La Gestión de Carteras de Patentes en Empresas de Base Tecnológica: Caso Fractus

Los Lunes de Patentes – Centre de Patents UB  04/10/2010

Dr. Carles Puente Baliarda
TSC Department, UPC
Fractus S.A.
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- Caso Fractus: Empresa Basada en Tecnología y Patentes
- Diseño y Arquitectura de una Cartera de Patentes
- Costes e Inversiones en Carteras de Patentes
- Estrategias de Optimización de Inversiones en Patentes

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IP Product – The Patent Family

Patent Families

- All patents claiming priority from an original document are said to form a **patent family**.
- A patent family might comprise **multiple patents** (i.e. granted patents) in multiple **territories**.
- A patent family might include **multiple patents** in a **single national territory** (through continuations/divisionals).
- Scope of protection might be different for each patent of the family.

...
IP Product Development Cycle

MARKET DEMAND
- Market Surveillance
- Product Marketing

IP Product License
- Licensing
- Patent Preparation

PATENT APPLICATION
- Provisional Application (Feasibility)
- Proof of Concept & Conceptualization
  - (Experiment)
  - (Invention Report)

Innovation Conception (IDEA)

Technology & Patent Engineering Know-How

Prior-Art Surveillance
- Patent Prosecution
- Technology Trends & Market Needs

€
IP vs. Tangible Product Development

**Innovation Conception (IDEA)**

- Feasibility Analysis
- PROTOTYPE

**Product Design**

- DFM & Qualification

**Market Demand**

- Market Surveillance

**Product Sales**

- IP Product License
- Licensing
  - Patent Preparation

**Patent Application**

- Provisional Patent Application

**Proof of Concept & Conceptualization**

- (Experiment)
- (Invention Report)

**Technology Trends & Market Needs**

- Prior-Art Surveillance

**Patent Prosecution**

- Technology & Patent Engineering Know-How

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Apple Inc. has filed at least 22 international (PCT) patent applications for multiple inventions used in the iPhone (graphics display, user interface, self-rotating screen, ...)

Patents: Inventions and Products are Different

http://jeroenarendsen.nl/ 2008/ 08/ apple-gesture-patents-around-iphone/
Building a Patent Portfolio - Scope (1)

1. Intermediate Product → Final Product → Application Product

- OLED → Flexible/Conformable Display → Mobile Phone

Make sure you include all of them in your patent application or patent portfolio!

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2. New Product $\rightarrow$ New Use $\rightarrow$ New Production Method

SMD Electronic Components $\rightarrow$ SMD Assembly & Soldering

Make sure you include all of them in your patent application or patent portfolio!

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Make sure you include all of them in your patent application or patent portfolio!
Building a Patent Portfolio - Scope (4)

4. New Apparatus → New Elements/Parts → Multiple Inventions

CD Player → Multiple Inventions: Laser Pick-Up, CD, Tracking, Recording, Manufacturing, ..

Make sure you include all of them in your patent application or patent portfolio!

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On the architecture of a PATENT PORTFOLIO

Example:

- **CORE** Technology: “OLED”
- Tech. **UPGRADES**: “Improvements in manufacturing, cost, wavelengths of OLEDs”
- **FIELDS** of Application/Markets:
  - Displays for Handhelds
  - TV Displays
  - Advertising Panels
  - On-vehicle signaling
  - Intelligent fabrics
  - Fashion fabrics
  - …
On the architecture of a PATENT PORTFOLIO

Some benefits of a layered architecture are:

- **Multilayer protection**: an asset of the company will be protected by multiple and different invention patents.

- **Business Segmentation**: Different IP assets might be used in different ways (selling, licensing, litigation) in different markets.

- **Business Diversification**: Risk (e.g. patent validity) is split in different fields, likelihood of losing ‘all eggs in the same basket’ is lower.
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- Scope of protection might be different for each patent of the family.
The main costs related to a PCT patent filing are:

- **Filing** of a PCT application:\(^1\): Int. Filing+Trans.+Search Fees (Note: Fees increase for docs beyond 30 pags.) \(~ 3,000 €\)
- There is an additional fee when demanding the ‘International Preliminary Examination’. This exam is optional, non-binding and only provides some guidance. \(1,675 €\)

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**Outline of the PCT application process**

<table>
<thead>
<tr>
<th>Months</th>
<th>File PCT application</th>
<th>International publication</th>
<th>(optional) International preliminary report on patentability</th>
<th>Enter national phase</th>
</tr>
</thead>
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<tr>
<td>0</td>
<td></td>
<td></td>
<td>(optional) File demand for international preliminary examination</td>
<td>28</td>
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<tr>
<td></td>
<td></td>
<td>12</td>
<td>International search report &amp; written opinion</td>
<td>30</td>
</tr>
<tr>
<td></td>
<td></td>
<td>16</td>
<td></td>
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</tr>
</tbody>
</table>

