

Intellectual property speaking

For an invention to be patented, besides being new it must not encourage offensive or immoral behaviour.

Intellectual property, though intangible, is a valuable asset on the balance sheet of any business — in many cases exceeding the fixed property of the business in actual marketable value. “Intellectual property refers collectively to intangible products such as patents, industrial designs, trademarks and brand names, copyright, trade secrets and know-how, all of which are products created through the innovative or creative efforts of people. It is important to take the necessary steps timeously to ensure that this property is protected. Legal protection will prevent others from making unauthorised use of the intellectual property to the detriment of the true owner, and to ensure the full commercial benefit of his or her creative efforts,” says Russell Bagnall, a partner and patent attorney at Adams & Adams.

He says a patent may be granted for any new invention which involves an inventive step and which can be used or applied in trade or industry or agriculture. “Inventions could be in the form of new articles or devices, apparatus or equipment, processes for producing or manufacturing a product, chemical substances and formulations.”

He points out that the most important prerequisite for the patentability of an invention is that it must be “new” — and not form part of the so-called “state of the art” at the time of registration. “State of the art comprises all matter which has been made available to the public. Another important prerequisite for patentability is that the invention must involve an ‘inventive step’ and thus merit patent protection.”

He emphasises that the inventor should ensure secrecy until a patent application for the invention has been filed. “If it is necessary to disclose details of the invention to other people before a patent application is filed, for example, to prepare drawings or to obtain technical or financial assistance, it should be under a pledge of secrecy, preferably in writing. A non-confidential disclosure of the invention before the patent application is filed may destroy the novelty of the invention and can rule out any hope of obtaining valid patent protection for the invention.”

Bagnall says certain inventions are excluded from patentability. “These could be a discovery; a scientific theory; a mathematical method; a literary, dramatic, musical or artistic work; or any other aesthetic creation. Also excluded from patentable items are a scheme, rule or method for performing a mental act, playing a game or doing business; a programme for a computer; or the presentation of information. However, an invention incorporating one or more of these items as mere features of the invention may still be patentable.”

He says a patent will not be granted for an invention that encourages offensive or immoral behaviour, or which may be used in a manner contrary to law, or for anything contrary to well-established natural laws, like for example, perpetual motion devices. “Furthermore, an invention that implies treatment of the human or animal body by surgery or therapy is not patentable. However, a substance or composition for use in such a method of treatment is patentable, even if the substance or composition itself is known, provided its use in the method of

treatment is 'new.'"

Bagnall says a first application for a patent may be filed in two ways. "A provisional patent application must be accompanied by a provisional specification, fairly describing the invention. A complete patent application has to be filed within 12 months from the provisional application. "On the other hand, a complete patent application may be filed, accompanied by a complete specification fully describing the invention and the manner in which it is to be performed. It must include, for example, illustrative drawings and claims defining the subject matter."

According to Bagnall: "The term of a patent is 20 years. To maintain the patent in force, annual renewal fees apply. These apply from the fourth year after the complete application has been filed. Failure to pay the renewal fees timeously results in the lapsing of the patent.

"When a patent has been granted, it confers upon the patentee the right to exclude other people from making, using, exercising, disposing or importing the invention. This allows the patentee the right to have and enjoy the whole profit and advantage accrued by the invention. Surely this makes business sense," says Bagnall. ■



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