
Technology Protection Strategies for Small Businesses and Startups

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The Challenge

- A Typical Startup on Day One
 - Lots of good ideas
 - Talented founder(s)
 - Cash challenged
 - Limited or no management, product development or marketing experience
 - A little bit paranoid
 - Often for good reason
 - Small fish make good snacks for the sharks

The Need for Technology Protection

- Proprietary rights are essential to most companies
 - Investors want IP and especially patents
 - A backup position in case business doesn't work out
 - Alternative revenue sources
 - Product Differentiation
 - Protect Prices and Profits

IP Life Cycle

- Start with trade secret protection
- When the time is right, file patent applications
 - If there is an invention worth protecting
- Consider the role of designs and copyright
- Build and protect your brand
 - Trademarks can be the heart of a good brand

Confidential Info / Trade Secrets

- Confidential Information
 - Information that is not generally known
 - Trade Secret – Confidential Information that relates to a product, technology, service, etc.
- A new idea is always a secret
 - Keep it that way as long as possible
 - Carefully authorize and control use (CDA)

Confidential Info / Trade Secrets

- Advantages
 - Low cost
 - Can last for an indefinite time
- Risks
 - Independent development is a defence
 - Accidental or malicious disclosure
 - Requires constant vigilance and trusted partners
 - Can have a high cost

Patents

- Statutory right to exclusive use of an invention
- Can be enforced against innocent infringers
- Independent development is not a defence

Patents – Practical Strategies

- Protect more in US and possibly in Canada
- File internationally only if it makes sense
 - Actual business or opportunity in 2-3 years
 - Actual competitor that might infringe
 - A real opportunity to license
- Protect commercially meaningful inventions
 - Infringement can be detected practically
 - Don't waste resources on easily avoided patents

Patents

- Every situation is different
 - Don't let valuable invention go unprotected
 - Keep them secret until ready to patent
 - Talk to your patent agent, but make sure they know your goals
- Risks
 - Cost
 - Time
 - Invalidity

Working with Your Patent Agent

- Choose an agent carefully
 - Agent should take time to understand your business, legal and technology goals
 - Agent should be able to understand your technology and converse with you about it
- Don't be penny wise but pound foolish
 - Perils of provisional applications
 - Don't try to claim too much

Industrial Designs

- Protects shape, appearance, ornamentation
- Does not protect function

- Can be used to protect marketable but non-functional features

Copyrights

- Protects expression
 - Very limited use in protecting technology
 - Instruction manuals
 - Exact or almost exact duplication of software
- Risks
 - There is no copyright in an idea or invention
 - Does not protect technology
 - Completely defeated by clean room technique

Build a Brand

- In the long run, your brand is usually more important than technology
- Choose a distinctive trade mark and market presence and protect it
- Advantages
 - Can last forever if well chosen and policed
 - Cost can be quite low, although enforcement can be expensive
- Trade Marks do not protect technology

Combining Approaches

- In practice, different products (and features of products) will be at various stages in the IP Life Cycle
- By combining protection, you can achieve long term protection for important features
 - Products are distinguished by different features over time, but they all stand behind the brand

Summary

- There is no real alternative to a patent
- Trade secrets can be very powerful in some cases
- A patent program need not be expensive
- Consider carefully whether you really have an invention that can or should be patented
- Don't overlook other IP rights as products and services evolve

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