

Building a Ground-Up Innovation Strategy

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Steve Jobs, Elon Musk, Jeff Bezos. Popular culture likes to cultivate the myth of the maverick entrepreneur, often attributing the innovation in a company to a lone genius. The reality is that innovative companies cannot and should not rely on singular flashes of genius, but instead should build a culture of innovation from the ground up.

Building such a culture requires thoughtful incentive programs, sustained educational effort and effective intellectual property (IP) leadership.

The Importance of Layered Patent Protection

Just like it is unwise to create a single point of creative failure through reliance on one or two individuals, it is also unwise to create a single point of failure for a patent strategy. In practice, this means not relying on a single technical area for the protection of a product.

In the medical device sector, for example, most new products are a team effort, involving many different disciplines. Innovation is often required in more than one of those disciplines to develop a successful product.

In my prior role as in-house counsel, our company developed sweat-sensing devices that required innovations in microfluidics, electrochemical sensors, software and design, among other fields. By empowering our scientists, engineers and programmers to innovate and collaborate in and across these disciplines, we were rewarded when several of our most valuable patents—including one on a potentiometer and others on groundbreaking physiological testing methods—emerged unexpectedly from these hybrid, cross-field interactions.

The benefit of such a comprehensive strategy is that a single product may be protected by a web of

related patents, not merely by a lone patent in a single area of innovation. Layering patent protection through multiple patent types and claim sets can prove crucial, since that lone patent may be an attractive target for a well-funded opportunist trying to appropriate someone else's hard-won technology.

Creating and Sustaining a Culture of Innovation

While the benefits of a robust innovation culture are apparent, how to create and sustain such a culture is another matter. First, a company should "put its money where its mouth is" by establishing programs to incentivize employees for creating IP.

For example, an employee could be granted a bonus for each patent the company files naming that employee as an inventor. Similarly, incentive programs could be established to improve patent quality. These incentives, for example, could be tied to the number of claims granted by the United States Patent and Trademark Office (USPTO), inclusion of relevant technology in a product or receipt of income from licensing agreements.

Incentive programs also should not discount the power of public accolades, such as innovation awards for the employee or development team with the most patents or presenting framed patent certificates to inventors with issued patents. However, as powerful as incentives can be, many companies suffer from sluggish innovation cultures not as a result of a lack of motivation, but due to a lack of information.

This is why an effective IP educational program is crucial. Patent law, and intellectual property laws in general, are often perceived as a mysterious black box by the potential innovators at a company. I've experienced this phenomenon myself, since many of the scientists and engineers with whom I've worked had an instinctual aversion to such unfamiliar landscapes. The last thing they wanted to do was spend time poring over legal documents.

However, a company seeking to add value through innovation should work to overcome these barriers, and one of the best ways to do so is through education. Good IP education programs should demystify the patenting process, establish a common vocabulary, and define and roadmap the inventor's role.

Regular IP education sessions should cover basic innovation-related laws and processes that employees must understand to effectively identify and disclose inventions. These sessions should also highlight the important preliminary steps needed to protect those innovations. Sessions might include, for example, an overview of the general rules governing patentability and prior art; how to use the company's invention disclosure form; a seminar on the typical steps involved in obtaining a patent; or a segment describing the inventor's role in the patent prosecution process.

These are only suggested topics, but in any case, the goal should not be to transform the company's frontline innovators into patent attorneys. Instead, the educational program ought to enable this critical, technical cadre to understand the foundational "must-haves" for a successful, thriving innovation culture.

Beyond these recommendations, innovators should also be provided a 30,000-foot view of the patent landscape in their particular disciplines. Where are the green spaces in their field? What is the company's vision for innovation? Knowing the answers to these and related questions, along with the knowledge gained from IP educational sessions, will enable those innovative employees to drive and sustain ground-up IP development.

Cultivating IP Leadership Companywide Is Essential

While education is important for equipping innovative employees with the skills necessary to drive IP development, cultivating IP leadership at all levels of the company is also important—perhaps most important.

Among the more-experienced scientists and engineers are typically those possessing considerable knowledge and experience with patenting and other IP-related processes. These potential mentors should be identified, vetted and encouraged to train and develop the less-experienced colleagues in their orbits.

Innovation leaders may also be selected to receive—and empowered to present—advanced briefings about the state of the art within their disciplines, areas of past success for the company's patent program and relevant aspects of the company's forward-looking IP strategy, to tie the company's where-we've-been legacies to its where-we're-going futures.

Ultimately, IP leadership should strike a balance between fostering a diverse set of creative solutions to the company's technical challenges/roadblocks and channeling those efforts toward the company's strategic, long-term goals.

Innovation That Powers Transformation

Building ground-up innovation cultures and programs requires significant effort and commitment. But doing so can transform a company from an "also-ran" into a persistent market leader. Incentivizing and training potential innovators throughout the company orients more talented minds—with diverse modes of thinking—toward the creation of valuable IP that can capture marketplaces, bolster company valuations and attract the finest talent.

Establishing such cultures and programs can be very expensive and time-consuming. However, the price of those transformations for companies truly committed to them pales in comparison to the payoff—just ask Apple, Tesla or Amazon.



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