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US Patent and Trademark Office (USPTO), International Patent Protections for Small Businesses, Report to Congress



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SUMMARY			
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Abstract

The USPTO Report on international patent protection for US SMEs examines the challenges faced by American small businesses in patenting their inventions overseas. The Report notes the importance of international patent protection for SMEs wishing to expand their business abroad and proposes policy measures for enhancing patenting by US SMEs abroad, including raising awareness and among SMEs of the opportunities for international patent protection.

Summary

The USPTO Report stresses the contribution of US SMEs to job creation and growth. An important aspect of this contribution is SME innovation and expansion to foreign markets. According to the report, American SMEs face significant challenges in protecting their inventions abroad. The report outlines these challenges using input from stakeholders invited to public hearings.

Patenting among US SMEs is relatively uncommon, mainly due to financial constraints. SMEs lack liquidity necessary for covering patenting costs, which according to the report may amount to hundreds of thousands of dollars. Moreover, patenting costs are typically borne at the beginning of the life of small businesses, when such liquidity problems are even more acute. The report emphasises the different US industrial policy with regard to SME patenting, compared to other countries, which provides for patenting discounts to SMEs regardless of their national origin.

Another important source of cost is translation of US patents to foreign languages, and professional advice abroad. According to testimonies during the public hearings, translation and attorney's fees may rise as high as USD 320,000. Despite the availability of the PCT international patent application system, US SMEs refer to the process of international patenting as 'overwhelming'.

Furthermore, although patenting among SMEs is relatively uncommon, for a particular class of SMEs, those active in high-tech sectors, it is crucial. Obtaining patent protection yields significant benefits for such SMEs, such as preventing copying, attracting venture capital investment, increasing the possibilities

of a take-over by a larger firm, and enabling a successful IPO. Public testimony to the hearings confirmed the view that patenting is an important element of success in penetrating foreign markets and maintaining a competitive edge over international rivals.

Another important disincentive to obtaining international patent protection is that, the substantial costs notwithstanding, the benefits from patenting remain uncertain. The report refers to empirical research pointing to a highly skewed distribution of monetary gains from patents, with only a small fraction of commercially successful patents generating the bulk of financial returns. The fact that investment in patenting must be undertaken early, when business uncertainty is very high, exacerbates the difficulties and risks facing SMEs.

According to the report, the overwhelming majority of the respondents encouraged the US government to engage more activity foreign governments in major US trading partner countries, with a view to bring down the significant international patenting costs for SMEs. More controversial is the measure of providing public subsidies to SMEs patenting overseas. Many respondents appeared sceptical to the granting of subsidises out of tax-payers' money for firms to obtain patent protection; in their view, the issue of financing patenting abroad should best be left to the private sector, which is more adept at evaluating risk. In view of the ambiguous effects of subsidising international patenting, the report does not advise public subsidies, however it goes on to examine the potential welfare effects of such subsidies. According to the report, not all public subsidisation instruments produce the same results. A full refund of international patenting costs may encourage wasteful patenting of inventions that do not worth the wile. Better results could be expected with partial refunds, and even better with loans to SMEs on better terms than the credit market offers.

The main recommendation of the report is that the US government should seek a closer alignment of SME patenting costs across some of the major US trading partners, and in particular in the EU, China, and Japan. Moreover, the report recommends strengthening the education and awareness of US SMEs with regard to the benefits of obtaining international patent protection for their inventions. Specifically, the report suggests an enhanced cooperation between USPTO and the US Small Business Administration in better training SMEs on patent issues, in particular through the Intellectual Property Awareness Campaign (IPAC), a training program providing tutoring to SMEs on the basics of the working of the IPRs system in the US and abroad.