

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 3

2020

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Strong Patent Portfolio in the IoT Generation – Important or not?

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ABSTRACT

We all already know that intellectual property plays a very significant role in the protection of innovations, art and inventions. Thus, in the present epoch of digitalization where every day we talk about the significance of inventing newer technologies, being able to protect the same in an effective manner should be given utmost importance. This is especially of great importance to most startups that are struggling to be known in this technological period called the Internet of Things (IoT) era. Many a times the survival of these startups depend on the success of their basic technologies which can always be undercut by larger competitors. Thus, we must be able to protect our invention by the way of creating a strong patent portfolio. In the course of time, IoT is going to benefit the world and open various amounts of opportunities to several consumers and businesses by helping us connect billions of devices through a mutual platform. This will, as a result, lead to the rising of several issues related to intellectual property and further will lead to years of courtroom battles and high penalties. This paper, in the given background, would gauge the importance of protecting one's technology and invention. It will further highlight ways to deal with the issues related to patent violations and furthermore examine the crucial point of patent protection in the (IoT) generation.

I. THE INTERNET OF THINGS ERA (IOT)

IoT is a concept which is expected to revolutionize our lives. (IoT). It is the most productive concept and is majorly discussed about in today's technological era. It is expected to not only change our way of work but also the way we live.

There have been several technological innovations in the previous years due to the development of 5G which we could not even imagine. In the present world, with the introduction of the wireless telecommunications technologies life's become much simpler and convenient as they can be integrated into various products like cars, televisions etc. thus, contributing towards the IoT era.

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II. EVALUATION OF THE PROBLEM

With the introduction of wireless communication around the 1900s and early 2000s, there were several alliances that took place between various technology developers to create a mutual platform where every developer would build upon the work of each other². These alliances lead to huge monetary profits for the developers as the competitors paid royalty for using their technologies.

The 3G epoch was driven by cellular companies who made it possible to match the speed of the wireless data with the desktop internet connection. As a result, the smartphone generation came to being. Our smartphones had all the characteristics of a radio, camera and a mobile phone. In the technology space, it was considered to be a groundbreaking product with various different developers competing over it in order to maintain their supremacy over others. As a result, there was a battle amidst the smartphone companies who claimed infringement of patent and competition law violations by their competitors one of the examples being that of Apple and Samsung.³

Thus, as we can see, the evolution of technology brings to the table several intellectual property issues between different developers and collaborators.

Thus, with the evolution of 5G, the smartphone war that took place in the 3G era has a possibility of taking place again and at a bigger scale. The variance is that now, it is thousands of companies that are entering the IoT space instead of just one or two. The need of the hour, has thus become to understand that stronger patent regulations and profiling techniques are required due to the greater divergence of innovations and the technology inventors. Various industry backgrounds like start-ups, MNC's etc. also must be taken into deliberation when implementing a strong patenting portfolio.

III. PATENTING ISSUES SURFACING OUT OF (IOT)

The most crucial argument of what is the scope of legal protection that can be provided to a patent can be determined from the specification of the technology that is made during the filing of the patent application. It was simpler to understand the extent of patent violations before the emergence of the IoT generation. Since, several technologies were incorporated in the devices itself, the unjustifiable use of such technology by any other competitor resulted in direct infringement of the patentee's rights. The new epoch of (IoT), however, has muddled

² Solving Patent Licensing in An Iot World - The Latest Legal Features, Research and Legal Profiles - Who's Who Legal' (*Who's Who Legal*, 2018)

³ *ibid*

the definition of what leads to a direct infringement.

A smart device now is connected to a vast network platform and are interconnected with each other to enhance its operability. While the claims around the smart device can be written and defined, the patentability of the claims which violates its network system and analytics cannot be defined.⁴

Despite of several patenting issues regarding (IoT) devices, it is still possible to apply for protection of innovation under the patents law if the contents of the patent are of a non-obvious and novel character over what is publicly known.

Thus, even though innovations derive from the interaction of smart devices handled by the consumers and the network handled by a distributor, it is possible for a patentee to claim direct infringement against a competitor who is in possession of a technology and device that is protected by all the possible claim elements. While smart devices are commercially different, the threshold for being new and non-obvious in patents may be stricter. Due to this, a device that does not incorporate any additional novel technological features will not be patentable, despite how valuable its intended use is commercially⁵.

A usual problem that several IoT focused businesses face is how to balance the patentability of a technology without limiting its degree of operation and scope.

How can a strong IoT patent portfolio be made despite the challenges faced by emerging technology companies in the current innovation area?

The first step would be to identify your potential competitors and thus the claims should focus to target activities of these competitors. Direct infringement of the patented technology must be established and to do this is a cumbersome task as it entails the competitor to have violated the rights on the device along with all the elements that establish your network. Indirect infringement by the competitor can also be proved by the creator if the competitor has induced, caused or abetted to have infringed upon their patented IoT.

Thus, it is easier to tackle issues related to the claims advanced for indirect infringement and can be done in a speedier way as they don't deal with the novel technology feature per se but probe into technicality of the infringement.

Thus, the best possible way of protecting a creator's IoT from being violated by the world is by adopting an approach that is diversified, including within its ambit both direct and indirect

⁴ Admin E, 'Intellectual Property Issues and Internet of Things (IoT) | Effectual Services' (Effectualservices.com, 2018)

⁵ Journal, R. (2018). *Why Your Business Needs to Develop a Strong IoT Patent Portfolio* - 2018-05-27 - Page 1- *RFID Journal*. [online] Rfidjournal.com.

infringement.

A creator's patent will be approved only if his work consists of a design which is unique and differentiable compared to others. In addition, if it is recognized that the cohesive system of network affects the rights of other creators to introduce different technology in the same public space, then the rights over that technology area will not be granted to the first creator. Thus, a patentee can secure his rights only with respect to the product made and not the public space he works in. In this technological era, in which people are incessantly innovating, the key lies in procuring the patent even though its enforcement may become a challenge. This will help you to get rid of your competitors and save your technology from direct infringement.

To protect your patent portfolio in the IoT arena the best possible way is to opt for an approach that is multi-faceted. You must start with patenting the smart device and the technology that surrounds it and once the patent gets approved, an application to incorporate the smart grid application in which the device is operable must be filed. The objective to adapt a multi-faceted approach is due to the reason of the application to patent the same grid application being a cumbersome task.

IV. CONCLUSION

IoT is gaining great motion and will soon dominate the market in terms of devices on its platform and also the size of the potential business. In a technology space that is rapidly evolving and financially rewarding, it becomes important to develop a strategy in order to protect the company's responsibility of using IP. Thus, evaluating the IP landscape of the country becomes an important task for the players wanting to enter the market arena.

In a digital world, where several players are competing for the same patented technology, it is important for you to evaluate the potential IPR threats. Some of the biggest threats to your business can be avoided and new business opportunities can be identified by warranting protection of your technology and driving your IPR strategy pro-actively.
