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BESTPRACTICESINUSINGIPTOPROMOTESMALLANDSTART-UPS:USINGIPTO
ACCESSFINANCE,TECHNOLOGYINFORMATIONANDFOR SERVICES,
BUSINESSMANAGEMENT, IP-SERVICES TO BUSINESS
INCUBATORS/TECHNOLOGYPARKS,MARKETING, ANDOTHERISSUES;
NATIONALEXPERIENCE OFAUSTRALIA

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Best Practices in using IP to promote SMEs and Start-ups - An Australian Perspective

As outlined in Mr. Willimott's paper (WIPO/IP/BKK/02/6) "Using IT to enhance the use of Industrial Property Systems by SME's" - much of Australia's current and future innovation stems from the SME sector. IP Australia's own market research and that of other government agencies with a keen interest and policy role for SMEs and start-ups, confirm that intellectual property is neither well understood nor the possible financial returns of IP seldom realized.

Throughout this paper I have tried to highlight the IP issues and strategies that SMEs and start-ups will need to understand and in turn, implement to achieve tangible returns from their investment in IP. While at first the skills needed may appear complex an SME does not have to be an expert in the matter. It is important for SMEs to understand the basics about business, but quality external advice is available to ensure that the SMEs and start-ups are prepared to benefit from their investment in IP.

This paper addresses some of the key issues and strategies that IP Australia has put in place to ensure that SMEs are aware of the steps to take towards the effective commercialization of their IP.

IP Australia's work however is not just limited to work in the SME sector, it covers many different key target areas such as the tertiary sector, business advisers, schools and government to name a few. The opportunity to discuss these issues with the two presenters from Australia will be available to you over the course of the workshop.

So what issues do SME/startups face in using IP

Before you can address the issue of best practice in using IP in any business there are a few issues you need to understand:

- The current level of knowledge relating to IP and how this impacts on the success of their business;
- The level of use of IP within the relevant sector;
- The stage at which IP is actually used as a driver for the business; and
- The 'economic' environment in which the sector operates and the challenges that result from this.

At IP Australia we call this the 'lifecycle of IP'.

In 1998 IP Australia commissioned a major market research project into the SME/startup sector to address the level of understanding of IP and how it is used in business. The results were surprising. The research clearly demonstrated that there was very little or no knowledge of IP among most companies surveyed. It also showed that the advice they received from much of the broad based business advisory sector (e.g., accountants and general practice lawyers) was at a very general level and offered little guidance in terms of IP management and commercialization. Compounding this was a clear trend to only think of IP management after companies had already invested in business planning, prototyping, taken on financial commitments, marketing and long-term business relationships. Often making this

decisions late in the process results in poor IP rights and expensive legal costs to defend their business in the courts.

The key themes that appeared throughout all the research were that IP was:

- dealt with reactively
- seen as high cost
- added little value
- too difficult to understand
- not relevant to my business
- the least important part of my business – did not have the time to address it
- protection was too hard to enforce.

Some of the key comments were:

- The theoretical definition of IP was understood reasonably well. They knew what a patent was for example, but did not understand the range of IP strategies available to them.
 - IP was about not being “ripped off” – someone not stealing your idea.
 - That common law would provide a broad protection for their business endeavors.
 - That IP was only for big step inventions and normally associated with patents and used by the big companies.
 - Uncertain as to what would be considered as IP as part of the normal process i.e., “we are always inventing new processes in our business – why is this regarded as IP”.
 - Uncertain as to what is new and what is regarded as IP.
 - Unsure when external contract work is commissioned – who owns the IP.
 - Who owns the IP when a client commissions the work.
 - IP is regarded as part of being innovative to win market share – no thought about protecting or securing IP rights.
 - Need to focus on other business issues such as marketing, cash flow, distribution, sales, market share etc. IP is not critical due to the high direct and indirect costs and cannot be justified.
 - Don’t see that their ideas will have general appeal to overseas markets – thinking domestically!
 - The cost of protecting and enforcing IP is too high.

The issues identified in the SME/start-up sector when compared to large-scale enterprises (LSEs) were dramatically different. LSEs understood the business skills and commercialization strategies required to get benefit from their IP.

- With these perceptions entrenched in much of the SME sector, it was of no surprise to IP Australia that IP was not a major point of focus.

Understanding why SMEs/start-ups identified these issues as barriers to using IP was the first step in understanding the *lifecycle of IP*. IP Australia then set about identifying the business stages at which IP was used and the type of strategies implemented to use and benefit from the IP. We were looking to identify some strategies, both Australian and international, that could be considered leading edge or ‘best practice’. This area of research is quite complex and would form the basis of another paper. For the purpose of this

presentation we have addressed only the key outcomes we address through our public awareness and outreach programs. Details of this research are available from IPA Australia if required. IPA Australia continues to conduct market research to enable us to develop programs and products that meet the needs of the SME/start-up sectors.

