

DISCLAIMER: This article is intended to be a general guide on the subject matter and does not constitute advice to readers in and of itself. Readers should seek expert advice regarding their specific circumstances.

Introduction

Developing an intellectual property strategy is a crucial tool for the growth of all businesses, and this is especially so for businesses such as technology companies, media & entertainment companies, and fast-moving consumer goods (FMCG) companies, which are known to have large intellectual property portfolios.

Technology companies that develop software, hardware, or related products often have significant patent portfolios that protect their inventions. Companies dealing in fashion, luxury goods, and consumer electronics also highly rely on trademarks to protect their brands and designs. Media and entertainment companies, such as film studios and record labels, rely on copyrights to protect their creative works. Intellectual property also plays a vital role in the success of FMCG companies, who typically rely on trademarks and packaging designs to protect and distinguish their brands from competitors.

It is essential to note that all businesses have some form of intellectual property, ranging from the product name, logo, customer data, etc. Therefore, it is crucial for all business owners in Africa to develop an intellectual property strategy for identifying, protecting, and leveraging its valuable intellectual property assets, regardless of industry or size.

Why is it Important to develop an Intellectual Property Strategy if your brand operates in Africa?

One major advantage of developing an intellectual property strategy for your company's operation in Africa is that it helps to establish a mechanism for quantifying and tracking the value of your intellectual property assets, including all patents, trademarks, copyrights, and trade secrets owned by your company. This, in turn, helps

your company to identify its most valuable intellectual property asset; devise strategies towards the management of each of the assets in an order of priority; and effectively allocate resources to protect and manage such assets.

Another valuable benefit of developing an intellectual property strategy is that it helps companies make well informed decisions, which are tailored to the peculiarities of the African market, on the commercialization of their intellectual property rights. Beyond commercialization, it also helps companies in areas such as evaluation of performance, establishing accountability, driving continuous improvement, enabling benchmarking and comparison, and optimizing resource allocation.

Developing an extensive intellectual property strategy also creates room for the systemic review of existing intellectual property management procedures such that organizations are able to estimate the success of the management procedures over time and flag necessary areas for improvement.

Lastly, given the prevalence of counterfeiting in Africa, there is a crucial need for companies to develop an intellectual property strategy which incorporates adequate brand protection regimes for their brand. Although accurate statistics on the extent of counterfeiting in Africa may be lacking, it remains a significant issue that cannot be overlooked. Africa, being a developing market with relatively lower disposable income and high dependence on imports, attracts unscrupulous businesses that specialize in counterfeiting various products, ranging from luxury goods to pharmaceuticals, electronics, and even piracy of films and music. Therefore, an effective IP strategy becomes a vital tool for the protection of brands' reputation, market share, and consumer trust in the African markets.

In summary, developing an intellectual property strategy plays a pivotal role in the success of a business as it helps organizations to leverage their intellectual property asset strategically for competitive advantage and growth in Africa, despite the peculiarities of doing business in these jurisdictions.



Intellectual Property Strategies: Building Blocks

A. Create a dedicated Intellectual Property Team.

The starting point in developing an intellectual property strategy for an organisation is the creation of a dedicated intellectual property team.

A standard intellectual property team typically consists of professionals knowledgeable in the field of intellectual property, they include patent attorneys, trademark attorneys, intellectual property analysts, etc. These professionals are skilled and grounded in the art of managing and protecting intellectual property assets.

Some multinational companies, such as Ericsson and Huawei, have a dedicated intellectual property team that takes on the responsibility of managing and protecting the company's intellectual property in several regions. While other companies contract established external intellectual property professionals or firms, (either based on a retainerhip or on a one -off basis), to manage and protect their intellectual property portfolio.

Where an organisation cannot afford to have a standby intellectual property team, it is essential to contract the services of external intellectual property consultants who can help identify, analyse, and develop a tailored strategy based on the organisation's specific needs and goals.

Beyond establishing a team comprising of intellectual property lawyers, it is also important that the team consists of other professionals and stakeholders who are crucial to the development of intellectual property within the company. These would typically include research and development professionals, finance professionals, marketing professionals and other relevant members of the organisation.

This would guarantee a collaborative approach towards the management and protection of the company's intellectual property in a way that serves the company and aligns with the company's business strategy.

B. Work with external counsel team to establish a brand protection/ anti-counterfeiting regime for your products across several jurisdictions where your products export to.

Brand protection and anti-counterfeiting measures are crucial tools for safeguarding the intellectual property rights and indeed, the reputation of companies. The existence of counterfeit products not only leads to revenue losses for the companies but also damages brand image and poses a threat to public safety.

It is therefore important for companies to engage a team of external counsel to help the company establish a brand protection/anti-counterfeiting regime for the company. This is especially expedient if the company does not have a dedicated internal legal/intellectual property team.

The external counsel would, inter alia, be responsible for conducting a thorough analysis of the legal framework, regulatory environment, and enforcement mechanisms in the jurisdiction(s) where the company is located, to identify the specific challenges and opportunities for brand protection and anti-counterfeiting.

The external counsel would also be responsible for developing a comprehensive legal and administrative strategy to prevent and detect counterfeit products. They would also provide training to employees, distributors, and other stakeholders to raise awareness of the risks of counterfeiting and the importance of brand protection.

Legal measures would include registering trademarks, patents, and designs in the relevant jurisdictions, drafting and enforcing contracts with distributors and suppliers to ensure compliance with brand protection policies, and initiating legal proceedings against counterfeiters.

