

How to create a world product - international IP strategy

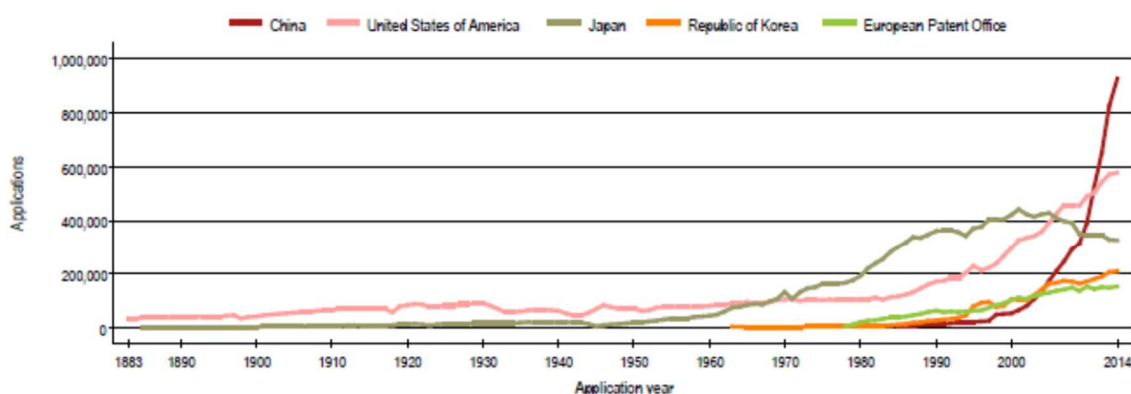
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Today’s young entrepreneurs have to consider global competition – not least due to crowdfunding campaigns you find on platforms like kickstarter or indiegogo with worldwide attendance. Having a start-up venture by my own – the One Button Phone – my experience shows that even with a website and a facebook account and without pacing crowdfunding campaigns you will get feedback and inquiries from all over the world – as well from bigger companies – in our case in the electronics and mobile phone market.

Following a study by KPMG we find actually around 6.000 Start-ups in Germany of which only up to 5 % have a hardware focus. And 80 % of all start-ups are financed by own savings – even more in the case of hardware start-ups. Investors prefer currently software or media ideas. 90 % of all start-ups declare their product as new or innovative. But only one quarter think, that their product is not affected by international competition, which seems very surprising.

With no doubt it is necessary - especially for start-ups - to protect ideas when facing today’s inevitable awareness – and of course best with a patent in future markets in question. But not only protection is sensible – as well the immediate setting of claims to avoid prosecutions from other parties is necessary if these are fast in filing.



Note: The top five offices were selected based on their 2014 totals.

Source: WIPO Statistics Database, October 2015.

Fig. 1: Trend in patent applications for the top five offices

In 2014 worldwide 2.68 Million patents were applied. That means a rate of 306 per hour. So what gives you confidence that even in this moment someone is not applying with the same idea at a patent office? Especially facing the Chinese application rate of around 840.000 a year or in the US with around 500.000 a year. Currently 10.2 million patents are in force worldwide – 2.53 Million in the US. Fig. 1 shows the race in worldwide patent applications. So the recommendation must be to start filing as soon as possible. The question remaining is: where to apply first?

Following a worldwide survey of the Time Magazine the USA are by far stated as the country with best patent protection due to its independent jurisdiction – followed by Germany and the United Kingdom (see fig. 2).

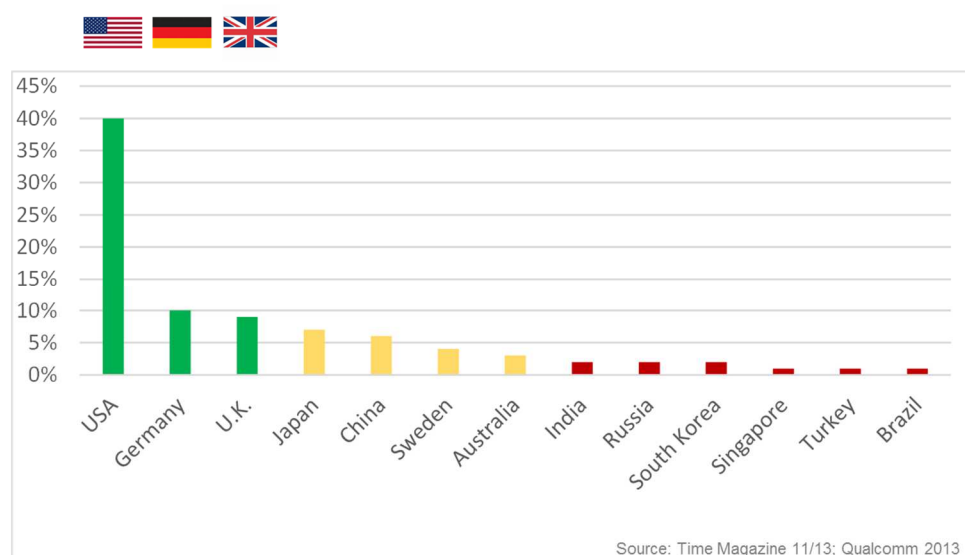


Fig. 2: Where patents are best protected

When applying for a patent a possible litigation or lawsuit has to be considered. And the chances for a fair process are the highest in a real constitutional state. So it is the best to consider a protection in states like USA, Germany or United Kingdom. For sure the new EU patent is as well worth being considered with only one relevant patent court – but in the end this a question of costs.

