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Gaining Valuable Insights by Monitoring Competitors' Patent Activity

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Competitive technology and industry sector intelligence are critical aspects of maintaining and increasing marketing share for a technology company. While present-day technology market activities of competitors are relatively easy to observe, insights into prospective strategies are harder to come by. An often overlooked but powerful way to gain this kind of competitive intelligence is to monitor competitors' patenting activities. As savvy companies develop new technologies and before they launch products into the marketplace, they generally file proactive patent applications to protect and leverage product research and development investment. Tracking competitors' patent portfolio changes, additions and progress through readily and publicly available resources can provide invaluable business insights.

What Competitive IP Monitoring Can Reveal

Technology companies typically file an initial patent application in a first patent office (e.g., the United States and/or Canadian Patent Office) early in the product development cycle and before a commercialized version is ready for market. Most applications are published after an 18-month confidential period has passed. However, periodic checks of published patent applications can still provide a "heads up" on competitor's product launches.

As an example of this in action, the notorious Web site (<http://www.patentlyapple.com/>) is dedicated to "Celebrating Apple's Spirit of Invention" in part by monitoring and reviewing published patent applications and issued patent applications in the name of

Apple. This Web site provides Apple-fans (and others) the opportunity to see what is likely to be hitting the shelves at the Apple Store months in advance.

Also, once an initial application is filed, global filings must be conducted within one year of the initial filing in order to benefit from the one-year convention priority year. By observing the extent of global filings made, insights into the worldwide marketing strategy for a product can be obtained.

Five Key Benefits of Monitoring

Many insights can be obtained by monitoring competitive patenting activity including these five notable benefits:

1. **Get a "Heads Up" on Competitor Market Plans.** By tracking and analyzing your competitor's patent filings, insights can be obtained into your competitor's product market strategies and into the technology areas they are investing in. Using these insights, it is possible to adjust market and product strategy to develop competing technology or to focus efforts elsewhere.
2. **Identify New Market Opportunities.** By monitoring global patent filings, you can determine which markets they plan to enter and those which they are forgoing. This may inform protection strategy and identify opportunities for expansion into new markets where you may gain an IP advantage over your competition. Also, an assessment can be made as to whether the market will be too crowded for a certain type of product (too many patent applications filed on similar inventions). This can be especially valuable for start-up companies that desire to scale rapidly, as well as larger companies considering expansion plans into new technology markets.
3. **Rethink Your Company's Patenting Strategy.** By reviewing the type of patents filed in your industry it is possible (likely with the assistance of your IP advisor) to get a better idea of what can be protected, and which in-house developments should be earmarked for patent

protection. This process can bring awareness that patents are not only for ground breaking ideas, but also for new products or methods that offer certain advantages, or improvements to existing technology.

4. **Find Opportunities to Challenge Your Competitor's Patents before They Issue.** By identifying and tracking a competitor's patent application that may represent a business obstacle, it is possible to stop them from receiving patent protection that they may not be entitled to. This can be accomplished by bringing a timely patentability challenge at the relevant patent office at the right time (*i.e.*, when the application becomes available for challenge or opposition).
5. **Obtain Insights into Potential Infringement.** It is possible to monitor competitor patent applications in order to identify inventions that may pose a risk of infringing your company's IP. By identifying potential instances of infringement, strategic steps can be taken to either attempt to monetize your company's patent rights through pursuing licensing or cross-licensing opportunities. In addition, you may become aware of patent rights that may be beneficial to use or sell under license from a third party. Your company may gain a competitive advantage by, for example, obtaining an exclusive license for the technology before other competitors or being first to market under license.

How to Get Started—What Are the Options?

Competitor patent watches can be easily implemented by putting in place a regular patent monitoring program. Your IP advisor can help establish one or more "patent watches" on target competitors or within a targeted industry sector. Such patent watches are run on a regular basis (*e.g.*, quarterly or monthly) and reports are issued detailing relevant new patent application filings, new issued patents or developments in the prosecution or re-examination of such patent applications or patents.

Patent watches can be established based on assignee name, inventor name, subject matter, or targeted patent or patent application status watch.

An assignee or inventor name search identifies any newly published patents or patent applications in

the name of one or more specific corporate entity or individual name or which has specific inventors. This kind of search is a straight forward and cost-effective way to track specific target competitive entities or individuals who are known to be active in a particular technology area.

A subject matter patent watch will identify any newly published patents or patent applications in a technical subject matter area of interest (*i.e.*, industry sector) typically focused on major countries of interest (*e.g.*, United States, Europe, China).

A targeted patent status watch will provide information on the progress of a particular patent or patent application that has been determined to be particularly relevant. As patent applications typically are amended during examination, a patent application that initially appears to be a potential infringement risk may not remain as such as it is amended. This process allows for monitoring of potential infringement risks over time and can inform a response strategy that may include participating in an issuance challenge or other applicable opposition process on the basis of non-patentability.

It should be borne in mind that all patent watches are subject to various limitations. As noted above, most applications are published after an 18-month confidential period has passed. Also, certain types of pending applications (*e.g.*, provisional US applications) are never published. Further, subject matter patent searching by the inherent limitations of relying on keyword searches cannot be considered exhaustive.

Last Words

A competitive patent watch requires relatively little time, effort and cost, but provides a reliable way to monitor competitor's patenting activities as they become public. While a stand-alone search can be conducted anytime to provide publicly available information regarding a competitor's patent portfolio, a regular patent watch provides ongoing insights into competitor business strategies and opportunities for taking action such as challenging or opposing the issuance of a patent at the appropriate time. It seems as though the key habit of "watching out for the competition" should include watching out for patenting activity too!