Administrative measures could involve setting up a centralized brand protection team to coordinate and monitor anti-counterfeiting activities, conducting regular audits of the supply chain to identify vulnerabilities, and establishing protocols for reporting and responding to instances of counterfeiting.

C. Conduct an Intellectual Property Audit

Sequel to the creation of an intellectual property team, it is very important to conduct a comprehensive audit of the intellectual property asset of the organisation. This entails a full understanding of the organisation's current intellectual property assets such as its patentable or patented invention, its trademark [brand name, logo, slogan], products protectable as industrial design, trade secret, etc. This is crucial in the development of applicable commercialisation strategies for these assets.

This will help the organisation to - clearly itemise its intellectual property rights; identify the intellectual property assets which have not been adequately protected as well as assets which have no value in its business strategy; reveal any infringement on the intellectual property rights of the company by any third party; and reveal any breach or likely breach of third parties' intellectual property on the part of the organisation. It is also essential that in conducting an intellectual property audit, the company's intellectual property portfolio is critically examined vis-à-vis that of competitors in the same line of business, especially in terms of a potential intellectual property assets, to identify innovative intellectual property currently in use by competitors and avoid potential infringement issues.

It is also important to note that the audit should be carried out by a competent intellectual property auditor or an intellectual property lawyer. To conduct the audit in general, contracts such as transfer agreements, licensing agreements, collaboration agreements, non-disclosure agreements, and other papers may be examined. Following the audit, the auditor should produce an intelligible database that the company's management can access.

D. Conduct Intellectual Property Valuation.

One may wonder what the need is to conduct an intellectual property valuation since an intellectual property audit has been conducted.

The concepts of intellectual property valuation and intellectual property audit are distinct. An intellectual property audit is focused on identifying and analysing an organisation's intellectual property asset with the major aim of understanding the organisation's intellectual property portfolio. The goal of intellectual property valuation, however, is the same as the goal of a standard valuation. It is a method for figuring out how much an organisation's intellectual property is worth. They are essential for accounting and tax purposes; for estimating fair market value for the sale or acquisition of intellectual property assets; and for valuing licensing or cooperation agreements in Africa.

Key issues to consider when conducting an intellectual property valuation include analysing the specific characteristics of an organisation's intellectual property assets, such as the strength of the intellectual property rights, potential market demand for the intellectual property asset, the competitive landscape, and the organisation's financial performance. The valuation results would give crucial insights into the company's intellectual property assets and assist the organisation in making well informed decisions about monetizing its intellectual property assets through licensing, franchising, collaborations, or sale of the intellectual property rights.

E. Encouraging organisational innovation.

Amazon Prime, one of Amazon Inc's biggest service offerings was developed by a team of Amazon employees. In 2004, a team of Amazon employees, headed by Greg Greeley, who was the VP of the company at the time, proposed the concept of 'Prime,' a subscription-based service that provided exclusive members with the benefit of two-day product delivery. This innovative offering quickly became one of Amazon Inc's most significant services and is known as Amazon Prime, available through Amazon's online platform¹. This Amazon Prime concept was unprecedented and quickly became a top niche idea. Amazon Prime membership currently generates over \$35 billion in revenue per year².

Similarly, Ford Motors Company is another great example of an organisation that has harnessed employee invention for its development. Ford encourages employees at all levels to contribute their ideas and innovations. They have platforms and programs in place to capture employee suggestions, recognizing and rewarding exceptional ideas.

¹ "Amazon innovation: How was Amazon prime developed?" – InspireIP." *InspireIP*, 20 Sept. 2022, <https://inspireip.com/amazon-innovation-prime-idea/>
² Matthew Woodward, "Amazon Prime Statistics: Subscribers, Usage & Revenue 2023". *SearchLogistics*, 12 June 2023, <https://www.searchlogistics.com/learn/statistics/amazon-prime-statistics/>

Ford values the input and creativity of its employees and actively seeks to involve them in the innovation process. As of 2016, more than 5,500 Ford employees put forth ideas, including about 2,200 first-time inventors³.

The examples above demonstrate that fostering employee creativity may result in the creation or discovery of new intellectual property rights that may be of long-term benefit to an organisation and may contribute to boosting corporate growth by generating more possibilities for financial success.

Some of the ways to promote innovation among staff members include making innovation one of the company's core values; adopting and implementing an open-door policy, i.e., an internal policy which allows employee to freely access the leadership team of the company to share, discuss, and nurture ideas; encouraging teamwork among employees for the development of new ideas; educating employees about the markets in which the company operates which may influence their creation of innovation tailored towards such markets; testing, reviewing, and implementing ideas timeously.

It is also crucial for organisations to establish a process for converting these innovative ideas into profitable ventures. For instance, establishing an intellectual property asset management system can aid the monetisation of intellectual property assets through commercialisation mechanisms such as licensing or assignment. The company may also use intellectual property licensing as a tool to create cooperative partnerships with related businesses.

Conclusion

An effective intellectual property strategy requires a holistic and proactive approach tailored to a company's business goals. Organisations in Africa should consider implementing key intellectual property strategies such a creating a designated IP team for their organisation, conducting intellectual property audits, valuing high potential intellectual property creation, encouraging internal innovation within their organisation, amongst other strategies covered in this article. A well thought out and

³ Steven Overly, "How Ford turned thousands of employees into inventors." *The Washington Post*, 12 December 2016, <https://www.washingtonpost.com/news/innovations/wp/2016/12/14/how-ford-turned-thousands-of-employees-into-inventors/>

properly implemented intellectual property strategy is key in securing competitive advantage, mitigating risks, and unlocking opportunities for commercialisation and monetisation, especially for organisations with heavy intellectual property portfolios.

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