\(^1\)Developing countries are entitled to a 90% fee reduction

Patent Agents Costs and Drafting Costs

- **Patent Agents** and Patent Prosecution Attorneys are a most relevant source of cost in patent prosecution:
  - Typical Hourly rates for US patent agents: $250 ~ 450/h
  - Typical Hourly rates for EPO agents: €200 ~ 300/h

- The most relevant source of initial cost is retaining a patent attorney for **drafting** a new application:
  - US patent drafting: $2,000 ~ 9,000
  - EP patent drafting: €1,000 ~ 6,000

- A significant cost reduction might be obtained if there is a **high degree of involvement from client** in drafting application (lower bound in the ranges above).

- Generally, patent agents charge for **ANY action** taken in front of the PTO: transmittal of letters and fees, and so on. This might be a surpluss cost to any PTO fee ranging from +20% ~ +100% of the fee cost.
The cost of filing a patent application depends on each country. On average, it is safe to estimate an average filing cost of \(~3,500\€\) including filing fees, patent agent fees, search fees and translations, in the following regions: US, EPO, CN, IN, KR, RU, MX, BR.

Filing fees in JP are higher and a good average estimate is about \(~6,000\€\).

Independent ‘self-filing’ (without the intervention of an agent) is possible both in the EPO and USPTO. Cost is limited to official fees, which in those cases are about:

- **US**: 850$ ~ 1,200$ (depending no. of claims)
- **EPO**: 2.250€ ~ 3.000€ (designate 7+ countries)

The above filing costs are related to the process of filing alone, and **do not include the costs of drafting** a patent application as described in the previous slide.
Examination & Office Actions Costs

- Most PTOs charge a **fee for examination** in addition to the filing fees.

- Costs during the examination period are however mostly related to the **office actions** and the **agent/attorney work** to answer such office actions. On average it is adviseable to account for a cost over the examination period of time of:
  - **US:** ~ 6,000$ over 30 months
  - **EPO:** ~ 4,500€ over 36 months
  - **JP:** ~ 13,000€ over 60 months
  - **CN:** ~ 6,000€ over 60 months
  - **IN:** ~ 4,000€ over 48 months
  - **RU:** ~ 5,000€ over 24 months
  - **MX:** ~ 3,000€ over 36 months
In the US, mant. fees are only due on years 3.5, 7 and 11.5 from the date of patent grant.

JP has the most expensive maintenance policy.

Generally, maintenance cost increases over time.

Generally, maintenance fees only accrue after 3rd year.
Maintenance Costs (III)

- Maintenance in the US has the lowest cost: ~7 k€
- Maintenance in EPO (5 top), JP, KR, is about: ~50k€
- Maintenance in a single EU country is more expensive than US
- EPO maintenance ceases after granting, when national maintenance fees start to apply (except for pending divisionals).
The **50-patent portfolio** example:

- **50 PATENT PORTFOLIO EXAMPLE**
  - **Patent Batch #1**: june 01/01/09 - june 17/09/09, cost: 2,647,455 €
  - + PCT Patent Application No. PCT-1: mar 29/12/09, cost: 264,735 €
  - + PCT Patent Application No. PCT-3: mar 22/02/09, cost: 264,735 €
  - + PCT Patent Application No. PCT-6: mar 22/05/09, cost: 264,735 €
  - + PCT Patent Application No. PCT-7: june 20/06/09, cost: 264,735 €
  - + PCT Patent Application No. PCT-8: mar 20/07/09, cost: 264,735 €
  - + PCT Patent Application No. PCT-10: june 18/08/09, cost: 264,735 €
  - + Patent Batch #2: mar 01/09/09 - mar 17/09/09, cost: 2,647,455 €
  - + Patent Batch #3: mar 17/09/09 - june 17/09/09, cost: 2,647,455 €
  - + Patent Batch #4: june 17/09/09 - june 15/09/09, cost: 2,647,455 €
  - + Patent Batch #5: june 15/09/09 - june 18/09/09, cost: 2,647,455 €

- **10 patents/ year** over a **5 year** period (PCT route)
- Assume filing in **8 main jurisdictions**: US, EPO, JP, CN, IN, MX, RU, BR.
- Overall budget for the entire portfolio term (25 years) is about **13m€**, which on average represents about **500k€/ year.**

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Sources of Cost – 50-patent portfolio example (III)

The **50-patent portfolio** example:

![50 Patent Portfolio Budget](image)

- **Years**: 1 to 25
- **Euros (€)**: 0 to 1,200,000

- **National Phase Entry+ Grantings**
- **Maintenance**
Geographical Policy – US Only Case

- Average total cost per patent reduced from 265k€ to 21k€!
- Total patent investment reduced from 13M€ to 1 M€!
- Average budget reduced from 500k€/yr to 43k€/yr!
- Peak cost around reduced to 135k€/year, around years 4,5,6.
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What is a patent?

