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**CORPORATE STRATEGIES FOR MANAGING, EXPLOITING AND ENFORCING
INTELLECTUAL PROPERTY RIGHTS**

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Summary Note

Intellectual Property Rights (IPR) as such do not grant business success. A patent on an invention does not necessarily ensure the right to use that invention nor does it guarantee a certain income. Patents merely prevent someone else from putting into commerce what has been invented by the patent owner. However, others may hold patents on other parts or steps involved in the same invention. Finally, the market may prefer substituting products or not respond to the offer at all. The challenge is to turn the inventiveness and creativity into sales of goods and services.

The real question therefore is:

How to influence the profit line by using Intellectual Property Rights?

A businessman once said: "the road to bankruptcy is paved with patents and trademarks!" He may be right as Intellectual Property Rights cost money to register and - even more important - to enforce. Additionally, business know-how can quite often be protected by keeping it secret or by a fast product development making it impossible for competitors to copy new developments in due time.

A recent study by the European Patent Office (EPO) found that small and medium sized companies (SMEs) are especially sceptical about patent protection for the following reasons:

- The cost of patents is often considered as a risky and unprofitable investment.
- Patents do not guarantee commercial exploitation.
- The annual 'patent maintenance' outlay does not necessarily deter imitators.

Many SMEs prefer to rely on their know-how and aggressive marketing, or dispense with innovation altogether.

Nevertheless, the members of my federation are fighting for a strong protection of Intellectual Property Rights and are considering such rights as an important value of their companies. They do use such rights to influence the profit line directly. In fact, neglecting Intellectual Property Rights carries important risks for any company:

- Opportunities to secure income are lost.
- Patents held or obtained by competitors on their innovations may block commercial activities.
- Resources for research and development are wasted.

Whatever business and area of operation, it is likely that IPRs - either own or those of competitors - will impinge upon the commercial activities of any enterprise.

Key Issues

The TRIPS Agreement is a major step towards an improved protection of IPR worldwide. When discussing the relation to export competitiveness, we demonstrated the

importance of this agreement to business. However, business success cannot be ensured by international agreements alone. The systems have to allow protection and enforcement at affordable costs. Last but not least, companies have to integrate intellectual property into their business strategies.

Issue	Measure
Sufficient legal protection	TRIPS Agreement
Efficient Systems at affordable costs	WIPO treaties
Turning into profits	Company strategies

Cost reduction

The costs to register Intellectual Property Rights has become a major concern not only to small and medium but to large companies as well:

- Large pharmaceutical companies are especially worried about patent costs as they register hundreds of new patents a year. Registering a European Patent costs around US\$ 70,000 without a commercial success being guaranteed. Most of the inventions will not be commercially applicable and have to be abandoned during their life.
- Manufacturers of consumer goods are worried about fees to register trade marks which are excessive in comparison to the potential of the market in question. Complying with administrative formalities such as legalization and official certification of documents increase costs further.
- Textile manufacturers registering hundreds of new designs each season are confronted with enormous fees if no bulk registration is possible. The obligation to publish the designs and the respective reproduction costs may have a prohibitive effect.

Governments could efficiently contribute to reduce costs:

A substantial part of the costs to register a patent are related to translation requirements. However, a recent study in Europe demonstrated that 98 % of all translations have never been consulted. Reducing translation requirements is therefore an important step towards reducing costs. Obviously, those patent attorneys making their living from translating patent applications do not share this business view.

Reducing formalities and facilitating central registration systems speed up the registration process and reduce costs substantially. The WIPO treaties are cornerstones in this respect. The current negotiations on the PCT and the PLT are important steps to the necessary improvement of this system. The enlargement of the Madrid system and the revision of the Hague Agreement to be adopted at the Diplomatic Conference next year are other positive signals.

Companies can substantially reduce their costs for the protection of their Intellectual Property by making full use of the possibilities of the various systems:

- Depending on the service needed, choosing a different country as basis for an international registration reduces costs for patent registration substantially.
- Patent application in ten to forty countries will usually be sufficient to ensure protection in key markets and in countries where there is a high risk of the invention being copied.
- A close cooperation between the specialized service and the research team is necessary to ensure a patent application as early as necessary and as late as possible.
- The organization of the patent and trademark department as well as a continuous review of the cooperation with external attorneys and services are important instruments to control the cost burden.