In order for IPA Australia to deliver education and awareness programs and develop a culture that meets best practice, it was important for us to recognize that our skills are in granting IP rights, not providing business advice. In Australia this is generally the domain of the major accounting, legal and patent attorney firms. A service that is not normally used by the SME/start-up sector because of the high costs involved.

My team set about to identify where this knowledge and skills were held and developed long-term relationships with these experts. We have identified and harnessed these skills in the key programs we deliver today and would strongly recommend to any country that without these strong working partnerships and knowledge transfer, it is difficult to establish best practice at any level.

Today we have developed a wealth of information to assist the SME/start-up sector - this has however taken a number of years to compile.

What are the key IP skills/knowledge required in the SME sector

IP management and commercialization can be highly technical and specialized in nature, however it need not be that difficult for SMEs to understand and manage if they implemented the disciplines of developing business plans, market strategies and sales plans.

IP is anything that makes a business unique. It includes patents, designs, trademarks and copyrights as well as employees' specialized knowledge, customer lists, secret processes or techniques, and even the application of well-known technologies to new situations. IP for SMEs/start-up exists whenever a business or product is ready for the market now or in the future.

Once an SME has developed an understanding of what IP is, they then need to develop an understanding of how they can benefit from it. This means:

- Developing a working understanding of the value of IP to their business and the philosophies behind IP legislation and the formal rights granted.
- Understanding the difference between IP rights versus physical rights.
- The acts and legislation protecting IP rights.
- The key qualities of IP rights i.e., Ownership, Restricted, Territorial, Overlapping and soon!
- When is IP protection relevant to a SME/start-up i.e., who owns it and where is the business opportunity.
- How will they manage their IP once they have recognized the value and importance of doing so!
- Identifying the different types of IP advice they will need and what questions do they need to ask their adviser.

Once some of the basic skills are understood, SMEs can begin the process of the managing their IP and understanding both the consequences and opportunities that exist for their business.

The journey of using and understanding IP does not stop here. They will need to develop skill sand an understanding of all the forms of IP available to them including:

- domain names
- protecting confidential information
- licensing and assignment
- infringement of IP rights
- conducting IP audits
- valuation of IP
- integrating IP into their business management processes
- financing and commercializing IP
- taxation
- government incentives, and
- tools available to them such as IP databases and internet resources.

These areas will not be discussed in detail here, but it is important to note that IP Australia and other government agencies have programs and products in place to educate SMEs/start-ups in the management and commercialization of IP. I would be happy to discuss these with you over the course of the workshop.

What is best practice

Having set the scene on the approaches IP Australia has undertaken in the areas of start-up and SMEs, an Australian perspective of what is best practice is covered in more detail below. This is a relatively new area of focus for Government and IP Australia, and there is a very little difference in the issues of IP management and commercialization facing SMEs?start-ups.

What is a start-up?

A start-up will be a company, typically with ownership by shareholders, or a research organization, such as a university or a group of investors that have "pooled" resources to fund the company. They will normally have a clear business charter dedicated to commercializing a particular or stand alone project and clear and early financial return to all investors i.e., IT startup with a particular software application.

What is a SME?

In Australia an SME is defined as a company or group consisting of between 10 and 100 employees in any field of business endeavor.

Best Practice in using IP to promote SMEs and Start-ups:

To address the topics outlined in the workshop agenda. I have listed some general dot points that relate to each.

Using IP to access finance

- There are two forms of investment funding available to SMEs/start-ups - debt funding (or a loan from a bank) and equity funding (which gives the investor a share in the asset or business).
- Traditionally accessing debt funding has been difficult for SMEs/start-ups - the banks view them as high risk and want to secure any debt over property or some other tangible asset. While this view still exists to some extent among venture capitalists - they see the potential for high returns for the risk taken. Venture capitalists in general see SMEs/start-ups more positively and in many cases there are innovators in our community. The majority of venture capital in Australia is distributed through a Joint Venture Company or agreement.
- Venture capitalists are interested in new technologies and products that have a well demonstrated market. These products do not have to be produced or tested to be attractive to venture capitalists - essentially they are investing in a company's IP. Venture capitalists also invest in the people that own the IP. So anyone wanting venture capital must be willing to put the time into developing a strong business plan. This plan must include identification of potential markets, strategic development and marketing plans for the innovation.
- The involvement of a Venture capitalist can create a number of traps for SMEs/start-ups, so it is recognized that some effort is needed to teach SME's the fundamentals of joint venturing or venture capital management.
- The main stumbling block for SMEs/start-ups and venture capitalists is that the venture capitalist wants to own a proportion of the IP and/or expects a high return in a short period of time. Many SMEs/start-ups fall into the trap of handing the ownership of the IP over without looking at other options.
- Module 19 of the Toolbox (covered later in this paper and on display during the workshop) looks at venture capital. The way for SMEs/start-ups to avoid many of the venture capital pitfalls is to set up a clean, efficient company structure for the joint venture company. The chapter describes an effective system whereby the joint venture is set up to the best advantage of all players including:
 - Putting together an agreement so that the role of each member of the company is clearly understood
 - Returns to the joint ventures and time frames are established at the beginning of the exercise
 - Plans are in place for protecting the IP when key members of the company leave
 - Creating the best tax position for the company
 - Setting up a holding company to which the IP rights are assigned. This means that if the joint venture company should fold the IP can still be secured.

