

Practical Business IP Education Series



Increasing profits and stabilizing SME management through patents and intellectual property

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1. What are intellectual property and IP rights?

Management resources that can increase operating profits by registering and acquiring rights.

Japan:

"SMEs with patents have approximately double the operating profit (operating profit per employee) of companies without patents" (General Affairs Department, Japan Patent Office, 2015-2017 average)

Europe:

- A 2019 EPO/EUIPO study demonstrated that SMEs that have at least one IP right are 21 percent more likely to experience a growth period and are 10% more likely to become a high-growth firm (HGF) than firms without IP rights applications.

USA:

- A 2021 update to the study found that fewer than 9 percent of SMEs owned at least one of the three main IP rights (a patent, trademark and design). By contrast, the figure is close to 60 percent for larger firms. This reveals a shocking disparity in the use of such a valuable business tool.

1. What are intellectual property and IP rights?

Beyond Profits: Stabilizing SME Management.

- Higher growth and greater profits are the platform of strong businesses. IP leads to it.
- 20+ year security and risk hedge for investing further
- Marketing. IP provides USP's (Unique Selling Propositions) and competitive advantage. Obvious promotional and marketing advantages.
- Operations and Staffing. Risk hedge to building superior operations and attracting staff.
- Financial. Beyond profit. Higher gross margins and cash flow. Increased borrowing capacity / covenants. Etc.

Intellectual property rights

"Exclusive right" (Article 68 of the Patent Law, Article 16 of the Utility Model Law, Article 25 and 37 of the Trademark Law, Article 23 of the Design Law)

→ "Claims" under the Civil Code, "Property Rights: Ownership of Real Estate" Even stronger rights.

★ " The success formula of Intellectual property "

Patent/Intellectual property rights

⇒ "Suspension of manufacture and sale of infringing goods", "Disposal of infringing goods".

⇒ "Market monopoly" Exclude other companies from entry / sell only by our company ⇒ Monopolize sales / increase

⇒ Stabilize management.

Essence of IP

“New ideas” (created during business execution)

⇒ Possibility of being stolen by others

⇒ Necessity to acquire and protect rights

★ However, "intellectual property" cannot be created without "intellectual property awareness"

Using IP as a management base

SMEs, which are economically weaker than large companies, use "intellectual property" as a management foundation

- Intellectual property awareness of SMEs is lower than that of large companies

Japan:

99.7% of all Japanese companies are SMEs (3.6 million companies), 16% of all patent applications (2019 JPO data)

USA:

Under 9 percent of USA SMEs owned at least one of the three main IP rights (patent, trademark or design). It's almost 60 percent for larger firms. (2019 USPTO data)

- Individual inventors and SMEs who bring their own ideas to major companies are bound to imitate them.

⇒ SMEs and sole proprietorships should be armed with IP rights.

Using IP as a management base

- IP rights are a “magic wand” to competitors up to a certain level.

However, there are limits (invalidation trial, technical evaluation, revocation trial, infringement theory, damage theory, etc.).

→ It should be used effectively while recognizing its limitations.

However, the intellectual property system is highly specialized and complicated.

Few patent attorneys and lawyers can clearly point out the limits of intellectual property protection.

SME support from the government: METI JPO.

Only "systemic support" such as improvement of intellectual property database, reduction of stamp duty for SMEs and individuals, subsidy for acquisition of rights overseas.

→ On-site one-on-one cooperation and guidance from patent attorneys is required.

Support needed: private sector and patent attorneys

Circumstances of companies

★ Intellectual property of SMEs ≠ Intellectual property of large enterprises

→ Completely different world

Large companies file thousands of patent applications each year → Easy access to patent rights

SMEs, at best, file 1 to 2 cases per year for → Obtaining rights for 1 case.

Circumstances of patent attorney/patent offices

★ "Large company disease" of patent attorneys and patent offices

Basically, patent attorneys want to have large company clients, they do not willin g to support SMEs.

⇒ Necessity of “Patent Attorney/Patent Firm for Intellectual Property Support for SMEs”

2. Types and Characteristics of Intellectual Property

“Industrial property rights” (patents, utility models, trademarks, designs)

Patents: Advanced technical ideas

→ If possible, "portfolio of patent" is effective for market monopoly.

Utility model: technical ideas for daily necessities

An effective protection tool for small businesses (fast, cheap, attractive).

★ **There are tips on how to use it**

The biggest merit: Simple technical ideas that are difficult to obtain patents can be registered at less than half the patent cost.

→ **Gain the effect of deterring potential entry by other companies**

→ **It is possible to avoid the tragedy of not being able to obtain a patent in the end**

2. Types and Characteristics of Intellectual Property

Trademark: company name, product name, service name

In the case of startups and company establishments, this intellectual property is most essential.

Different than Trade Name

Design: Product design

Not recommended.

Even if you register one design, the rights are narrow.

→ Use of Related Designs

Depending on the industry, there are industries where design is important (industries where product appearance is important, such as clothing industry, accessories, bags, etc.).

If the shape of the appearance has a technical effect, the utility model is more useful.

2. Types and Characteristics of Intellectual Property

Unfair Competition Prevention Act

- **Prohibition of dead copy of product form (3 years). If famous, there is no 3-year limit.**

Foreign Countries?

