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Happy Thanksgiving!



“Tip of the Month”

Are Defensive Publications Part of Your Company’s IP Strategy?

A defensive publication is an intellectual property (IP) strategy that preempts other parties from obtaining a patent on a product or method. The objective is to preempt competitors from growing and/or fully leveraging their own intellectual property by publishing information that renders the idea unpatentable. By either destroying the novelty of a competitor’s invention or rendering it obvious, a defensive publication can prevent others from staking a claim in your company’s technology space.

Defensive publications can be quite useful for companies in a highly competitive market. Compared to the costs associated with securing patent rights, defensive publications are a low-cost IP management tool. Defensive publications can also be accomplished very quickly in some cases.

It is important to understand that a defensive publication can negatively affect your own company’s intellectual property rights. Except for a relatively narrow exception in the U.S., most foreign jurisdictions require absolute novelty as one condition for patentability. This means that once a company issues a defensive publication, the defensive publication immediately extinguishes patent rights for the idea, even those patent rights of the company making the information public. This is especially important in international trade because a publication irreversibly relinquishes potential patent rights that the publishing company may have had in the idea.

The decision to issue defensive publications should be considered not in a vacuum but as part of a comprehensive intellectual property strategy. One goal for using defensive publications should be to enhance your company’s position in its marketplace while preventing a competitor from obtaining patents that limit your company’s expansion and innovation in the same technology space.

Is defensive publication right for your company? It is only one tool in your company’s intellectual property strategy. Typically, one consideration is whether the cost of patenting outweighs the economic and competitive benefit gained by obtaining a patent. A second consideration is whether publication would prevent competitors from patenting possible iterations of a major advancement in a given technology space.

If you have questions about the use of defensive publication in your company’s IP strategy, the IP attorneys of Mesmer & Deleault can help you. Please contact the attorneys at Mesmer & Deleault, PLLC by calling 603-668-1971 or contacting us by email at *mailbox @ biz-patlaw.com*.

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