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**THEME III: STRENGTHENING THE PROTECTION OF INTELLECTUAL PROPERTY
RIGHTS (IPR) IN SMALL AND MEDIUM ENTERPRISES**

**TOPIC 5: THE ROLE OF THE IPR IN THE PROMOTION OF COMPETITIVENESS
AND DEVELOPMENT OF ENTERPRISES**

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THE ROLE OF IPR IN THE PROMOTION OF COMPETITIVENESS AND DEVELOPMENT OF ENTERPRISES

This paper will:

- Discuss the practical implications of IPR for Small and Medium Enterprises (SMEs);
- Exemplify why patent information is relevant for the business manager;
- Present four different ways in which IPR can promote the competitiveness and development of SMEs;
- Finally bring a conclusion to the subject.

1. THE PRACTICAL IMPLICATIONS OF IPR FOR SMES

Intellectual Property Rights (IPR) have many implications, e.g., legal, technical, administrative, financial, etc.

If you ask the typical Managing Director or the Marketing Manager of an enterprise about his view on IPR he will hardly be interested in the legal or technical aspects of IPR, no matter how interesting they are. He will anticipate that a well-functioning system has been provided and that others will take care of solving the legal and administrative problems.

His answer will most probably be an answer to the question: What is in it for my business?

This paper will focus on that question and leave the other aspects of IPR out. Furthermore, it will focus on patents, because most questions are normally raised to the patent system which by many people is considered the most complicated.

From a user's point of view the patent system can be seen as a trade between the inventor and society whereby

1. Society receives detailed information about the invention;
2. The inventor is given the right to forbid others to produce and market the patented invention for a certain period of time, normally 20 years.

A very simplified answer to the businessman to the above question could therefore be: Patent information and patent protection – that is what is in it for your business.

1. Patent Information

Most businessmen know that an inventor can get a patent and prevent others from producing and marketing the invention, whereas only few people are aware of the other side of the coin: that society gets insight into the technical details of the invention.

The patent system is very well organized in this matter because to obtain a patent, the inventor has to file a patent application which, in detail describes the invention in such a way that a person skilled within the actual field will be able to exercise the invention from the descriptions in the patent application. The application will be made public 18 months after the filing date of the patent application. This means that everybody who is aware of the information contained in the patent application will know about this new invention and can let himself be inspired by the novel technology, which will speed up the process of technical development in society.

This technical information is important to a business manager who manages a technologically-oriented company, because it also contains important information about market development in the future.

There is a clear tendency to underestimate patent information as a source of technical and business information. This is a shame, because patent information contains information which can be found nowhere else or, if so, with a substantial delay. It is a fact that 2/3 of all patented technical innovations are not at all described anywhere else than in the patent literature. And, for example, the television and the jet engine were both described in the patent literature 10 and 5 years, respectively, before they became known through other sources.

The main reason for patent literature to have remained relatively unnoticed is hardly ignorance alone, but rather the fact that patent information has been relatively difficult to access, has been organized in another way than other sorts of literature, and finally it has required some skills to find the relevant information and leave out that which is of no interest in a specific case.

This situation, however, has changed during the last two decades through the introduction of information technology. This means that today patent information is not restricted to paper-based libraries or magazines.

Modern computer technology and the development of the Internet has already changed the way to access patent information dramatically. Already now a good share of all patents can be searched and found on the Internet free of charge, and the European Patent Office (EPO) has recently decided to publish all its patents on the Internet at no costs for the user.

This development will probably mean the most dramatic change in the use of patent information ever, because everybody with an Internet connection to these free-of-charge databases will soon be able to make use of patent information.

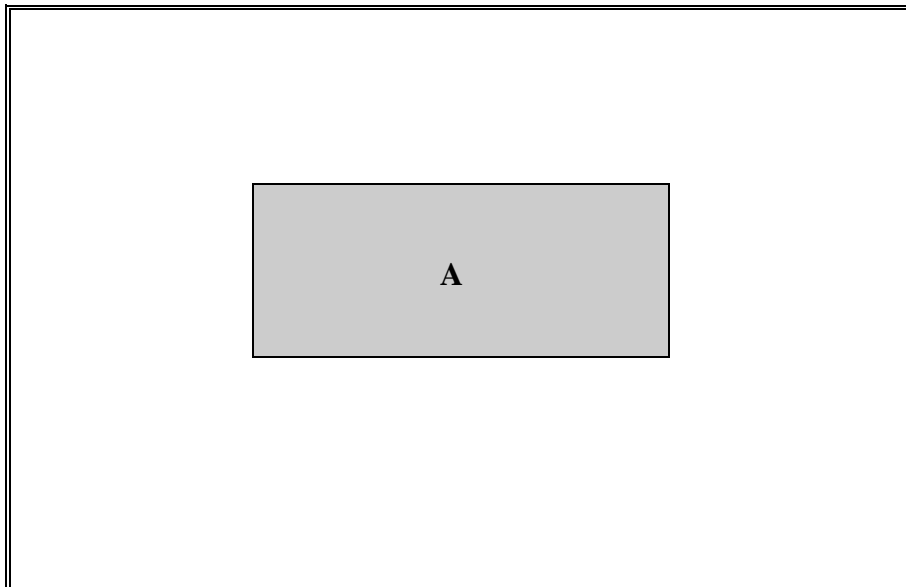
1.2 How can patent information be relevant to the business manager?

