

PROTECTION AND MANAGEMENT OF THE INNOVATION

11 July 2010

PREAMBLE

- As a business lawyer involved in IP issues, I often have the occasion to advise clients mainly companies regarding **protection and use of the innovation**
- At many occasions I could realized that most of the engineers, technicians and managers although very creative and inventive people have very few knowledge about the way they can use existing innovations and many of them admit their capacity **to anticipate and handle a good and efficient manner to protect the inventions.**
- My personal and professional input tend to bring them some kind **of legal solutions and business approach.** During the preparation of workshops I work in close connection with in-house lawyers as well as **engineers, technicians and marketing directors.**

PREAMBLE

- The purpose of those workshops are less to teach IP law but to help people in the company to reach a uniform level of understanding about **IP assets management**.
- Hence, my goal is that right from the beginning of any innovative project **company's employees shall be capable you take into consideration the IP concerns**.
- And further more one of my recurrent concern is to be able to facilitate the communication with the legal team **at the earliest stage of an innovative project**.

WHAT DO WE UNDERSTAND BY INNOVATION ?

- Companies must continuously maintain and improve their **competitively and performance**.
- Innovation enables companies **to develop, adapt to trends and, above all, gain a clear advantage over the competition** in order to ensure their long-term success.
- Innovation has therefore become an **absolute necessity** for all companies, whether small or large.

How to innovate?

- The success of an innovation does not depend solely on a **company's technological performance. All its resources (human, technical, financial, etc.) are key factors** in the success of an innovative project.
- It's the way a company opts **to manage its ability to innovate** that makes it innovative!
- By definition, innovation is based on **an original idea**. You can't innovate without new ideas. But innovation resides essentially in the ability **to turn these ideas into business success**.

PART ONE :

SUBJECTS AND MEANS OF PROTECTION

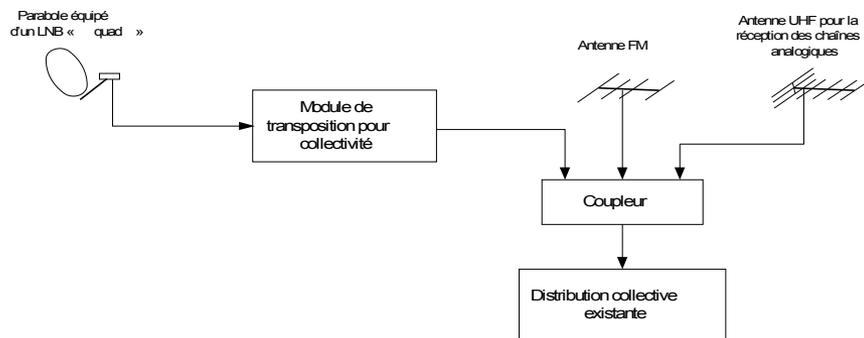
A – WHICH INNOVATIVE ASSETS ?

Every company has **innovation capital** i-e the ability to innovate :

- Invention, Software, Data bases, Distinctive signs, industrial designs, domain names, web sites, art works, know how, Trade Secret etc...

Exemples:

A. WHICH INNOVATIVE ASSETS ?



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B – HOW TO PROTECT THE INNOVATION AND REMAIN COMPETITIVE ?

B-1 INTELLECTUAL PROPERTY - LEGAL PROTECTION

*Patents, trademarks, industrial designs, domain
name, copyright law, data base, software*

B – HOW TO PROTECT THE INNOVATION AND REMAIN COMPETITIVE ?

B-2 CONTRACTUAL APPROACH

Know how and or Trade secrets

One of the effects of globalization is the relocation of production from the technology rich countries towards low labour cost countries.

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B – HOW TO PROTECT THE INNOVATION AND REMAIN COMPETITIVE ?

Know-How or Trade Secrets

This is a threat for SME suppliers and manufacturers in technology-rich countries, whose customers turn their heads to **low labour cost countries**. On the other side of the globe, this trend creates **opportunities for contract manufacturers and service industries**.

B – HOW TO PROTECT THE INNOVATION AND REMAIN COMPETITIVE ?

From a historical and international perspective, we are witnessing a dramatic shift in the importance of the five main drivers for value adding: **technology, production, marketing, logistics and support.**

From a historical and international perspective, **technology –in the form of know how and trade secrets- has emerged as a key factor in this process.**

B – HOW TO PROTECT THE INNOVATION AND REMAIN COMPETITIVE ?

- In technology rich countries, there is a vast pool of know how waiting to be untapped. In emerging markets, there is an enormous demand for know how, waiting to be filled. This **“trade in technology”** could well be one of the answers to a changing world. But we need to improve the matching process for this trade i.e. through licensing.

B – HOW TO PROTECT THE INNOVATION AND REMAIN COMPETITIVE ?

When it comes to transfer of know how and trade secrets which are **hardly “patentable”** –as is the case with most industrial know how- both parties, licensor and licensee alike, still seem to be reluctant to cross bridges. There is a role for **institutions and governments to facilitate** this matching process by improving the “climate” of intellectual property rights, particularly in **know how and trade secrets.**

PART 2 –THE PUPOSE OF THE PROTECTION

A.THE CRATIVE STEP

The idea (not protectable)

Checking of the existing inventions and/or rights

Acquisition of prior rights (watch out about apprently Open Sourced tools !)

PART 2 –THE PUPOSE OF THE PROTECTION

B. THE EXPLOTATION STEP

For a company it is vital to stay ahead of the field and to always be ready **to deploy skills adapted to the market**. There are numerous ways to develop such a competitively aside legal tools and protection.

PART 2 –THE PUPOSE OF THE PROTECTION

Technics such like:

1. Monitoring :

- Monitoring is a **continuous and systematic technique for surveying past, current and developing products, services, technologies, procedures, processes, practices, etc.**
- Irrespective of type of company, size or sector, this technique enables a company to stay **well informed** and aware of developments.

PART 2 –THE PUPOSE OF THE PROTECTION

Monitoring can be used in all sectors of a company:

- Commercial sectors can be positioned in relation to competitors (**competition watch**);
- Technology sectors can find out about technological developments and consider how to use them (**technology watch**);
- From a strategic point of view, new companies pursuing complimentary activities can be identified and contacted with a view to forming partnerships (**strategic watch**);

PART 2 –THE PUPOSE OF THE PROTECTION

Monitoring systems adapted to all companies, regardless of activities, size and motivation, are available. Systems that are heavy and expensive are out of place in SMEs and reserved for large companies that have the time and means to implement and run them.

Actions that are sometimes very simple (such as keeping detailed lists of competitors' product catalogues, registering on local networks, etc.) are ways to remain reactive with regard to market and technological developments.

PART 2 –THE PUPOSE OF THE PROTECTION

2. Knowledge Management :

- Knowledge Management is an approach to adopt in order to improve and secure the long-term future of the know-how and skills of a company.
- Knowledge Management involves a large number of possible solutions:

PART 2 –THE PUPOSE OF THE PROTECTION

- Capitalisation and dissemination of employee knowledge;
- Training;
- Introduction and use of networks internal and external to the company;
- Decompartmentalisation of knowledge within the company;

PART 2 –THE PUPOSE OF THE PROTECTION

- Exemples :

Since 1986 Nestlé files 1700 patent applications and back 2 Billards euros Turnover par a year



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