I need to file a US patent as soon as I arrive to the lab, otherwise we will not be able to sell our new drug in the US.

WRONG,

A patent does not provide a right to sell. You do not need a patent to sell products.
What is a patent?

I need to file a US patent as soon as I arrive to the lab, so I will have a tool to defend ourselves if our competitors stole our invention.

RIGHT!

This is what a patent is for. Note: you still need to make the effort to defend yourself.

RIGHT!

(quote by Roy Lichtenstein)

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The owner of the patent (the patentee) has “the right to prevent or STOP others from making, using, offering for sale, selling or importing a product or a process including the patented invention without the owner’s permission”.

A patent provide a NEGATIVE RIGHT, i.e., the right to stop others from making unauthorized use of an invention. A patent does NOT provide a POSITIVE “FREEDOM TO USE” right, i.e., the right to make or sell a product or an invention.

A patent is intended to protects an invention, not necessarily a product. An invention can be understood as a “new and inventive solution to a technical problem”. A product can include multiple inventions which might be protected independently.
Example: “Combination Therapy for Osteoporosis” WO9731640 …

Pfizer strategy for this therapy provides quite broad global coverage, including over 25 patent regions in all continents.
Geographical Strategy – WiRELESS Example

Example: “Phase Locked Loop for an OFDM System” WO2004093363 …

... QUALCOMM strategy for this patent provides global coverage, in selected regions 9 regions.
Example: “Stacked Packages” WO03032370 ...

... TESSERA strategy for this patent is limited to 3 jurisdictions: US, DE, JP.
So, why are there such significant differences in the geographical coverage for patents across different industries?

**Geographical Strategy – WHERE and WHY?**

**PHARMA**  
30-50 Countries

**WIRELESS**  
3-10 Countries

**SEMICONDUCTORS**  
1-3 Countries
The PHARMA INDUSTRY case

- **Huge product margins** (~90%) in the Pharma industry are sustained only through the **value of patents**.
- **Production** of drugs is relatively **inexpensive** and usually does not require heavy investments.
- **Distribution** of drugs is rather **easy** (e.g. internet) except for local government regulations.
- **Heavy R&D investments** required which introduce a significant entry barrier to competitors ...
- ... unless competitors can copy. **Margins are so high** that **local pharma companies might become very lucrative business** (e.g. ‘Generic Labs’)
- **Market** is highly regulated and monitored by local governments. ‘Free riders’ are discouraged.

The patent investment in a small country might pay-off since each country is a lucrative business per se and IP is, in general, respected.
Margins in the telecom/consumer electronics markets are moderate (5%-30%) and volume is a driving success factor in this market (e.g. Nokia with 35%-40% share).

Product platforms might be quite globalized, although customization of products for regional markets exist (e.g. frequency bands/standards).

Design of complex products in a high-pace market makes competition tough...

.. but manufacturing (and design) is being commoditized and moved to low cost regions: global manufacturing.

Moderate margins do not incentivate respect for IP.

A few local competitors have been able to survive and compete (e.g. Samsung, LG, Pantech in Korea), many failed.

Portfolio reach should be global, yet only focusing on main markets/ mass-production regions. Entry barriers are high enough to prevent competitors in small mkts.
The SEMICONDUCTOR INDUSTRY case

- **Margins** in the semiconductor electronics markets are **moderate** (5%-30%) and **volume** is a driving success factor in this market.

- **IP leverage** sometimes is able to keep **high margins** for high added value products (e.g. Intel).

- Products are highly **globalized** and **standarized**. Local design and customization strongly discouraged.

- **Huge investments** in production are required. Strong concentration in selected regions. Local manufacturing virtually unexistent.

- **High investments in R&D** required, quite respect for IP to protect margins, synergies and cooperation.

**Blocking a few strategic markets is usually enough to prevent unfair competition. Global licensing agreements with global players possible. Blocking key production centers also to be considered.**
Not ALL patents are EQUALLY VALUABLE

Each patent contributes different to the value of the patent portfolio, which does not only depend on the technical content of the patent, but also on legal and business factors:

**Business Factors:**
- Impacted Revenue
- Value Contribution into Impacted Market
- Essentiallity in Impacted Market (i.e. lack of alternatives).
- Competitive Advantage
- Focus on Strategic Markets

**Legal Factors:**
- Quality of claims: diversification, quantity, language
- Focus of claims: clarity of infringement.
- Validity likelihood: contrasted prior-art.
- Enforceability
- Prosecution History (US)