Patent information is primarily technical information. But in a technologically-oriented company technical matters have clear implications for business.

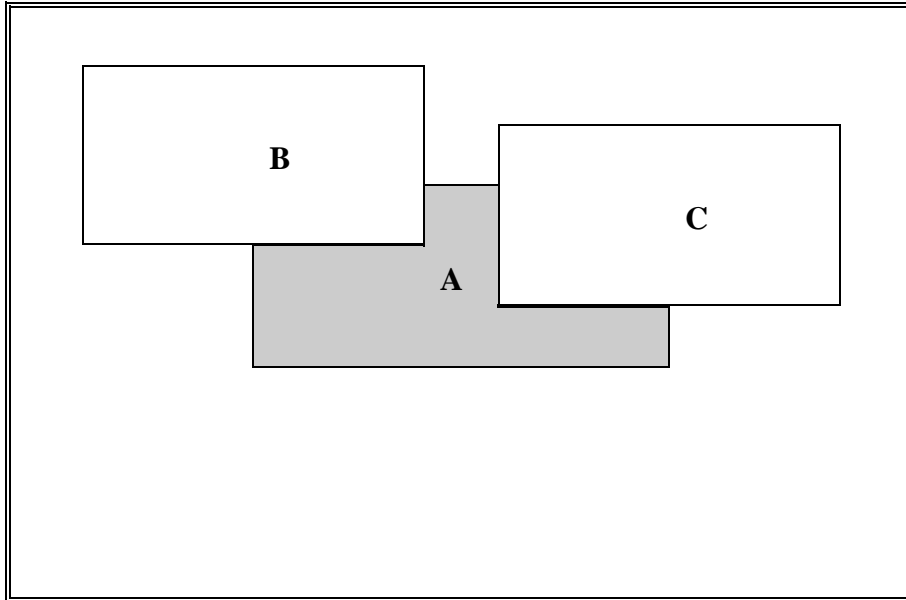
An example:

A company is developing a certain technology, because it has received feedback from the market that there is a need for a new product. The marketing people have done their best to estimate the market which seems promising.

At this stage a search in the patent literature is carried out. The technological field of the proposed new product is illustrated by the rectangle A



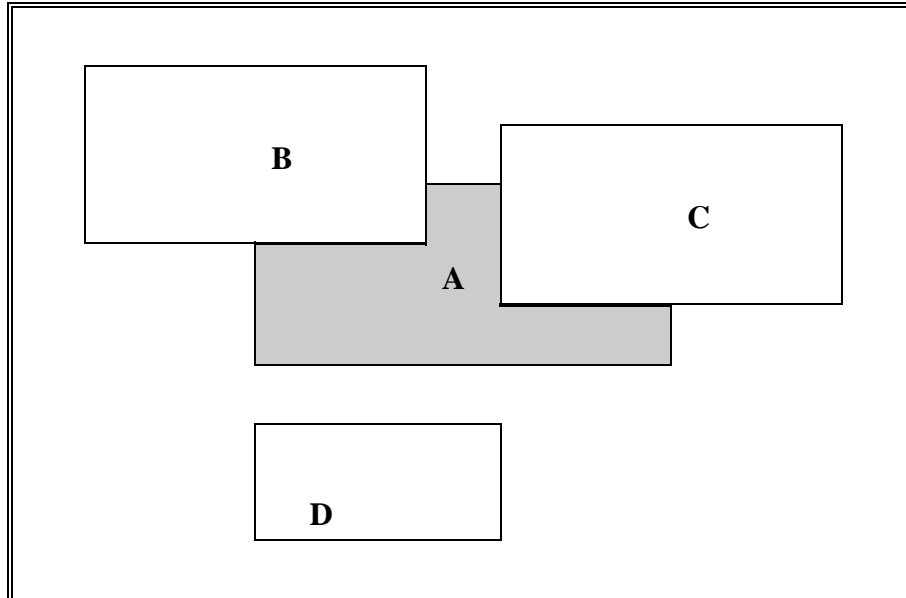
The search shows that the company is not alone in the world. Actually two other clusters of patents are already partly within the technological field, illustrated by the rectangles B and C.



