MAINE CERNOTA & RARDIN
ADVOCATI RES MENTIS

Protecting the Company's Competitive Advantage with Patents

The technology underlying a company's competitive advantage is nothing less than a crown jewel, and it should be protected accordingly. A carefully executed patent program reduces the company's risk of losing control over its core technology, and allows the company to operate from a position of strength in licensing and settlement negotiations.

A patent holder has the powerful right to exclude others from making, using, selling, and even offering to sell the claimed invention in the U.S. This right becomes active when the patent issues, and lasts 20 years from the effective filing date of the patent. It is a constitutionally-based right, granted by the government in return for the inventor's public disclosure of the invention. According to the U.S. Congress, a patent may be obtained on "anything under the sun that is made by man." However, the invention must satisfy certain criteria.

In particular, the invention must be useful, novel, and non-obvious. Most inventions are found to be "useful" under U.S. patent law. Novelty essentially means that the invention cannot already be publicly known or used by others in this country. Nor can the invention be patented or otherwise published anywhere in the world. Non-obvious is the most difficult hurdle, as it tends to be a more subjective determination based on a perceived level of "ordinary skill" in the invention's technology. Patent laws of other countries have similar requirements when international patent protection is appropriate.

The patent contents must also pass muster. The patent contents must enable those skilled in the field to practice the invention, and disclose the inventor's best mode of practicing the invention. The written description must convey with reasonable clarity to those skilled in the field that the inventor was in possession of the claimed invention at the time of filing.

Patents can be used offensively, defensively, or simply to build company image, and are a key component in a robust business strategy. Other forms of intellectual property, including trademarks, copyrights, and trade secrets, may also be used to protect valuable company assets.

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