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Q: We've heard rumours that one of our competitors may have patents covering our new rocket science product. What should we do?

A: Don't panic! Being forewarned about an aspect of patent litigation is being forearmed.

Litigation is like playing poker, doubling your bets as time goes by, with a lot of bluff, counter-bluff and posturing. Patents are often overturned during litigation when someone with a more serious vested interest does the hard work of actually thoroughly searching the world for other material that may fundamentally undermine the patent holder's posturing.

Indeed, the costs involved in litigation can often be sobering for both sides with the successful party being able to demand a significant portion of their legal costs from the unsuccessful party – further accentuating the poker chip nature of any litigation undertaken.

Even granted patents can be quite vulnerable. Often, overworked patent examiners may do quite a poor job of searching to locate prior art that may cover the same subject matter and hence fundamentally undermine the strength of the threatening patent. For example, examiners rarely

search the Japanese patent office because all the applications are in Japanese!

When investigating the substance of the threat, a number of issues arise:

- Patent applications are generally unpublished for 18 months. Hence, you may not even be able to identify the threat!
- Patents are issued separately in each country. If the competitor is a large multinational, Australia may not even be on the list of countries in which they have applied for protection.
- Patents can be split, with one patent becoming multiple "sub-patents", so care needs to be taken to ensure one is not blind-sided by a "sub-patent".

Through prudent strategic action an advantageous position may be obtainable!

Peter Treloar is a patent specialist for Shelston IP, advising on design protection, infringement, license preparation and technology transfer agreements. Phone: (02) 9777 1111. petertreloar@ShelstonIP.com



Q: I own and manage a business that employs around 25 staff. I don't have time to develop a strategic plan, but I know that it is probably important if I want to grow my business further. What advice do you have for me?

A: You are correct, to enable a small business to grow and prosper, it is important to think and act strategically. Strategic planning is by its nature time consuming and, should consultants be used, potentially costly. Many small businesses simply do not have sufficient resources to commit to such a formal strategic planning process.

However, having a clear strategic direction and a continuous strategic focus are more important than having a written strategic plan.

There are a number of techniques that you can use to create a clear strategic focus and direction. Your strategic thinking and actioning should be guided by the following:

- A thorough understanding of the key issues facing your business, for example resource restrictions and your position relative to your competitors.
- Consider how you want to differentiate your business from your competitors. You should remember that differentiating your business is often not best done through price if you are

small and that you can also differentiate your business through service, quality, product range and innovative products/services. This should of course be communicated well to your market through advertising, appropriate pricing and other marketing strategies.

- To offset the disadvantages of limited managerial resources, you should consider getting the input and feedback from your staff, customers and suppliers. This could lead to these stakeholders becoming more motivated and productive as a result of greater buy-in. Their participation will also help you to introduce more innovative ideas.
- Finally, remember to regularly measure, review and revise your strategic direction.

Dr Martie-Louise Verreyne is a lecturer at UQ Business School specialising in Strategic Management and Entrepreneurship. m.verreyne@business.uq.edu.au



Q: I have been told that having my accounts audited will help me if I want to sell or finance my business. My external accountant agrees but says that if he audits my accounts, he can't prepare them as well. What can I do?

A: An audit can be very beneficial to your business. Not only does it support the integrity of your books but it also shows that you are not afraid of a regular and independent review of your accounts. Given the number of businesses coming up for sale in the next few years as the "baby boomers" retire, a business that has had a regular audit will have a clear sales advantage – just like a car that is regularly serviced.

It is not only good practice, but also an auditing requirement for the accountant who prepares your accounts to be independent from the auditor. This helps ensure the robustness of the audit process and reduces any potential conflict of interest. Again, using the car analogy, it is why a buyer uses the

independent RACV or NRMA for a vehicle inspection.

Recruiting a full-time accountant or choosing a second accounting firm to prepare your accounts can be an expensive process. Appointing a qualified in-house accountant part-time to prepare your accounts maintains your auditor's independence and is a more cost-effective solution. They could also contribute to the financial management of your business.

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