A Tool to Enhance Competitiveness of SMEs

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(Received 23 July 2002)

Small and Medium-sized Enterprises (SMEs) are the driving force of most economies with a proven capacity to innovate and to generate new ideas and technologies. Consequently, the wider and more effective use of the intellectual property (IP) system would enable innovative and creative SMEs not only to enhance their market position but also to contribute to the economic growth of their respective countries. In this article, the SMEs Division of the World Intellectual Property Organization (WIPO) seeks to demystify IP by providing reader-friendly answers to some common business questions about IP.

A core concern for any enterprise, big or small, has always been how to improve the quality of its products or services as compared with those of others in its competitive arena. If it is able to do so, then a linked concern is how it should maintain the quality consistently and how it should market its products and services to consumers. To make such improvements, to maintain quality consistently, and to communicate it effectively to the consumers in the market place, an enterprise invariably requires knowledge based on new and original ideas. Such useful knowledge has to be created either in-house by its own employees or it has to be obtained from others who may be willing to provide it, generally on payment of a fee or honorarium.

The primary key to successful management of such knowledge for business purposes is provided by the modern intellectual property (IP) system, which is based on intellectual property rights (IPRs). The term IPRs refers to legal rights obtained in relation to such innovative or creative output of the human mind. These rights are generally limited to the national jurisdiction and boundaries of the country where they have been obtained. The protection of many of these rights depends on grant or registration, subject to fulfillment of the prescribed conditions under the relevant national IP law, which is administered by an office, set up by the national government. The main types of such intellectual property rights are: (1) patents, (2) trademarks, (3)
industrial designs, (4) valuable undisclosed information or trade secrets, and (5) copyright and related or neighbouring rights.

Therefore, understanding the importance of the IP system and using it effectively, as an integral part of the business strategy of an SME, is a crucial necessity for success in the market place.

**IP in Practice**

To illustrate the point, let us look at a practical but generic example. A small manufacturing company has developed a new product, which is, in many ways, superior to competing products existing in the market. This product is characterized by a number of new distinctive design, and is marketed under a new brand name. To advertise the new product, the company creates or uses its own web site, in addition to putting out a radio advertisement with a distinctive jingle. Such a company could protect the new functional features through a patent or a series of patents, the new design through industrial design registration, the associated technical drawings and its web site through copyright, the associated knowledge through trade secrets, the brand name through trademark registration, etc. In other words, the small company has a great deal of IP, which could be protected and used through a combination of different types of IPRs. Should it do so? If so, what practical considerations should guide it in its decision-making? And which practical steps should it take?

Many SMEs in all sectors of the economy face such questions. SMEs are in fact responsible for a significant number of innovations and creative works. Their dynamism and flexibility lies at the heart of not only the new but also of the old economy. Nevertheless, SMEs often under-utilize the intellectual property system. There are plenty of reasons why this is the case and I would like to mention just a few. Firstly, a number of entrepreneurs believe that their creative output and innovations are not sufficiently innovative or innovative as to merit IP protection. Secondly, many perceive the IP system as being too complex and expensive and therefore useful only for large enterprises. Thirdly, numerous entrepreneurs simply do not know enough about intellectual property and the benefits that can be derived from IP protection.

**The Importance of Patents**

Returning to the example described above, there are a number of advantages that the small manufacturing company could draw from IP protection. Let us take the case of patent protection for the innovative features of the new product. Patent protection will give the company exclusive right to commercialize the product for the period of protection (usually, twenty years from the date of filing the application) giving it a strong market position and the possibility to recoup the money invested in the development and marketing of the innovative product. In addition, if other companies are interested in selling the same product, they will have to negotiate a licensing agreement with the company and pay fees in the form of royalties or through a lump-sum payment for the commercial use of the product. The company can also benefit
from other suitable arrangement, which result in a strategic alliance. Finally, patent protection will enhance the company’s image and negotiating position vis-à-vis other companies, investors, and if applicable, its shareholders.

Undoubtedly not all SMEs will have patentable inventions. The benefits of the IP system have to be balanced against the costs and efforts required for seeking IP protection and maintaining, policing and enforcing IP rights. A decision on whether, how and where to seek patent protection, on how to manage the rights conferred by a patent, and whether and how to enforce patent rights has to be taken on the merits of each case. Therefore, it is worth reiterating that every entrepreneur or manager of an SME who is to take a decision in this regard should be reasonably well-informed about the costs and benefits of the IP system or should know whom to contact so that he is able to get the right advice or counseling in this matter.

The commonly held belief that patent protection is only relevant to large high-tech companies investing large sums of money in research and development is to a large extent a misperception. Patents, in fact, may be obtained in any area of technology, from the most sophisticated computer hardware to the simplest manufacturing tool, sports equipment or office stationery and there are many ways in which SMEs operating in low tech sectors may benefit from patent protection. In cases where the product developed is not considered to be sufficiently inventive to merit a patent, some forty countries world wide offer utility model protection (often also referred to as “utility certificates” or “innovations patents”) which applies mainly for adaptations to existing products or less significant innovations primarily in the manufacturing industries.

Using IP for Marketing Goods and Services

But having an innovative product with a good market potential protected by a patent or utility model is only half the challenge. Successful production, distribution and marketing are an equally large part of the success of any product. Intellectual property protection, in the form of trademark and industrial design protection also plays an important role in supporting the small company’s commercialization and marketing strategy.

In order to differentiate its products or services from those of its competitors and to make them visually more appealing to the consumers, the small company has to develop innovative designs, create an appropriate brand name (or trademark) or logo to be used in advertising the products so as to make its products more easily recognizable by consumers. Now, if the same distinctive features were used by other enterprises, consumers would have difficulties in differentiating the products and this would lead to confusion and significant loss of revenue and goodwill for the small company. Trademarks and industrial designs, and the exclusive rights obtained through their protection are, therefore, important to differentiate products and services, develop a loyal clientele, and avoid confusion in the market thus supporting the company’s marketing strategy.
IP as a Key Business Asset

Similar reasons can be adduced in relation to the use of other intellectual property rights (e.g. copyright and related rights and the protection of undisclosed information or trade secrets, which do not, in most countries, require registration or prerequisite for protection). The crucial point is that IP protection turns innovative ideas, creative designs, and other intangible assets into valuable business assets that may contribute significantly to enhancing a company’s overall position in the market. Most successful entrepreneurs would agree that a proper mixture of know-how, human resources, a loyal clientele, consistent quality of their products or services, capacity to innovate, specific features of their design that appeal to consumers and other similar issues are the major contributor to their companies’ success. Intellectual property rights capture most of these aspects and turn them into exclusive property rights.

In a number of key technology areas, enterprises, big and small, have begun to appreciate that their IP assets are often even more valuable than their physical assets. This is particularly the case for highly innovative companies, which have over the years, managed to build a positive image and reputation based on their trademark and the consistent quality of their products. But it is also a trend that may be noticed across the board as powerful software, innovative ideas, successful management strategies and know-how are increasingly replacing physical asset as the keys to the competitiveness of enterprises in all sectors.

A small manufacturing company, such as the one referred to above, therefore, has a lot to gain from protecting its intellectual property. It goes without saying that IP represents by no means a panacea for all ills faced by enterprises nor is it the answer to all its business problems. It is, however, an extremely useful tool that offers SME entrepreneurs the opportunity to enhance the competitiveness of their business.