- **Do not use names that are the same as or similar to well-known company names, trademarks, trade names, and product names.**

Copyright

- **"It has little to do with the manufacturing and sales industries."**

3. Successful cases of IP management (our clients)

Company A

Resin extrusion molding manufacturing company (Capital: 20 million yen)

Entered the field of 3D printer materials from resin materials. Production method using 3D printer materials.

Business format conversion to a software company.

- **Patents: 8 Number of patent applications: 12 (within 10 years) Trademark registrations: 24**

★ A typical example of patented technology and trademarks leading to "market enclosure" and increased sales.

3. Successful cases of IP management (our clients)

Company B

Synthetic leather bag manufacturing and sales business, 100-year company (capital: 30 million yen)

"Customer complaints are the treasure of the company." Solving product problems and registering utility models and obtaining patents.

→ **"Our company's products are masses of intellectual property"**

• Patents: 1, Utility models 24 (within 20 years) Trademarks: 19

★ IP awareness is very high. Only one Patent on the most important technology. “Honor student” in intellectual property utilization.

★ Hit product "Polycarbonate skin material bag"

→ **Significant contribution to sales growth of current main products**

The technique of using highly rigid polycarbonate for bags while giving it flexibility. Overwhelming weather resistance and durability. Lightweight.

3. Successful cases of IP management (our clients)

Company C

**Manufacturing and sales of hardware and software for utilizing TV and Internet video information
(Capital: 100 million yen)**

Enclosure strategy by overwhelming "Patent portfolio"

→ Realize almost complete market monopoly in a niche market.

- Patents: 21 Patent applications: 38 Trademark registrations: 4 (within 18 years)**

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Company D

"Paper food container manufacturing company" (Capital: 10 million yen)

A flat square open container that is nothing out of the ordinary. However, the opening angle is 85 degrees.

⇒ Easy to stack and easy to transport. Design and patent acquisition Currently expanding to major restaurant chains

4. Neglecting IP Rights is Damaging! Common SME Mistakes

★ "Intellectual property" is "property" for your company. However, it is important to avoid the "landmine" of other companies' rights surrounding your company.

“Infringement without knowing”

Sold without conducting a preliminary search.

⇒ Warned/Large damage (client of our firm).?? Chines client?

- Import of hit products from China. Sold without prior intellectual property search in Japan. Infringement of another company's patent right.

→Warning: Suspension of sales and disposal of all imported products. Paid a settlement of 5 million yen.

* Intellectual property rights are subject to the principle of territoriality. China's rights extend only to China. Infringement investigation in Japan is required.

4. Neglecting IP Rights is Damaging! Common SME Mistakes

...“Infringement without knowing”

ii: "Trademark use without preliminary search. Damage due to warning and trademark change!" (our client)

- "No infringement search/trademark registration"

→ Warning from other companies that "trademark infringement due to similar company names"

★ Trade name registration is for the company name only. Even if the company name is the same, it is registered if it is a different address.

Many similar company names. Trademark registration monopolizes the company's trademark throughout Japan.

4. Neglecting IP Rights is Damaging! Common SME Mistakes

“Unknowingly destroying, giving up, or overlooking your company’s intellectual property”

- **"We have launched a new product based on our own idea. It has been well received in a year, so we would like to patent it." (Many clients of our firm)**

→ Cannot be patented after one year from the start of sales (Patent Law Articles 30 and 29, Design Act Article 4, etc.).

ADD. Foreign territories?

- **"I thought that this kind of idea could not be patented, but it was patented by another company" (multiple clients of our firm)**

→ The "little ideas" of SMEs basically have the potential to become intellectual property.

4. Neglecting IP Rights is Damaging! Common SME Mistakes

"Carelessly did not exchange the contract formally" (our client)

A French individual inventor.

Came to Japan to commercialize the Japanese patents and developed business based on a license agreement (delivered inventions to Saitama Arena, Yokohama Arena, and Tokyo Metropolitan Government), but a medium-sized general contractor violated the contract (but no official contract). to conflict cases.

→ Filed a lawsuit and actually won the case at the high court. The settlement amount is about 100 million yen. However, it will take 4 years to resolve.

5. Countermeasures - What to Do

① Establishment of "intellectual property management awareness" within the company and discovery of intellectual property

Based on the concept of intellectual property management, raise intellectual property awareness, extract and list sleeping intellectual property.

★"The business ideas of small and medium-sized enterprises basically become intellectual property."

② Securing patent attorneys and patent firms that support small and medium-sized enterprises that can be easily consulted

★Conditions

i: Having sympathy for SMEs. "I don't suffer from big company disease"

ii: Experience in dispute cases and infringement lawsuits

iii: Feedback the experience in dispute cases to rights acquisition practices

iv: Being able to do preliminary Search (determination of infringement/determination of registrability [determination of novelty/inventive step/trademark analogy/design analogy

v: Being able to experience in acquiring foreign rights

5. Countermeasures - What to Do

③ Execution of preliminary (infringement/registrability) search

“Search that can support intellectual property of SMEs” are:

→ Investigation based on the experience and know-how of infringement cases

★No experience with infringement cases when only large companies are our customers.

In addition, no experience in prior infringement/registration feasibility investigations.

→ Impossible for small and medium enterprises.