

Right up-to-date, right up to speed: all you will ever need to know about intellectual property

IP Focus 1/11

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Dear Readers,

You are holding another IP Focus Newsletter in your hands. Our last IP Newsletter on the subject «Patent protection even longer than 20 years? The rebirth of an invention» provoked various reactions among our clients and we are naturally very pleased about this. Just recently, during a visit of one of our patent attorneys to his workshop, another client picked up the newsletter and remarked that the patent protection of his successful product was about to expire, and whether anything could be done about it. The discussion revealed that some product improvements had already been made and,

as we say in patent law, had thus been disclosed, which is why patent protection no longer came into consideration. However, another improvement was already in the pipeline – this was patentable and the client did not hesitate for a moment before getting down to the patenting. This current IP Focus is devoted to the problem dominating our Swiss economy at the present time – the strong franc. We explain to you how property rights, particularly patents, can help to counteract the pressure on margins from your customers. Read why – have fun!

Your IP Focus Team from
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Defy the strong franc with patents

The Swiss economy is suffering as never before under the strong franc! Along with tourism, export-oriented industry such as the machinery and apparatus industry is severely affected.

Whereas large businesses can transfer their production into the Euro zone, this possibility is not really an option for small- and medium-sized businesses. Fluctuations of foreign currencies have a particularly devastating effect on firms which hardly supply any of their own products and depend on contract work. They are dependent on their employers who in times of crisis tend to verticalize production and no longer outsource. Without their own innovative products, they have little scope for confronting the market!

The question is urgent: what strategies can small- and medium-sized businesses use to respond to such currency-dependent distortions and generally better equip themselves against economic crises?

A promising approach is to build up monopolies for innovative own products supported by patent or design rights. A patent or a design is a time-limited monopoly that gives the applicant so-called exclusivity rights. In



Thanks to slight tension, a workpiece can be machined all round with short tools.

Heinz Kisslig, Heinz Kisslig AG (TG), Mechanical engineering & clamping technology: without our own products protected by patent rights, we would barely have survived the last crisis in 2008/09. We were suddenly confronted with a loss of a large proportion of our orders for contract work. In this situation we were fortunately able to ramp up our production for our own products, including the clamping tool shown. The sale of these products in the economic downturn was certainly not easy but the patents helped to maintain the margins to some extent. We compensated for reduced volumes with a partial replenishment of inventories. What applied in 2008/09 naturally applies now more than ever - now we are also happy to have our own products.

most countries, patents have a term of 20 years, designs even up to a maximum of 25 years. During this period a competitor can neither manufacture nor supply the protected products, nor export from there into non-protected markets.

During the 2008/2009 economic crisis, export-oriented small- and medium-sized businesses already experienced a severe downturn in exports. At that time, however almost all currencies were affected which is why the crisis did not result in currency-dependent market distortions. In addition, the price difference between the Euro countries and Switzerland was never as great as it is today. At that time, however firms with their own products protected by patent or design rights braved the economic slump better than so-called service manufacturers who depend on the outsourced contract work of their customers.

The Swiss small- and medium-sized businesses are among the most innovative businesses in the world. Many of these firms are even world market leaders in niche areas. Swiss firms have not merely filed more patents in Europe than before over the last few years, but the percentage increase in applications in 2010 was even massively greater than in past years, with the applications in the 2008/09 crisis years even decreasing compared with 2007 (source: EPO Statistics Filings 2001-2010)!

This development can be observed not only in Switzerland. The increase in European patent applications from countries from the non-Euro area was greater than those from the Euro area. The percentage increase in the filing rate of the countries AU (18%), CH (15%), GB (12%), SE (13%) and USA (20%) in 2010 was greater than that of the Euro countries DE (9%), FR (7%), IT (5%) and NL (-11%). There is a simple explanation for this: thanks to the low Euro and US dollar, the costs for patent applications abroad by Swiss entrepreneurs have decreased appreciably and are as inexpensive as never before. It therefore pays now in particular to make increased investments in patents. The general costs of European and US American patent application have decreased by around 20% compared with previous years.

A patent or design enables a legally enforceable monopoly over imitators and exclusivity for the distribution partner. With the ban on imitation, freeloaders attracted by the economic success of original manufacturers can be kept at arms' length. The more easily a product can be copied, the more a firm is exposed to imitators. Under the current strong franc, products are being copied which previously did not seem worth copying. This is because the massive price differences at the present time make the imitation of products appear lucrative for the first time. Even previous distribution partners waver when they are offered competing products at half the price, albeit with loss of quality. Without property rights one is helplessly at the mercy

of imitators and must look on as one's own products are pushed out of the market by cheap copies. This can mean the demise of small- and medium-sized enterprises concentrating on individual lines of business.

For all these reasons it now pays more than ever to make patent applications and design registrations. Any firm with its own production and/or development has this potential which is worth exploiting. Unfortunately this is frequently not recognized by management. This is attributable among other things to the fact that some decision makers still have the idea that patents are merely cost factors which are worth avoiding. Development engineers frequently do not recognize the opportunities offered by patents because, frequently out of false modesty(!), they are of the opinion that their development is nothing special and is therefore obvious from the prior art in the patent law sense. We know from experience that this opinion is wrong in most cases!

This is because the statistics and behaviour of successful companies refute this assumption again and again. Even the smallest companies still have export opportunities and possibilities for finding exclusive distribution partners under adverse market conditions thanks to patents. These companies accordingly operate primarily in the black on account of their property rights.



René Amherd, VRP Awe-ma AG (ZH), manufacturer of chocolate machines: So far the "Swissness" label has given us really good protection from imitators. We have thus been able to benefit from the good reputation of the Swiss chocolate industry and maintain our margins even in the economic downturn in 2008/09. This concept is being stretched to its limits with the massive currency-dependent distortions and we must consider investing in patents even more strongly than before.

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