Patent myths and misconceptions – why should I bother?

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Agenda

• How does the patent system work?
  – seven major myths about patents
• Is it really just for big business?
• I don’t invent anything – why should I bother?
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Myth No. 1 - “A patent is for life…”

I’ll never compete now!

Most modern patents only last for 20 years…
“A patent is for life…"

...but many do not last this long...

...and a small number go beyond this date, typically to around 25 years.
So what happens after expiry?

The original Aero ® patent (1937)… still on sale today...

...but facing competition

Post-expiry sales depend on product recognition and loyalty

GB 813531: Paraquat
Granted 1959

Still selling well today.
So what?

• Knowing that patents have a fixed lifetime means that
  – third parties can leverage technical knowledge in expired patents, without paying royalties
  – it is worthwhile monitoring competitor technology, in case it becomes available earlier than expected.
No world patent exists

At least 142 nations around the world have an operating patent system – all independent of one other.

Some (kind of) exceptions; regional patent systems
Patents come in families

Fuel-cell technology

CA 2171298-C
US 5422411-A
DE 69610322-T2
JP 3061197-B2
AU 704923-B

One patent per country

Company A owns a UK patent on product X.
They can make it in the UK – and stop other
UK companies from making it.
So only Company A can sell product X
to customers in the UK.

Nobody owns a French patent on
the same product X.
Société B can make and sell it to
customers in France.
Company A cannot prevent them.
So what?

- If your current awareness identifies a patent
  - don’t panic!
    - a patent granted in one part of the world does not necessarily bar you from using the same technology somewhere else
- If you are a potential applicant
  - think carefully about where you want to manufacture or sell the product
    - don’t buy more cover than you need…

Myth No. 3 - “A patent entitles you to use your invention…”

The only right the patentee gets is to exclude others…
from making, selling, offering for sale, using or importing the product.
Territorial enforcement

Company A can export their product to France and sell it. Société B cannot prevent them, because neither they nor anyone else holds a French patent.

But Société B cannot export their product to the UK and sell it; if they try, Company A can sue for infringement of their UK patent.

So what?

• Patent granting and patent enforcement are two separate issues
  – small inventors may be able to obtain litigation insurance, but legal action is always expensive
  – alternative dispute resolution (ADR) procedures exist e.g. arbitration
• Some patent owners have no way of commercialising the invention
  – many patents are operated by licencees, who pay royalties to the patent owner
The ‘Black & Decker’ Workmate®

Myth No. 4 - “If you want a patent, you need an outstanding invention...”

- The aeroplane
  US 821393 (1906)
- Neon lighting
  FR 424190 (1910)
- Synthetic insulin
  CA 234336 (1923)
- Nylon
  US 2130948 (1937)
- Instant photography
  US 2543180 (1948)
Inventions which represent “only small improvements” are equally amenable to patent protection, and often have the largest business impact.

**So what?**

- Most patent documents differ only slightly from earlier cases
  - combined with the very large volumes, this means that efficient searching is inherently more complex.
Myth No. 5 - “Patenting is the only way to protect an invention.”

In other words…..

Additional, lower-cost alternatives to patenting may be more appropriate for your invention… and you’re not limited to choosing only one!

Example IP rights

- Patents (national, regional) 20 yrs
  - some extensions possible
- Utility models 10 yrs
  - can be as short as 6 in some countries
- Trademarks 20 yrs
  - some may be extended indefinitely
- Designs 20 yrs
- Plant variety rights 25 yrs
- Semiconductor chip masks 10 yrs
So what?

• If you are an inventor
  – patent protection *may* be unsuitable, but that is no excuse to leave yourself unprotected
  – effective protection may consist of a wider portfolio, not just patents

• If you are a user
  – don’t assume that just because you can’t locate the patent, the invention is not protected by other means – which may be enforced against you!
Myth No. 6 - “Market leaders will own the most patents in their field.”

There is no shortage of statistical studies…

Lies, damned lies and….

• Pietro Carnaghi S.p.A. is a world leader in large-scale vertical lathe technology.
  – they won an international tender in July 2001 to machine 5-metre wide fuel tanks for the Boeing Delta-4 satellite launch rockets.

• Total number of European and Italian patents held = 0
So what?

- Market share is a complex combination of many factors, of which technical lead is only one.
  - a simple metric like ‘numbers of patents published’ can reflect company filing policy, national law, social policy, budgetary constraints etc...
- Be cautious before you start crunching the patent numbers!

Myth No. 7 - “This invention is patented, therefore it must work”

- False : patentability only needs to show that the invention is new and not obvious, and capable of industrial use.
  - the patent as filed does not need to contain every piece of information needed to get the invention to work.
  - ‘working’ in the sense of a prototype is not the same as having a commercially viable product....
The non-patent literature

  - contrasted the efficiency of sportsman’s eye black grease -v- commercial stickers
  - “These results suggest that eye black grease does in fact have antiglare properties, whereas antiglare stickers and petroleum jelly do not.”


“I don't remember [eye black] ever doing any good. If there was any value, great. But in the process you looked cool.”

Boog Powell, Baltimore Orioles
The patents exist, but they do not guarantee that the product works.

So what?

• Expect to find that *some* parts of *some* patents don’t work
  – these are not peer-reviewed journals, they include speculative extension of known techniques
• But don’t dismiss them as a source of genuine new know-how
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Is it really just for big business?

• It depends
• If you want world-wide protection, and your product is easy to copy, patenting will get expensive
  – Filing and prosecution fees
  – Attorney fees
  – Translations
  – Post-grant renewal fees
  – Defence fund / litigation costs
Great oaks from little acorns….

As of last Wednesday, Mr. J.W. Farley of 23 Thorpe Hall Close, Norwich, has exactly the same legal rights to his invention within the UK as existing manufacturers do to theirs.

Patenting issues for academia

  - “Too many companies [are]…formed on the basis of a single idea or patent, leaving them with a weak base on which to establish a viable business.”
  - “We strongly suspect that the longer term budgets and resources needed to properly administer growing patent estates are not clearly understood by some universities and that a crisis of IP management may already be in the making.”
- A newly granted patent is only a potential asset; considerable additional investment may be needed to realise that potential.
Patent-intensive industries may be more vulnerable to adverse market perceptions than poor science

Research shows that accurate information hurts our share price much more than unfounded rumour

The implications for information users

• Unlike a journal article or book, a patent document will have a different impact upon users, depending upon
  – where it was published
  – when it was published
  – what has happened since publication
• “Beauty [value] is in the eye of the beholder”
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I’m not a big inventor….

- …but I could still be sued
  - increasingly, organisations have to monitor the patents in their field, to ensure that they are not accidentally using someone else’s IP
    - this applies whether you are academia, not-for-profit or commercial
  - …but I own one piece of IP
    - many small biotech companies have become takeover targets by big pharma because they owned niche technologies
I’m not a big inventor….

- …but my company spends a fortune on translating journals because my competitors are in Brazil/Russia/China…
  - patent specifications can form an invaluable free window into foreign-language know-how.
- …but now I understand a little more about patents and how the system works