent in order to create a patent portfolio of a specific technology and thus better safeguard the proprietor's interests. Such practices are often used by pharmaceutical and communication enterprises which put a lot of effort into developing subsequent generations of patent applications protecting the original strong patent generation and thus gain a competitive advantage the market and can negotiate profits from licenses granted for the use of their protected solutions for which there is a market demand.

Freedom-to-operate search

The fact that a business entity has been granted a patent does not authorize it to freely use its exclusive right. Patents that were granted earlier may block the new patent because its implementation may require the use of elements protected by other enterprises, such as electronic components etc.

It is recommended to conduct a Freedom-To-Operate search in order to assess a specific geographical area in terms of the freedom to put certain products on the market and minimize the risk of disputes resulting from an infringement of third-party rights. Patent procedures typically take several years. They are similar in all countries, but not identical. Therefore, is it advisable to use the services of patent attorneys who are specialized in conducting patent proceedings and can provide guidance on the best ways to go through such proceedings.