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Newsletter

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Our latest news

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news from patentinfo.net

Welcome to the November newsletter from Patentinfo.net. This month, Moetteli & Associés SàRL offers a free patent application draft to one of the next Patentsearchers.Net clients*. Read below to see how to enter.

"National Intellectual Property Rights: The Importance of Mediation in an Increasingly Global and Technological Society"

By Jeremy Lack, Attorney & Mediator

Our global society is increasingly dependent on new technologies. One of the consequences of this is the growing recognition of the importance of intangible assets relating to these technologies, known as Intellectual Property Rights (IPRs), which is occurring at all levels – political, societal and economic.

These IPRs move and travel freely across borders, whether via the internet or accompanying individuals in their travels. Yet, these same IPRs are governed by national laws, which vary in scope and effect as soon as they pass from one border to the next, depending on the country in which the IPR has been created or is to be applied.

Despite attempts to harmonise these laws at an international level (e.g., in the fields of copyright, trademark, design rights and patent laws), such IPRs are often only enforceable by national courts, producing inconsistent results when litigated simultaneously in several countries. In certain jurisdictions IPR disputes are deemed to involve issues of public policy or ordre public (e.g., where determinations of validity are at stake), rendering a multi-jurisdictional technology or IPR-based dispute difficult to resolve by arbitration. The confusion that results from these disparate national IPR regimes and dispute resolution mechanisms affects all levels of society.

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This is primarily apparent in the private sector, affecting equally multinationals and small and medium-sized enterprises ("SMEs"), whose livelihoods may depend on the enforceability of their or their competitors' IPRs.

The growing need to understand the impact of IPRs on company balance sheets is likely to be a source of increased conflict at all levels of the private sector. The influence of IPRs, however, is not limited only to the private sector. In both developed and developing countries there is a growing debate in the public sector as to whether nationally-funded research and resources should be published or protected by patents or other forms of IPR. Governments are beginning to assert rights in their national genetic bio-diversity and cultural heritage, and to motivate universities to create technology transfer offices to create and manage IPRs.

The recent emphasis on the societal and the economic impacts of IPRs (e.g., job and wealth creation, as well as improved products or services) is also causing these issues to be newly debated (and disputed) in international forums, such as the WHO, WTO and WIPO.

Additionally, whereas all disputes are greatly influenced by ethnic and national cultural diversity, IPR-based disputes often highlight new inter-cultural paradigms, based on the wide range of stakeholders involved in a dispute, who are typically motivated by different interests (e.g., scientists, civil servants, investors, industrialists, and entrepreneurs).

Mediation provides a perfect and safe environment in which parties involved in IP disputes can discuss and assess their alternatives within this complex and ever confusing international arena. Whereas national litigation and arbitrations can only focus on past events, and applying narrowly construed national laws to the facts of the case (which often lead to inconsistent results as demonstrated by the much-analysed EPILDADY/Improver cases in the 1990s), mediation allows all national laws and perspectives to be taken into account. The parties can agree to a solution based on the future, and not just past facts, that responds to their true business interests and not simply their legally posited rights. The mediation process allows parties complete flexibility over procedural and substantive issues (subject only to anti-trust constraints). The process can still lead to litigation or arbitration, but where the parties can have agreed beforehand on certain rules of procedure aimed at controlling costs and accelerating time to judgment (e.g., limiting discovery, what questions to ask of which experts and witnesses, and narrowing down the number of legal points remaining for adjudication).

The parties can also agree to different outcome-based scenarios depending on the court or arbitral panel's decisions, whereby the parties can agree to limit the consequences of the decision in the future, such that they are able to get rid of worst-case scenarios and obtain business certainty earlier on. In short, mediation is likely to lead to better, faster and cheaper dispute resolution, regardless of whether or not the mediation itself ends up in a final settlement agreement.

Jeremy Lack is the Director and General Counsel of Medabiotech SA. He also serves as counsel to Etude ZPG, a Geneva-based law firm in Switzerland and is a Door Tenant with Quadrant Chambers in London, UK. He is an Intellectual Property lawyer and mediator accredited by CSMC, CEDR, CMAO and WIPO.
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Here's why you should conduct a patent search first…

By Jelle Nijdam, Patentsearchers.Net project manager

Filing a patent application? The question as to whether to first conduct a comprehensive search opens up debate both for and against this preliminary step:
Conducting a prior art search, patent applications, journals and trade publications will put you in a position to determine what the 'prior art' constitutes – and will paint for you a much clearer picture of where you stand with your invention. You certainly want to be able to make an informed decision about filing your patent application and avoiding infringing another patent. Also, when your patent application goes to the examination stage, a comprehensive search will anticipate possible objections that can be raised by the examiner.

With the results of a prior art search in hand, your patent attorney can draft the best application for you, maximizing your claim coverage for your invention - and giving you, in simple terms, a more robust patent application!

It takes time to conduct a comprehensive search, and it can sometimes cost several thousand dollars, so this supports the other side of the debate– to file a patent anyway and 'take a chance'. Or perhaps filing the patent application first and securing that all-important priority date is of utmost importance to you.

On the other hand, consider that a prior art search costs far less than actually obtaining a patent. If there are patents that will invalidate your application, the patent examiner will probably find them. And remember that, anyway, you will probably want to take a little more time to provide an all-round better patent application.

Perhaps you consider any 'prior art' to be well known, and so you're comfortable to risk filing straight away without a patent search. There are literally millions of patents in patent databases worldwide - and new patents are filed every day. Are you absolutely sure that there are no patents that could invalidate your application?

Consider this: you have a great idea; you want to approach some companies who might license your invention. Preparation is wise – such as a prior art search; to make sure a patent can at least be obtained. The chances that the potential licensee will want to see your patent application but then work around you is quite real - ask yourself if you have locked down the best embodiment of your invention. Are you in a position to draft the best application, and prevent the likely licensee from circumventing your patent?

A patent search will show what you need to avoid, show who your competitors are, and ultimately enable a more robust patent. It's your choice, but conducting a patent search first and using the results can be the beginning of a smart strategy.

In summary, better knowledge enables you to have a more professional application. In providing you with that potentially vital extra knowledge, a patent search can be an early and wise investment of time and money.

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Moetteli & Associés SàRL, an international patent firm licensed to file direct US and European patent applications, and sponsor of the PatentSearchers.Net, is offering a free US provisional patent application draft to one of the next 20 clients to purchase a patentability search using the www.patentinfo.net website and who take the time to submit their constructive comments. So if you've got a search project, consider using the Patentsearchers.Net in order to earn your chance to win a free US provisional patent application draft.

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