



Expert Assessment: Don't Overlook the Marketing Value of Your Company's IP: Part 1

By Alec Schibanoff

Smart marketers use every advantage they can find to promote their products and services, and while one type of intellectual property – patents – was never intended to be used as a marketing tool, effective promotion of a company's patents can give the business a high-tech image and help it differentiate its products and services. While most marketers do a pretty good job of leveraging their company's trademarks and service marks, a company's patents also have marketing value.

We first need to understand what a patent is....*and is not*. The concept of a patent goes all the way back to the original version of the U.S. Constitution that was adopted in 1787. Patents and copyrights were envisioned by the Founding Fathers "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

From that concept grew our current system of patents, trademarks, service marks and copyrights. Before we specifically address patents and their value to the marketing efforts of an organization, let's take a look at the difference between these various forms of intellectual property:

- **Patent:** This is a time-limited monopoly granted to an inventor by the federal government. To receive a patent, an invention must be "novel," "non-obvious" and "useful." A product is not patented; an invention is. And a patent is valid for 20 years from the date of its filing with the U.S. Patent and Trademark Office.
- **Trademark:** This is the name – very often the brand – used to identify and differentiate a product. Among all trademarks, one of the most enduring is the DieHard® brand. Initially given to Sears' line of heavy duty batteries, it has since been extended to other automotive accessories. Other classic trademarks include Smith Brothers® Cough Drops, Crest® and Levi's®. As long as a trademark is regularly used and does not become a generic term, it can be renewed and kept in force indefinitely.
- **Service Mark:** A service mark, as the name implies, pertains to a service. Among the best known service marks are American Express's *Don't leave home without it.*® and KFC's *We do chicken right.*® Like a trademark, a service mark can be renewed on a regular basis and kept valid indefinitely.
- **Copyright:** This protects written documents such as books and plays, as well as music, films and other creative works from being copied. A copyright is valid for life of the author plus 70 years. For works of corporate authorship, the copyright is valid for 120 years after creation or for 95 years after publication. How's that for a product life cycle?

Each form of intellectual property is independent from the other forms. A product can be covered by a patent, but not have a name that is trademarked. Or it can have a trademarked name, but not be covered by a patent. Or it can be covered by a patent and trademarked, or neither. The

methodology behind a piece of software might be patented, the name of the software could be trademarked, and the coding for the software can be copyrighted.

A patent permits the owner of the patent to exclude others from “making,” “using” or “offering for sale” a product that uses the patent. A patent owner grants permission for the use of his (or her or its) patent by licensing it in exchange for a royalty or licensing fee. And when a patented invention is used without the permission of its owner, that is called “infringement.” Like other items of property, patents can be bought and sold.

In order to enforce a patent, the product that uses a patented invention must be marked with the patent number. Failure to properly mark products that use a patent could diminish the patent owner’s ability to collect damages for infringement of the patent.

So what does all of this have to do with the marketing of the product that uses a patent? A patent, when properly promoted, can give a product – and the company that manufactures and/or sells it – a cutting-edge, high-tech, innovative image. And in many industries, that can be a distinct competitive edge. Far too many marketers try to convince prospective customers that their products are faster or easier to use or more durable or more adaptable or – get ready for one of the great buzz words of the decade – “scalable.” Not scalable as in a mountain is scalable, but able to easily adapt to different workloads, decreasing or increasing in capacity.

While all these superlatives are fine, if your product is genuinely covered by one or more patents, you have what is called an “absolute advantage,” a competitive edge that no competitor can beg, borrow or steal. Include in your advertising not just “patent” or “patented,” include the actual patent number and the patent’s formal description. For example, “The WhirlMeister 1200-D includes the latest technology and is covered by U.S. Patent No. 1,234,567 ‘Apparatus for cleaning curved tubular devices.’” Also include the patent number on the product’s packaging. And at your website, include not just the patent number, but make the patent number a link to a description of the actual patent at a site such as www.google.com/patents or www.patentstorm.us, making your patent interactive.

If your competitor’s product is not covered by a patent, crank up the volume. “The WhirlMeister 1200-D is the *only* curved tube cleaner so advanced it is covered by U.S. Patent No. 1,234,567.” Some products are covered by multiple patents. If so, list them all.

In part two of this article, which will appear in the next issue of *Marketing News Exclusives*, we will address how to take advantage of a patent that has not been issued, how to mark your products, and how to turn patent litigation into positive publicity for your company.

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