

PATENTS – VALUE FOR MONEY

Is it true that patents, cost a small fortune to obtain? Yes, sometimes!

Does it happen that a small manufacturer cannot afford, in a dispute against a large competitor, to pay the legal fees involved in enforcing a patent? Yes, sometimes!

Does a small minor change to a machine allow a competitor to avoid infringement of a patent? Yes, sometimes!

A patent is a business tool which in some cases is worthwhile and in other cases is not worthwhile.

Some patents are worth millions of dollars. Some patents enable a manufacturer to monopolize a particular field for many years and therefore establish an ongoing profitable business. Some patents allow a product to be sold at a significantly higher mark-up than would otherwise be possible so that the manufacturer can obtain more profits.

To take the position that patents are never worthwhile is short sighted and may lead to significant lost business opportunities. To take the position that patents are always necessary will lead to significant expense which could otherwise be avoided. Each situation should be considered on its merits.

It is certainly true that there is no necessity for any manufacturer to patent any of its products. Some manufacturers very successfully take the position that they will minimize their costs by avoiding unnecessary expenditures (such as patents) and will therefore manufacture and sell at the best price.

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However as Stan Ade, who was involved with Ade & Company for nearly 50 years, used to say “If you do not patent your machine, you may as well hang on it the sign ‘copy me’”. Without patent protection a competitor has the right both legally and morally to copy your machine down to the nearest nut and bolt.

SO WHAT THE CAN THE PATENT SYSTEM DO?

It acts as a deterrent. Many competitors simply do not wish to get involved in any kind of dispute and therefore will keep away from your patented product. Some of these competitors you will never see and you will never know that they considered copying your product but were deterred before reaching the market place. Other competitors may start to copy but most are quickly deterred by a warning letter, by a letter from your lawyer or by the initiation of legal action.

Most patents are not litigated. Even in the situation, where litigation is started, in most cases the parties quickly determine their positions and reach a settlement often favourable to the patentee.

In a situation where the initial manufacturer or inventor requires financing or assistance from others, the patent situation gives immediate and important credibility to assist in convincing others of the viability of the project. If it is intended that the product be manufactured by others either under a license or by outright sale of the invention, the patent provides the basis for the payment to the patentee. While licensing or sale in some cases is possible without patent protection, most manufacturers are unwilling to take on a product and make payments for that product when they know that others can copy the same product without making payments.

Some patents can protect a new principle of a machine and therefore prevent competitors from manufacturing a product which is in any way competitive. In

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order to do this the patent must be carefully worded to contain the proper definition of the invention which protects that new principle. The proper wording of a patent involves careful communication between the patent agent and the inventor so that the principle or concept involved is communicated. When the principle or concept is understood, the necessary wording has to be carefully selected to ensure that unnecessary limitations to the definition of the invention are not included. This process takes care from both the inventor and the patent agent.

In some cases where there is no new principle and the prior art machines are quite close, it may only be possible to obtain protection for specific details of the new machine. Such a patent may be more easily avoided. However, this type of patent will prevent a competitor from simply copying your machine down to the closest nut and bolt. This will require your competitor to spend money on development rather than to ride on the back of the money that you have spent. This protection would ensure that your competitor's machine is in some way different from yours thus allowing you to convince your customers by your marketing skills that your machine is better.

So what are the costs of obtaining grant of patents?

To get patents issued in Canada and U.S.A. the cost is likely to be approximately \$8000 to \$10,000 for relatively simple cases and potentially much higher for more complicated cases. These costs apply to smaller companies and may be increased approximately \$2,000 for larger companies where larger government fees are required. These costs assume that the patent process goes reasonably well in that the patent office does not raise extensive objections. In most cases the patent office can be convinced without difficulty that a patent should be granted. In some cases the patent office may maintain an objection that the invention is not patentable on the ground that it

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is merely an obvious minor modification of pre-existing machines. In such cases appeals or further applications may be necessary at increased cost.

In the development of any new machine, therefore, it is worthwhile considering whether patent protection is desirable, bearing in mind, the above likely costs, bearing in mind whether the protection could be obtained is for a general principle or merely for a very specific detail, and bearing in mind whether any of the above advantages are relevant to the particular manufacturer. A brief consultation with a patent agent, which is often without charge, will assist in making this decision. A search may help decide whether the invention is new.

In many cases an initial patent application can be filed for a portion of the total costs listed above which will provide some protection for an initial period of one year. During this time the viability of the product can be investigated. If the product is not worthwhile the application can be cancelled at no further cost. If the product looks to be worthwhile, the applications can be further pursued to complete the grant of patents. Depending upon whether the patentee wishes to obtain grant of patents quickly, it may be possible for patents to be granted in Canada and U.S.A. within 9 to 15 months. There are advantages to delaying grant of a patent where the grant is not urgently required and so the procedure can take up to 7 years in some cases.

As in any business situation, we always recommend that you do not base your decisions on unfounded rumors from others or misguided prejudice but that you simply find the facts, determine how they apply to your particular situation and make a proper business decision based upon these facts. The Patent Agent can assist in this by providing an honest assessment of the patent situation and generally will not try to convince you to file where this is not suitable.

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