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July 2006

PATENTING, BRANDING, AND MARKETING

Michigan Business Review - Lansing

When it comes to product or service development, these activities should be thought of as mutually beneficial, not necessarily mutually exclusive.

Patenting involves securing ones intellectual property rights by obtaining a grant of a patent, thus protecting the novel features of the invention from being made, used, offered for sale, or sold by someone other than the inventor. Branding on the other hand, is the process of developing a products identity within the minds of the consumer. Patenting is accomplished by securing a patent, and branding is accomplished, typically, through marketing efforts. However, these development efforts need not, and should not occur in a vacuum.

Unless the product, method or process in question is truly a commodity and incapable of patent protection, branding alone will probably not provide the outcome the owner is seeking. Yes, branding alone *may* make a product successful. Unfortunately, if the product is not protected, it will likely not be the original owner who enjoys that success. For example, small and medium sized business owners who concentrate solely on branding in order to secure the market place will invariably be thwarted in their efforts by large corporations having better access to marketing and distribution channels.

Normally, what happens in these cases is that as the product becomes a commercialized success, competition enters. If this competition has access to cheaper manufacturing, a larger distribution network, and sufficient initial capitalization, the competition will be able to capitalize on and then take over or redevelop the brand, leaving the original owner in their wake. This can be accomplished by, among things, locking them out of major distribution channels, and creating lower cost products.

Without some form of protection there is little the smaller business owner can do. For example, when the worlds largest company is a retail store, and is China's eighth largest trading partner, you have very little chance of out-sourcing, out-marketing, or out-selling them. So what's a business to do? Simple, protect yourself!

By securing a patent on the product, process, method, or article of manufacture, the business "arms" itself by protecting the intellectual property. As such, if your product is "novel," that is to say new or improved over existing products, then your product may be capable of patent protection. If so, and if you acquire for example a U.S. patent, you will have twenty years wherein you can stop all others from making, using, offering for sale, selling, or importing the invention into this country. However, patents are only for non-commodity products. One caveat is required: in obtaining patent protection, it is imperative that the inventor seek a qualified patent attorney. All patents are not created equal, and there are many ways to pay for and obtain a patent that will have little to no commercial value. Yes, the process and fees are expensive. Frankly, the system is designed to be that way in order to discourage people from patenting products that have no hope of commercialization.

One of the biggest reasons I hear for not obtaining patent protection is the false belief that even if achieved, a smaller business would not be able to enforce it against a larger entity. This is simply not true. In fact, the opposite is true. There are numerous law firms that actively seek smaller business clients in patent infringement matters and will represent them at little to no cost to the client. In these cases, the larger the infringing entity, the more infringement typically takes place. Consequently, it is exactly these patent infringement cases that firms seek and will represent clients on a contingency basis.

Of course, there are also many reasons to <u>not</u> patent something. In the end, it is a business decision that only you can make, and it should be treated as any other business decision. In this manner, simply forgoing patent protection because of preconceived ideas about the market, costs, and enforcement, without looking into what amount of protection is available, is akin to sticking your head in the sand. The days when one could rely on these preconceived notions are gone, and in today's competitive economic environment, we need to ascertain, strive for, and obtain all of the commercial advantages

that are available to us. At the very least, you should investigate what you may be giving up.

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Mr. Paparella is Principal and founder of Paparella & Associates, a law firm specializing in intellectual property matters. Mr. Paparella has extensive experience in all phases of IP practice including patent and trademark prosecution, as well as infringement analysis. Additionally, Mr. Paparella has broad experience in the corporate environment. Before practicing law, Mr. Paparella worked for 3M as an engineer, progressed into project management, and culminated his corporate career as a Key Account Representative, overseeing the entire eastern half of the United States. Mr. Paparella has garnered numerous corporate awards, and was himself patented twice for inventions relating to fiber optic connectors. After his corporate career, and before founding Paparella & Associates, Mr. Paparella worked in one of the mid-west's largest IP boutique law firms.

Paparella & Associates is a law firm which specializes in intellectual Property: Namely, Patents, Trademarks, & Copyrights. With offices in Lansing and Grand Rapids, Paparella & Associates is uniquely situated to deliver the highest quality representation. Handling all Intellectual Property matters including, Patents, Trademarks, Copyrights, Infringement Matters, Clearance Opinions, Freedom to Operate Opinions, and Litigation.