This is, of course, in itself, bad news. But it is interesting news, because it is early stage news. It provides a good idea about who the future competitors will be, once they have developed their patented technologies into new products. It also gives an idea about when that will happen, because it can be seen when they filed their patent applications.

In this way interesting information about market development can be achieved. The information is important for the strategic decisions of the management. They can range from giving up the product development to starting a common research project with the companies behind the B and C technologies or buying or selling a patent license.

In some cases a further search in the patent literature may reveal another technological field (D) close to the original one, not yet covered by patents.



If the company is able to direct its effort towards this area and away from the coming competitors chances will be high that a strong position on the future market can be achieved.

2. PATENT PROTECTION

Most people know that a holder of a patent has the right to stop others from producing and selling a product covered by the patent. And this is of course the most important issue when a business manager asks: What is in the patent system for my business?

There are numerous examples of how large enterprises have benefited from the patent system in taking out patents in most countries in the world for their break-through technologies. One well known example is Xerox who made a revolution when they introduced their new photocopying technology and dominated the market for more than a decade. In many countries the word “Xerox” is even used instead of “photocopy”.

But is it possible even for SMEs who do not develop break-through technologies and do not have the same financial strength or IPR competence as a large enterprise to make use of the patent system?

To a large extent the answer is Yes.

If an SME decides to use the patent system this potentially (at least) implies:

- Market position improvement on a local market;
- Market position improvement on the global market;
- Improving the competence of the enterprise;
- Opening the door for licensing and internationalization.

This will be discussed below:

2.1 Market Position Improvement on a Local Market

In many cases SMEs develop novel technologies – either in their stepwise improvement of an existing product – or as an outcome of the development of a new product to meet the changing demands of the market. In most cases these new products will address a regional or national market – not a world market.

In this case it may be in the interest of the company to improve its position on the market by excluding competitors from simply copying the technology. That will be possible by taking out a national patent. National patenting is not very expensive. In most cases the applicant can write the application himself with some assistance from the patent office (NOIP) – or in more complicated cases from a patent agent. And should a competitor start infringing the patent, the patent holder can take him to court in his own country.

2.2 Market Position Improvement on the Global Market

In some cases SMEs develop break-through technologies that potentially address the world market. In Vietnam, there are examples of groups of scientists who have started a small enterprise in order to develop a novel drug based on plant medicine technology.

In such cases international patenting is vital. But unfortunately, international patenting is expensive. It both takes a lot of time – sleepless nights of speculations in order to make the right decisions – and a lot of money. Therefore, it is important for the SME to enter alliances with organizations, companies or individuals who can provide financial resources and professional advise in international patenting matters.

2.3 Improving the Competence of the Enterprise

For many SMEs the patent system is a new and unknown tool. If you buy a new tool, then it takes time and often money to learn how to use it. So you have to invest in it before you can really benefit from it. This is also the case for the patent system.

Every SME has to make investments. In equipment, in staff training, in product development and in developing a competence in its field of business. If the enterprise is active

in developing technologies, then it may be worthwhile to invest in gaining competence in IPR matters. And here the best way is learning by doing.

A company that suddenly develops a valuable invention for an international market is in a much better position if it has some experience in how to use the patent system than if it has to enter a totally new world. And the previous experience may well be gained through national patenting of minor product improvements for local markets.

2.4 Opening the Door for Licensing and Internationalization

Today technology travels internationally. Know-how and patent licenses have become a common way of accessing global markets, and many of today's advanced companies are looking for partners in those parts of the world where they do not have the strength or the competence to access the market themselves.

In many cases such companies are looking for partners who have a proven competence in IPR matters. They may therefore prefer an active and IPR competent SME to a larger company without that competence.

A contact between two companies which has been established on the basis of a patent may lead to very important strategic decisions, e.g., licensing, cross-licensing, production sharing and a common marketing effort on selected markets.

3. CONCLUSION

IPR and the patent system offer a number of potential benefits for promoting the competitiveness and development for enterprises – even if they are small or medium sized.

There may be good reasons for not using IPR protection in a specific case or in general, but the decision whether to protect or not should be based on a knowledge about the matter and an analyses of the situation – not on ignorance.

When DIC assists entrepreneurs who want to set up a new company, we use a check-list for the business plan. An important item on that list, in my view, is the best advise to any enterprise: Create an IPR strategy.

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