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# The Patent Management Trichotomy: Patenting, Publishing, And Secrecy



HOLGERSSON, Meno / WALLIN, Martin: The Patent Management Trichotomy: Patenting, Publishing, And Secrecy, Management Decision (2017), Vol. 55 Issue 6, pp.1087-1099

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SUMMARY			
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## Abstract

In the present paper, the authors examine the relationships between three strategies of Intellectual Property (IP) management, namely patenting, publishing and secrecy. The authors introduce the concept of “patent management trichotomy”, suggesting that each strategy has distinct advantages and disadvantages both for enabling value appropriation from innovation and protecting companies’ freedom to operate (FTO). Although patenting appears to be the strategy presenting the largest breadth of options both in terms of value appropriation and FTO at the single invention level, the authors hold that IP management must exploit the combinatorial possibilities between all three strategies across time as well as across several inventions and technologies.

## Summary

Over the last decades, the importance of Intellectual Property (IP) management has grown enormously. Effectively controlling technological resources is of great importance for companies in two respects: first, for enabling appropriation from technological innovation (that means capturing value from research and development investments or other innovative activities) and, second, for protecting the company’s freedom to operate (FTO), that is its ability to undertake specific commercial business, without infringing valid Intellectual Property Rights (IPRs) held by others.

For controlling technological resources three different strategies are available to companies.

The most common strategy is patenting. Patents not only provide the holder with a right to exclude others from using the patented technology, but also ensure that the patent holder will not be blocked by others from using the technology in question.

Besides patenting, two other strategies exist: publishing and secrecy. Both strategies are considered substitute strategies to patenting, in a sense that they mutually exclude each other.

Publishing is understood as the act of publicly and strategically disclosing information, with the goal to create novelty-destroying prior art, in order to prevent others from obtaining IP protection on the same invention. Secrecy, on the other hand, is the act of keeping innovation from being generally known, with the goal to obtain a monopoly advantage, as long as the innovation remains secret.

In their effort to establish which of the above strategies is more beneficial to companies, the authors introduce the concept of “patent management trichotomy”. The authors argue that each aforementioned strategy has distinct advantages and disadvantages both for enabling value appropriation and for protecting companies’ FTO. The choice between patenting, publishing or secrecy depends on several factors, such as the degree of complexity of the technology, the interdependency of multiple innovations (which, for example, is high within standardization) and the overall corporate strategy.

In terms of value appropriation, the authors found that companies can better achieve appropriation through patenting and/or secrecy than by publishing. Sales of products or services and licensing of IPRs all rely on exclusivity. Exclusivity, in turn, can be protected only by patenting or secrecy, not by publishing.

As technological complexity increases, particularly in industries where standardization is widespread (for example telecommunications), value appropriation is better achieved through patenting than secrecy. In this case, companies increasingly benefit from indirect value appropriation (that means appropriation without direct link to sales of products or services), as well as by reaching a strong position in the standard through patenting.

In terms of FTO, the authors believe that companies can better achieve FTO through patenting and/or publishing than secrecy. Indeed, secrecy does not ensure any level of FTO.

As technological complexity and cumulativeness increases, companies achieve FTO better through patenting than publishing (and secrecy). Particularly in industries with a high level of standardization, companies often depend on the IPRs of competitors. By engaging in patenting, companies can build up a defensive bargaining position that can be used to reach (cross-)licensing agreements, which exclude the blocking power of competitors’ IPRs. Publishing, on the other hand, cannot generate this effect.

Against this background, the authors argue that patenting is the strategy presenting the largest breadth of options both in terms of value appropriation and FTO at the single invention level. This fact should, however, not prevent companies from exploring the combinatorial possibilities between patenting, publishing and secrecy across time and across several inventions and technologies. Furthermore, forms of hybrid strategies should also be considered, for example a combination of patenting with free licensing, a strategy with characteristics close to those of publishing.