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# High Tech Giants' Appetite For Patents May Create Hurdles For Innovative Startups

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The multi-billion-dollar patent purchases during the last several months involving large high tech companies illustrates the difficulties that small start-up companies potentially face when entering the marketplace with a new technology.

Recently, Google purchased Motorola Mobility Holdings Inc., largely to gain ownership of Motorola's 17,000 patents. Among these 17,000 patents are patents that help to protect Google's Android software. A consortium of companies that included Apple, Microsoft and EMC Corp. spent $4.5 billion on the 6,000 patents belonging to now bankrupt Nortel Networks. Although these transactions involved big players in the high tech field, small companies may also be affected by the demand for patents and the willingness to enforce existing patents. For example, the Texas-based firm, Lodsys, generates revenue by enforcing its four patents that relate to online interactions and payment methods. Lodsys has sued large companies like HP and Motorola, and has now started demanding settlement from small application development companies.

In the high tech industry, patents are especially valuable because a single gadget such as the iPhone may consist of multiple elements of patented technology. It is often difficult to know whether a device or method infringes a patent. Small companies developing application software could unknowingly be infringing one or more patents owned by the larger high tech companies. For example, a device such as the iPhone could infringe a patent directed to a particular application or it could infringe a patent directed to the type of screen. As a means to better position themselves against these issues, companies are increasingly assembling patent portfolios they can use to argue they own the rights to their products.

In addition, some companies buy pools of patents and then charge companies a royalty to use them.

What lessons can be gathered from the recent large high tech patent transactions? The objective of a patent portfolio is to protect the core technologies, core products and business practices of the company. Patents provide exclusive rights for the patent owner to use and exploit the invention for 20 years from the filing date of the application. This, in turn, allows for strong market position because the patent owner is able to prevent others from commercially benefiting from the patented invention, thereby reducing competition in the marketplace. Additionally, patents may be obtained to enable the company to enter into reciprocal (i.e. cross) licensing arrangements with competitors who assert patent infringement claims against the company in the same field of interest.

However, the high cost involved in obtaining patent protection means that some companies should consider either a defensive or offensive strategy in building a patent portfolio.

A defensive strategy should be considered if financial resources are limited and if competitors are unlikely to copy the company's products. Patent applications could be filed to protect core technologies embodied in core products that deliver the greatest advantage over rival products in the market. Provisional applications (i.e. preliminary applications that are not subject to examination) can be filed until financial resources can be secured.

An offensive strategy can be considered if significant resources are available to secure a new technology and create a wall of patent protection covering key differentiating features that reinforce the product's brand positioning and key performance. Specific patent strategies that may be considered in an offensive patent strategy are (a) obtain patents on all commercially available improvements or small incremental innovations around the core technology of a competitor. The owner of these patents is then in a position to force a cross-license of patents to acquire the competitor's core technology; (b) obtain patents based on efforts to design around a company's own patents in order to prevent competitors from inventing around the patents; (c) acquire key patents owned by others in areas of current and future interest; (d) survey existing patent landscape and monitor marketplace to identify infringing products and services.