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Think Value, Not Cheap for Long-Term Business Success

BY RAJIV P. PATEL

Entrepreneurship today faces some new realities. Different perspectives exist on what are the new realities. For some, the new realities are in stark contrast to the recent high-flying days when ideas were turned into apparently successful businesses in a matter of months rather than years. For others, the new realities now include competing with sophisticated and formable competitors in countries, such as India, China, and the former Soviet Republics, in addition to lower cost regions of the United States. Yet for others, the new realities offer the promise and excitement of developing and producing new emerging technologies and products whose time and acceptance will soon arrive!

Faced with the challenges of the new realities, entrepreneurs must make key business decisions early that will impact their companies for years to come. These decisions are tempered by a lack of available funding for new companies. Hence, entrepreneurs must stretch limited cash resources to develop and grow their business to a point where it is either self-funding or attractive to investors for longerterm funding. Often this means that key business decisions are made based on how cheap something can be done rather than the value attained for the company in view of the money spent. Over the long term, such bottom line decisions could be significantly more costly to the company.

Among the business decisions falling into the conundrum of cheap versus value is identifying and implementing a strategy involving a new company's primary competitive edge – its intellectual assets, and more specifically, intellectual property. Often this is because entrepreneurs either dismiss entirely the value of pursuing intellectual property protection or because they view intellectual property protection as merely filing and obtaining some number of patents.

Dismissing the value of intellectual property protection puts the company at a severe disadvantage as the company begins to develop and grow, particularly in a highly competitive landscape. In some instances, a competitor having a patent portfolio will assert it against the company, causing the company to either devote valuable resources to defend itself or take a patent license on onerous terms. Without a patent portfolio of its own, the company often has no leverage to negotiate a quick and favorable settlement. Moreover, for a company that does develop a patent portfolio, if it is not properly planned and pursued it will do little to protect the company's technology and business and may not be useful in leverage situations. Hence, unwary entrepreneurs that rush to file patent applications as cheaply as possible without planning and without understanding or evaluating the risks versus rewards of patent protection, may later find that their patent portfolio has little to no value.

Unfortunately, many companies that do rely on cheap provisional patent applications do not realize that they are of little value until it is too late to rectify. As an example, consider an entrepreneur that files a provisional patent application comprised of a business plan or PowerPoint® slides covering basic technology in general terms. Such a provisional patent application may do little to secure any potential patent rights when a company files a full patent application, and may in fact have compromised potentially available patent rights of the company. Likewise, an entrepreneur that files a product design specification as a provisional application may get patent protection on some important technology, but may also have unnecessarily given up valuable trade secret information that provides a competitive edge to the company. Thus, while the provisional application is cheap, it may have little value to the company and may cost the company its competitive or financial edge along with important legal rights.

In taking a value approach to intellectual property protection, an entrepreneur quickly learns that it not only involves patents, but also includes copyrights, trade secrets, and trademarks. When properly planned, an intellectual property strategy uses these tools to best protect its intellectual capital. Thus, the company ultimately assembles and organizes a complete portfolio of in tellectual assets in a manner that corresponds with the company's overall business and technology strategy. In turn, the company now has a complete and compelling of how its business and technology will evolve and grow over time.

Consider an example in the context of a company having a substantial investment in the software industry. For such a company an intellectual property strategy would identify for the company (1) whether patent protection or trade secret protection provides greater long-term value to the company; (2) how to maintain value of trade secrets; (3) the risk versus the value in integrating or using standardsbased or "open source" intellectual assets in its products; (4) the value and potential rewards from using proper copyright notices in software and content as well as registering such software with the U.S. Copyright Office; (5) trademark protection and associated web strategies for the company name, products, and marketing plan; and (6) longer term intellectual property planning for determining which intellectual assets should be protected internationally and where.

Once the entrepreneur maps an intellectual property strategy, an appropriate budget can be established to acquire appropriate protection for intellectual assets. Although not necessarily cheaper in the short-term, over the long-term the entrepreneur creates lasting and measurable value for the company. Moreover, this value approach provides an organized and well-developed story to share with investors, strategic partners, and customers. In the new realities of less funding, global competition, and emerging technologies – thinking value, not cheap – will give the entrepreneur greater long term returns for the investment they make in their company.

Rajiv P. Patel is a partner in the Intellectual Property Group of Fenwick & West LLP. He has developed, managed and deployed patent portfolios for client in a number of technology fields, including processor design, wireless communications, optical devices, nanotechnology, enterprise software, and the Internet technologies (e.g., search engines, language processing, CDNs). Mr. Patel is a member of the State Bar of California and is registered to practice before the U.S. Patent and Trademark Office. He is also an Adjunct Professor of Law at the University of California, Hastings College of Law.