Technology information and foresight services

- Many companies including SMEs/start-ups can 'buy in' services that will help them either establish or grow their business.

- It is very expensive for a SME for example to establish an IT center in a house. In many cases these companies will contract a professional service to provide a call center or accounting services. It is quite common for companies to establish an exchange of service contracts, where two companies with complimentary services will exchange those services rather than an exchange fee for service.
- Other services that are often used by SMEs/start-ups are those of 'market monitors'. These are strategic business advisers that provide information on the viability of the market a particular company is in.
- These services are useful in:
 - determining what key changes may happen in a given market - providing the company with time to refine or change their product or service
 - how a company's product or service is positioned in relation to its competitors
 - what gaps are in the market place that may enable a competitor to launch a similar product.

Business Management

- Business planning is a key requirement for the success of any business. Whether it be to attract customers, finance or a potential purchaser for a business or product, a business plan is essential to this process.
- Business management is something that can be done internally (by a staff member) or it can be outsourced to a company or individual that specializes in strategic business management. This is always a risky approach to take with IP, because to manage IP or your business well you must have a clear understanding of how the individual aspects fit together to create the business mix.
- Business management is important to all business, but it is particularly important to SMEs/start-ups as the company tries to establish a position in the market place and a reputation for its service and products.
- Business management is more than just managing the company's accounts. Obviously managing cash flow is important because this is the lifeblood of the company. But just as important are issues such as:
 - Understanding what is unique about you' re product and keeping a watch on competitor so that you retain this leading edge.
 - Watching the market that you are in to see whether customer needs change - if they do then you may need to look at how you may have to change your product or service.
 - What strategies are in place to protect the company's IP.
 - Who your key staff are, what they offer the company and what you may have to do to retain and reward them.
 - What skill gaps exist in your business and steps you will have to take to fill these gaps - this could be through recruitment or by outsourcing.

- Looking at the actual production strategy and determine whether this could be more effectively done in house or by being outsourced.
- Understanding and managing the strengths and weakness of your business and assessing the potential cash flows and profit margins.

IP services to business incubators/technology parks

- IP Australia does not provide specific services to incubators or technology parks, there are however a number of programs offered by the Federal government (under the industry portfolio) and by various state governments to encourage innovative SMEs/start-ups.
- The Aus Industry program - run out of the Industry portfolio delivers over thirty grant programs that are open to all innovative companies. These grants are competitive, in that there is no guarantee that any one company will succeed. Some of the programs that are most relevant to SMEs include:
 - The R&D starts scheme - successful companies are provided with loan assistance to finance their R&D and commercialize their results.
 - The COMET (Commercialising Emerging Technologies) scheme - successful companies receive assistance in developing and implementing a commercialization plan, focusing on the development of an IP strategy.
- The Industry portfolio also delivers a program called the Innovation Investment Fund - designed to promote the commercialization of Australian R&D, through the injection of venture capital into small, high tech firms at the seed, startup or early expansion stages of the lifecycle.
- Most State governments also provide assistance, Queensland for example has the:
 - BioStart Fund aimed at stimulating growth in the Queensland biotechnology industry and
 - Queensland Industry Development Fund aimed at helping innovative companies employ additional resources, and undertake additional R&D.

Marketing

- The importance of marketing the success of a business seem to be cyclical in nature. At the moment marketing is again enjoying some degree of prominence in the planning and development of a successful business in Australia. At other times it is the managers of the finance that have pride of place.
- In relation to IP, marketing is more than just deciding where you should sell your product; it's about integrating your IP into the business planning process and establishing a strong brand.
- A strong brand is important to a company not only because it identifies your company, but also because it establishes a reputation for your product and an expectation from your customer. Customers will continue to buy a brand that is strong and offers consistency in quality.

- Managing a brand also goes beyond the marketing activities, it extends to having practices in place that identify when your IP is being infringed and what actions you can or should take to prevent further infringement and/or penalize the person infringing your IP.