Company strategy

Depending on their structure and their commercial objectives, companies do follow different strategies. The EPO study states that European companies patent a significantly smaller proportion than their Japanese and American competitors. Japanese companies patent more often for strategic reasons than American or European companies. Some of these differences may be caused by different R&D approaches. Japanese companies outsource their R&D more than in Europe or the US. They tend to collaborate with their suppliers, clients, subsidiaries, parent companies and even competitors much more than American or European companies.

Technology is no guarantee of success

A superior technology itself does not guarantee the commercial success. APPLE, for example, has been technologically ahead of the MS-DOS personal computers in terms of performance and user friendliness. However, due to a restrictive license policy which prevented others from integrating the innovations made by APPLE into their products, they lost market shares and have ultimately been acquired by MICROSOFT.

Protection of innovation has to generate added value at the input side (investment) as well as at the output side (exploitation), whether a company takes care of the innovation efforts entirely on its own or in cooperation with others.

Source of information and documentation

Patent documentation especially is an important and valuable source of information. This information is provided in a structured way and - due to the new technologies - easily available. In fact patent offices now make available to the public their entire collection of patents, some through on-line data bases on the Internet. These systems not only facilitate access but also more importantly allow sophisticated search mechanisms. Often patent documents contain information which is not divulged in any other form of literature. Since the technological information contained in patent documents is not secret, it can be freely used to support research and development activities. In spite of the advantages and possibilities of patent publications as a source of technological information, its use is unexpectedly low, notably among SMEs.

Combination of IPR instruments

IPR take many forms, including notably patents, trade marks, designs, copyrights and know-how. Each instrument has its particularities and advantages but not all are suitable for any situation.

It has to be determined what cost-effective protection instruments are most suitable for the appropriate business.

Strategic portfolio and license policy

The management of IPR has to be integrated into the business strategy. This requires a thorough analysis of the business situation and its IPR position. Both in terms of business strategy and in terms of IPR strategy one has to decide whether an offensive or a defensive strategy is suitable. This decision cannot be left to the IPR specialists or external consultants, although their advice is necessary.

The IPR strategy requires an audit and regular update of the business position in the market. Relevant questions to be considered include:

- Market needs.
- Structure of competition and distribution.
- Anticipation of long term technological developments.
- Own technological and financial strengths and weaknesses.

The life cycle of existing rights is an important indicator in determining the strategic position of the relevant products.

Straightforward licensing is the usual form of giving more value to patents if the owner is not able or not willing to fully exploit all the possibilities of his invention. In addition, IPR may be used as trading goods in exchange for access to rights of competitors (cross licensing). The sale of unused technology may create additional revenues and help to finance R&D activities.

Management of IPR

There are some company strategies that have been proved successful:

- Broad protection

The deterrent effect of patents (and the risk of having to pay large amounts of compensation) has the consequence that competitors will not immediately copy the invention but that they avoid a possible conflict by circumventing the patent.

- Not patent processes that have narrow scope

The publication of the patent information will help competitors to circumvent the patent.

- Careful Market Analysis

A worldwide patent costs on average US\$ 250,000 over its 20-year life and there are cost risks from the possible need to fight litigation. In some cases a company may better invest this money in marketing the product.

- Publish weak patents when confidentiality is difficult

The publication of an invention that is not worthwhile being patented destroys novelty and ensures that no one else can get the patent.

Enforcement strategies

It is of vital importance to survey whether or not products offered by competitors do violate the IPR of a company. The enforcement strategy has to be implemented in the business strategy. Any IPR has no greater value than represented in the willingness of the rightholder to defend his rights. Full management support is necessary in enforcing the rights, notably if advanced techniques such as arbitration or mediation are used.

A successful enforcement strategy includes the following objectives:

- freedom of action
- secure income
- secure market share.

Threat against infringement

A serious threat against infringement is necessary to secure the rights (e.g. danger of undermining trademarks) and to respect the obligations under license contracts. Only serious actions create the necessary preventive effect.

Litigation strategy

A litigation strategy has to be prepared, as enforcing IPR may be very costly and involve complex processes. The need for management involvement absorbs important resources. Federal states with federal court systems - such as Switzerland - may lead to very complex, lengthy and sometimes conflicting procedures. Alternative dispute resolution may reduce some negative aspects. The WIPO Mediation and Arbitration Center offers valuable services in this respect. However, alternative dispute resolution may become difficult if not impossible if important sources of income to one or all of the parties are involved.

Quick reaction on the markets

The quick result on the market is important to the profit line of a company. It is more important to maintain the market share and the price stability than to obtain a favorable judgement after years. Therefore, provisional measures and interventions of the customs authorities at the border have a special importance.

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