**Technology Factors**
- Scope of Technology: Fundamental vs. Marginal Contribution
### Patent Portfolio SCORING and RANKING

#### PATENT PORTFOLIO SCORING AND RANKING

<table>
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**WHERE:** The MARKET/REGION/VALUE Matrix

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<tr>
<th>Patent Class</th>
<th>Core</th>
<th>Upgrade</th>
<th>Market #1</th>
<th>Market #2</th>
<th>Market #3</th>
<th>Market #4</th>
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<td>US</td>
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<td>US</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Dr. Carles Puente i Baliarda

carles.puente@upc.edu

D4-214 (C.Nord, UPC)

- Professor, Universitat Politècnica de Catalunya (UPC), Dept. TSC (1994-1998, 2008-2010)
TECHNOLOGY ASSET MANAGEMENT ('TAM') course at UPC

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http://jeroenarendsen.nl/ 2008/ 08/apple-gesture-patents-around-iphone/
What is a patent?

I need to file a US patent as soon as I arrive to the lab, so I will forget about claims from third parties about patent infringement.

WRONG,
The fact that one or more inventions in your products are patented does not mean that your product does not infringe third parties IP rights.

Roy Lichtenstein

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What is a patent?

I need to file a US patent as soon as I arrive to the lab, so I will be sure nobody will copy our technology.

WRONG,
Companies copy and make unauthorized use of IP rights quite often (even unintentionally). Patents do not prevent copying but provides a mean to stop it or at least get compensated.
WHEN AND WHY?

Several schemes are usually followed before taking the decision of filing a patent:

**Conservative:**
- Make a prior-art review before filing
- Make a business case for the patent investment
- Get approval from innovation/IP committees before filing

**Moderate:**
- Make a prior-art search before filing
- Delegate on a team of business/technical experts the filing decision.

**Pro-Active:**
- Delegate on a team of 1-2 experts the decision on filing a provisional.

**Aggressive:**
- SFAQL: Shot First Ask Questions Later
WHEN AND WHY depends on WHO you are.

<table>
<thead>
<tr>
<th>Large Innovative Corporation</th>
<th>Large Tech &amp; Licensing Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many R&amp;D project run in parallel</td>
<td>Many R&amp;D projects run in parallel</td>
</tr>
<tr>
<td>Multiple business units</td>
<td>Multiple business units</td>
</tr>
<tr>
<td>Global reach.</td>
<td>Global reach</td>
</tr>
<tr>
<td>Already owning large portfolio</td>
<td>Already owning large portfolio</td>
</tr>
<tr>
<td>Participating in patent pools</td>
<td>Patent Licensing is a core business</td>
</tr>
<tr>
<td>Tough Competition in Product Market</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Large Tech-User Corporation</th>
<th>Technology Start-Up</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focus on services or traditional product business</td>
<td>Highly innovative, creative</td>
</tr>
<tr>
<td>Patents seen as a ‘defensive’ (¿?) tool to protect product business</td>
<td>In-house top-experts</td>
</tr>
<tr>
<td>Present in technology intensive markets</td>
<td>Low resources</td>
</tr>
<tr>
<td></td>
<td>Many activities handled together</td>
</tr>
<tr>
<td></td>
<td>Patent Licensing might become a core business</td>
</tr>
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</table>
Some possible/common strategies ... 

<table>
<thead>
<tr>
<th>Large Innovative Corporation</th>
<th>Large Tech &amp; Licensing Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Usual to operate in a <strong>Conservative</strong> mode.</td>
<td><strong>Moderate</strong> to <strong>Pro-Active</strong> modes are possible.</td>
</tr>
<tr>
<td>Conservative mode adds costs up-front (searches, comittes) and delays decissions. <strong>Moderate</strong> mode could be an alternative.</td>
<td>Specific <strong>incentives to R&amp;D teams</strong> to produce patentable inventions and file patents.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Large Tech-User Corporation</th>
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</tr>
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<tbody>
<tr>
<td>Usually operate in a <strong>Conservative</strong> mode.</td>
<td><strong>SFAQL</strong> is best than Conservative/Moderate.</td>
</tr>
<tr>
<td>Patents seen as <strong>defensive</strong> tools to protect their product/service business.</td>
<td><strong>Prior-art</strong> searches are not always required since internal experts already have a substantial perspective on state of the art.</td>
</tr>
<tr>
<td>High <strong>exposure</strong> to litigation, should seek protection from main tech <strong>product</strong> suppliers.</td>
<td><strong>Pro-Active</strong> mode is highly adviseable.</td>
</tr>
</tbody>
</table>

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For a technology and patent based company, IP rights are the substance of their **IP product portfolio**. Patents can be turned into effective IP Products subject to development cycles analogous to traditional products.