

What Does Your IP Strategy Say About Your Startup?

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Every startup has an intellectual property (IP) strategy. For many, it may be as simple as, "I'll worry about IP after the next funding round." Whether articulated or not, a startup's IP strategy says a great deal about how well its leadership is balancing the company's short-term survival with long-term growth and success.

Trademarking Your Company's Name and Other Assets

The most time-critical aspect of IP strategy is usually securing trademark protection for your company's name and logo, or marks designating your company's products and services. Since trademark protection in the U.S. adheres on a "first use in commerce" basis, neglecting state or federal registration of your company can result in the need for last-minute rebranding efforts on top of all of the usual heavy lifting required to bring a product to market.

Another time-critical, and often-overlooked task is securing domain names for your company or product. Having identified your names and logos, and ensured they are protectible, they still may ultimately need to be replaced if you cannot direct internet traffic to your products and services. Securing suitable domain names and predictable misspellings or variations can vary greatly in expense, depending on the perceived value of the domain. However, most domains can be acquired rather inexpensively, and a strategic approach can create value for your company.

Provisional Patent Applications and Other Useful Tactics

Patents are the elephant in the room for many early-stage businesses. Patents are expensive, they can take a long time to secure and, of course, pursuing them means you have to work with a lawyer. These downsides make it understandable that many CEOs choose to put the IP discussion off until another

day. Unfortunately, doing so is a missed opportunity for company leadership to think strategically about the future, and to begin investing in that future.

Beginning the process of securing a patent does not have to be prohibitively costly. A good first step is to file a provisional application with the U.S. Patent & Trademark Office (USPTO). This is a placeholder application that secures a priority date and gives the applicant a year to follow up with a utility application.

A provisional has a filing fee of less than \$200, so the real cost is attorneys' fees. With guidance from a patent attorney, these fees can be reduced if your internal team can dig in and do some of the drafting themselves. And while your priority claim is only as good as the provisional's content, the filing does not have to be perfect, which is helpful since perfection takes time and money to achieve.

Another way to begin the patenting process while delaying expenditures is to file a Patent Cooperation Treaty ("PCT") application before your provisional expires. Depending on the page count and number of claims, a PCT will cost around \$2,500 in filing fees for a small business, which is around twice the fees for a utility filing with the USPTO. Attorneys' fees should not be skimmed on at this point, since the filing needs to be as thorough and rigorous as possible.

While filing a PCT first is somewhat more expensive, it provides a respite before the company needs to start paying prosecution fees. Once you file the PCT, you have 30 months from the priority date to file at the USPTO and any other national stage. And then it is usually another year before prosecution costs begin to accrue.

If cash flow is not the issue, but the daunting multi-year process is, there are ways to dramatically cut down the time it takes to get an issued patent. Rather than starting with a provisional, a fast track utility can be filed for an additional \$2,000 fee for small entities. Normally, fast track applications get a final disposition in 12 months or less. Just over a year is not a bad time horizon to have a patent in hand.

The Dangers of Delaying Execution of Your IP Strategy

As you can see, neither cost nor timeline need pose an insurmountable barrier for beginning to execute an IP strategy, especially considering the drawbacks of waiting too long to start the process. These drawbacks start with the naming and product launch difficulties mentioned in the context of trademarks and domain names. However, delaying the development of a patent strategy can be even more detrimental.

In the short term, there is the danger of having another party scoop up your idea by filing a patent application before you do. And, if you do not seek patent protection within a year of publication or a public sale, those activities act as a ban on your ability to get a patent for that invention.

Also, a business with a great idea but without patent protection puts its funding opportunities at risk.

Early stage investors want to see that your company is taking intellectual property seriously, and will likely weigh the quality of your IP strategy and holdings—or lack thereof—in their funding decisions.

Patent Strategy as a Powerful Focal Point

Finally, the exercise of setting aside time to think about patent strategy can be invaluable for an early stage company. Since patents are intended to protect an invention for 20 years from filing, they necessarily require forward thinking to maximize their value. Therefore, thinking about patent strategy affords one of the rare opportunities for early-stage companies to think beyond the next funding cycle and toward what they want to become.



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