

Patents and the Economy

The U.S. Patent and Trademark Office recently reported that the number of utility patent applications filed in 2009 fell 1.8% from 2008 (to a total of 457,966). That makes 2009 the first year since 1996 in which businesses and inventors filed fewer patents from one year to the next; one has to look back 27 years to 1983 to find the previous period in which this anomaly occurred.

At the same time, the number of U.S. patents granted to inventors and businesses in foreign countries jumped 6.3% in 2009. And from 1996 to 2008, the percentage of U.S. patent applications filed by foreign applicants rose steadily from 45.2 to 49.2%.

While acknowledging that the intensified protection of corporate intellectual property in both the U.S. and abroad has resulted in an increase in patent activity, Darlene Slaughter, general manager of IFI Patent Intelligence, has said, "The silver lining may be that the high priority foreign firms place on U.S. patents is a confirmation of the value and importance that the U.S. market represents."



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Interest in the U.S. market is certainly understandable, but it's a shame that U.S. companies are losing ground in their own home market. Historically, the U.S. has been one of the largest and most active consumer markets in the world. However, the current downturn in the economy could well test the foresight and resolve of U.S. companies to maintain and possibly increase their strength in developing new technologies and in securing intellectual property (IP) rights.

Flawed Strategies

Past short-term economic cycles have caused companies to be more aware of, if not sensitive to, the costs associated with

obtaining and enforcing IP rights in patents and trademarks. The current economic recession has caused most companies to face tough decisions regarding how to reduce costs while improving profit. Unfortunately, research and development (R&D) and IP costs are often the most quickly identified and easily controllable costs, and companies often target and unwisely reduce or eliminate these costs.

Two rational strategies exist for reducing R&D and IP costs, each of which foregoes long-term competitiveness. The first strategy is for a company to simply retreat to their core technologies and products while attempting to maximize profits on established historic sales and possible expanded sales. This strategy intentionally jettisons non-core technologies/products that are in development. These non-core technologies might be abandoned outright or sometimes sold separately through a different division of the company.

The second strategy is to hold off or delay bringing new ideas/products to the market. This strategy also relies on profits generated from the sale of core technologies/products; however, non-core technologies that are in development are kept while the further and final development of new ideas/products may be delayed until some uncertain date in the future (when it's hoped that the economy will pick up). These and similar strate-



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gies (which are not exclusive of each other) involve the risk that companies might lose their competitive edge in the future.

Continued Innovation

In reference to the report that U.S. patent application filings were down in 2009, David Kappos, director of the U.S. Patent and Trademark Office, said, "That's unfortunate because [patent filings] are a reflection of innovation." There is no question that economic growth for any country is dependent on innovation. At the time that this column was being prepared, dcmessagboards.com went as far as posting the message board topic "American Innovation Drives the World Economy."

The patent filing statistics bear out that American businesses and inventors are steadily falling behind in U.S. patent filings. For example, the latest statistics reveal that from 2000-2008, the filing rate of U.S. patent applications by Japanese companies and inventors alone has outpaced American businesses and inventors in all but one year (2005). Other countries continue to file U.S. patent applications at steady rates, and still others, including China, India and South Korea, keep increasing the number of U.S. patents that they file. These trends are expected to continue as we ride out the current recession.

While it is not unreasonable for U.S. companies to cut their budgets, particularly in the current economic circumstances, forgoing, excessively limiting, or putting off R&D and IP protection could well mean a loss of our competitive edge, with companies from other countries standing to benefit. Despite the current economic downturn, the U.S. market will continue to be the focus of companies that hope to expand their sales and profits.

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U.S. companies need to be aware that companies in other countries are determined to remain aggressive in R&D and IP protection, even though the world-

wide economy has spiraled downward and remains flat. The result can be seen in technological advances and the introduction of new foreign products and technologies that appear to leap ahead of existing offerings. Such technologies and products naturally compete and often gain market share over their older counterparts.

Cutting back excessively on R&D or putting off IP protection while trying to ride out a downturn in the economy could mean a loss of competitive edge and future market share. A better strategy would be to find ways to strategically reduce and/or delay R&D and IP costs without completely, or even temporarily, eliminating these costs. Some possible alternatives include limiting R&D and IP protection to only the most significant technologies/products, filing provisional patent applications rather than utility applications, filing design patent applications when applicable, cutting back on foreign filings (by picking strategic/profitable markets), reviewing the viability of applications/patents for which maintenance/annuity fees have to be paid, and considering joint ventures.

At a minimum, U.S. companies need to keep up with their foreign competitors as the shift to a global economy and a global market continues. 🌐