In Australia, this is IP Australia's view of best practice in using IP for SMEs/start-ups. Business is always evolving and the environment in which these companies operate will always be one of change. The need for SMEs/start-ups to keep abreast of the changes will be an ongoing challenge for IP Australia and other government agencies to ensure that this innovative sector is well educated in IP management and commercialization.

IP Toolbox - case study

Having worked through what is best practice in Australia, I would like to talk about the issues and skills required to ensure that SMEs and start-ups have the skills required to understand and manage their IP. Best practice is fine, however as already outlined in my presentation, much of the SME and start-up sector are unaware of the skills and experience needed or where they can gain IP knowledge.

Latelast year IP Australia produced a comprehensive IP resource covering the core components of IP commercialization. The product called IPToolbox is an Australian first and to the best of our knowledge, not available anywhere else in the world.

IPToolbox is our guide to best practice for SMEs, start-ups and other areas dealing with IP. It covers in 22 modules of IP resources from information on how IP relates to business and the forms of IP protection available, to such issues as the process of identifying your business' IP, creating an integrated business plan that includes IP and how taxation relates to your business' IP.

So for your information I have summarized the content of IPToolbox. To have this knowledge and understanding of IP is the cornerstone of IP management and the beginning of best practice. The contributors to IPToolbox are some of the major players in Australia IP management and where the benchmark for a best practice model has involved. Over the course of the workshop I would encourage you to review the product and discuss the content with delegates from IP Australia.

THE IPTOOLBOX = 22 COMPREHENSIVE MODULES

1. *Introduction*
2. *Glossary*
3. *Myths and fallacies*
4. *IP and your business*
5. *The different types of IP*
6. *Patents*
7. *Trade Marks*
8. *Designs*
9. *Copyright*
10. *Circuit layout rights*
11. *Plant Breeder's rights*

12. *Domainnames*
13. *Protectingconfidentialinformation*
14. *Commercializingintellectualpr opertyrights -licensingandassignment*
15. *InfringementofIPrights*
16. *ConductinganIPAudit*
17. *ValuationofIP*
18. *BusinessPlanning*
19. *FinancingandcommercializingIP -venturecapital*
20. *Taxationandgovernmentincentives*
21. *ThepowerofIPdatabasesearching*
22. *Useful Presourcesandcontacts*

The lifecycle concept

It is important to remember the “IP lifecycle” concept in the development of best practice, as the role of IP in a business will change depending on the stage of the business and the opportunities facing it. To further illustrate this concept:

- “birth of SME/start -up” - IP is created and protection applied for
- “maturity of SME/start -up” - IP is granted and considered as a business asset
- “growth of SME/start -up” - IP rights are licensed, franchised, royalties, manufacture etc.
- “transition of SME/start -up” - new ventures, revenues, acquisition, joint ventures etc.

IP is essential to SMEs and start -ups - without it they will struggle to take a market share or impact in their markets. I hope the material presented in this paper and at the workshop will provide you with an insight into the strategies and key messages IP Australia utilizes to ensure that IP integrates to the performance of the SME/start -up market.

Conclusion

To conclude I would like to leave you a checklist that will assist you in determining whether you are on the right track to achieving best practice. Whenever I present or speak to SMEs or start ups – the following advice is always relevant in the management and commercialization of IP.

So where do you start!

- Put together a business strategy that incorporates your IP. This is not necessarily going to be an easy task - there is going to be some work involved.
- Develop a quick checklist of things to consider and do.
- Treat IP as a business asset. Identify all IP associated with your business.
- Conduct an IP audit. Have a look at IP identifier - this will give you an idea where to start.
- Understand the different types of IP (speak to a professional, have a look at the resources IP Australia has available or other offices).

- Keep your smart idea to yourself until it is adequately protected. If you talk to others about your idea, make sure that you have a confidentiality agreement in place.
- Protect your idea using the IP system - it's a good idea to seek the help of an IP professional soon rather than later.
- Build a prototype, model or make a beta version of your idea. This gives others such as potential finance providers an opportunity to visualize your idea and assess its market potential.
- Keep track of all your development and production costs - this will assist you in putting a value on your IP. It is also important in terms of determining how far to go in enforcing your rights, and how much the innovation might be worth in terms of licensing or assignment.
- Research your potential market - understand the likely customers, buyers, licensees, investors, etc.
- Do you have the skills? Taking your idea to market needs more than a smart idea - you may need other skills to ensure success.
- Keep an open mind - there are always different ways to make money from IP, you can sell it, license it or make the products yourself. Put together a business plan.
- Enforce your IP rights - you have the legal right to protect your IP from unauthorized use.

A lot of things to remember, but this is the beginning of setting best practice in the management of IP.

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