

Patents as a tool for business and innovation

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Almost everyone nowadays is familiar with the words "intellectual property" and "patents". This is largely because intellectual property (IP) is a vitally important part of developing and maintaining a profitable business.

Having recognised the importance of IP protection, you also need to understand the types of protection you can obtain and the benefits of each. There are several types of IP _ including patents, copyrights, trademarks and trade secrets _ each of which offers different legal rights and protections.

For instance, copyright protection and patent protection are very different. If you are thinking about "filing" or "registering" your IP, you are probably thinking about obtaining a patent as opposed to a copyright. Why? Because registration is required only for patent and trademark protection, not for copyright and trade secret protection.

Another key point is that patents only give you legal protection in the country where they are registered. There is no such thing as an "international patent" that will give you protection in every country in the world. This means a patent must be applied for in each country where you aim to obtain legal protection.

The Patent Cooperation Treaty (PCT) system, which Thailand recently joined, allows you to apply for a patent in several PCT member countries by submitting a single application via the PCT system. Although this is certainly helpful for businesses, it does not actually give you an "international patent", as you still need to pursue patent registration in each country separately.

Once the patent is granted (the process usually takes a few years), the patent owner will enjoy the exclusive right (i.e. monopoly) to exploit the patented invention in the country in which the patent has been granted for a specified period of time. In Thailand, the total protection period is 20 years from the filing date for an invention patent and 10 years from the filing date for a petty patent or design patent.

From a business perspective, patent protection should be viewed as a tool for achieving specific business goals. The question is how to apply this potentially available tool productively and efficiently. Remember, filing and maintaining patents costs money, so the proper management of patents is crucial. The questions that business owners need to ask themselves include:

- How can a company generate and identify new ideas and innovation that would be worth patenting?
- How is patent ownership determined?
- How do employee-inventor(s) get rewarded?
- How can the company profit from the patent to protect and grow the business?

The main benefit of having a patent is to give your company limited-time exclusive rights to the patented invention and, in turn, prevent your competitors from copying the invention, entering the market, or otherwise competing with your company. This benefit can only be fully realised, however, if your company has a strong patent (patents are best drafted by professionals) and has an effective patent enforcement plan in place so that the company can quickly detect and take legal actions against an infringer.

In any event, it is important to keep in mind that without being able to reap the benefits a patent can offer, an issued patent is merely a piece of paper that costs money to maintain year after year.

Patent ownership and employee remuneration is another big issue. Section 11 of the Thai Patent Act clearly stipulates: "The right to apply for a patent for an invention made in the execution of an employment contract or a contract for performing a certain work shall belong to the employer or the person having commissioned the work unless otherwise provided in the contract."

This means the patent rights to an invention created within the course of employment belong to the company unless the company and the employee-inventor(s) have agreed otherwise. This point must be clearly communicated to all employees to prevent any misunderstanding. In some cases, employees may think they own the invention.

But companies also need to be aware of Section 12 of the Thai Patent Act, which stipulates: "In order to promote inventive activities and give a fair share to the employee, the employee-inventor shall have the right to remuneration other than his regular salary if the employer benefits from the invention."

Therefore, even though the company owns the patent rights, the employee-inventor is entitled to extra remuneration, provided that the company benefits from the patented invention created by the employee. In light of this legal obligation, companies may consider putting in place a well-designed reward system to create incentives for employees to come up with innovative ideas and inventions that would benefit the company's business growth and development.

Undoubtedly, with careful planning and effective management, patents will be a very useful tool to drive business and foster innovation.