Starting with a US patent means that in the case of a lawsuit just one patent court for 324 Million potential users can be addressed. The new EU patent will offer as well more potential users with one court but it is not valid in Spain, Italy, Switzerland, Norway, Island and Turkey. And with possibly with the UK leaving the EU a further important country will not be covered.

For an EU patent annual fees must be paid in all validation states. So far, no member state is prepared to give up its share of the fees. A price advantage in favor of the EU patent compared to the traditional European patent application is only given for applications in more than 5 countries. And this concerns likely to be less than 10% of all applications.

Furthermore a US patent has a much larger scope of protection through its broader claims. Very advantageous is the possibility of filing a so called continuation applications. This allows new claims to be drafted years after the priority date – so long as a pending application remains on file.

When starting with a US patent it is as well easier to transfer it into an EU patent application due to the then only necessary translation of claims. And it saves work and costs because the other way around the patent usually has to be written twice.

Still it can be observed that German applications are directly translated into US application. This is a big mistake. Usually these translation are of no value due to the different patent legislation in the US.

So it is sensible, favorable and powerful to start with an USPTO application and then considering the European states like Germany and United Kingdom. Furthermore it is even for start-ups advisable not to file a PCT application because of the immense cost involved.

A US patent application gives as well cost advantages regarding application fees. The US fee includes 20 claims with 3 independent claims in comparison to just 10 claims with 2 independent claims in Germany. Furthermore Germany has annual fees which leads to the fact that a lot of small inventors are not keeping up their patents due to the running costs. For running a US patents fees have to be paid only three times.

In case of a lawsuit or litigation the US are as well better for small enterprises. There is no table of fees for attorneys like in Germany. Moreover attorneys can work for contingency fees. Furthermore the losing side has not to pay the counterparts attorney's fees. And there is no dependence on the amount in dispute when court fees have to be paid.

The recommendation especially for young entrepreneurs facing worldwide markets must be to start with a patent application at the USPTO. JOINCO® Innovation Consulting is supporting this strategy with its own partner the patent office Imperium Patent Works in the Silicon Valley.

Filing just one idea could be sufficient. Strategically a comprehensive IP protection gives of course more power and business options.

Good engineers know how to circumvent patent claims and the best way is to do it yourself. Applying methods of systematic innovation let you create all ideas around you product and predict future developments (see fig. 3).

- It gives advantage to block by your own possible circumventing alternatives,
- let you select the best option for your product,
- gives you the advantage to know beforehand dead ends and perhaps
- and shows options to set false flags for your competition.

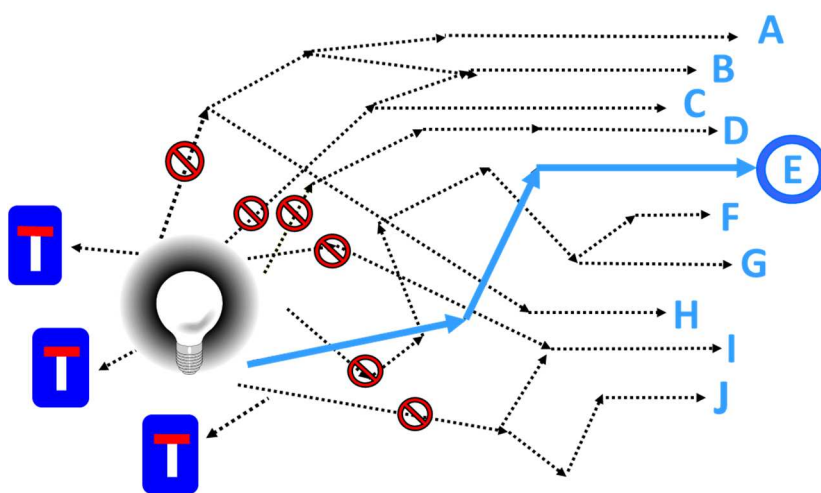


Fig. 3: Comprehensive idea creation for strategic IP protection

The basic principle of systematic innovation is the principle of ideality. It defines innovation in general: Ideality is the relation between useful functions, i.e. product functions and as well perceived benefits towards harmful functions, i.e. costs and harm (see fig. 4).

$$\text{Ideality} = \frac{\text{Functions + Perceived Benefit}}{\text{Costs + Harm}}$$

Fig. 4: The innovation principle of ideality

The principle allows you to have a view on the future development of your product since every system evolves toward increasing ideality. The ideal product is therefore a product which gives you all functions and benefits without cost or more without even existing.

This follows the principle of functional integration. When you can integrate the functions of other products within your product you have disrupted your competition.

Applying the toolset of Systematic Innovation is the basis for generating the right ideas to conquer future markets and to protect your intangible assets.

“The best way to predict the future is to invent it.” (Abraham Lincoln)