Medical Design & OUTSOURCING

Proactive IP strategy to navigate your medtech startup through uncertain times

Medtech companies can use their intellectual property to send a powerful message to potential buyers and investors.

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There's no doubt that the current climate has created uncertainty in the medtech market. Overall, we are seeing companies generally approach this volatility with some hesitation to entertain and close M&A deals. Access to venture capital is harder as well. Most investors are taking a wait-and-see approach, evidencing a preference for the dust to settle before committing to significant investments.

Despite the above, large medtech companies are still making strategic plays for complementary technology that either supplements existing business or provides access to new ones. At the moment, opportunities are greatest for those companies with regulatory approval and strong intellectual property (IP) protection because shortening the time to market makes targets more attractive in the current climate.

What can medtech companies do to position themselves for an exit despite these turbulent times?
Medtech companies can put themselves in a better position for acquisition by having a firm understanding of their competitive landscape and how their technology fits within this competitive landscape. Companies that tell a compelling story of how their IP portfolio strengthens their market position and provides a competitive advantage are attractive targets. This not only gives medtech companies a powerful message to potential buyers and investors, but can also lead to premium valuations.

Are governmental changes impacting the approach to IP protection?
Ongoing changes to the government administrative agencies in the U.S. are also reaching the U.S. Patent and Trademark Office (USPTO). While these changes may impact the timelines for obtaining a patent, at this time, they do not merit wholescale changes to a company's approach to obtaining IP protection. Fees at the USPTO continue to rise, so it is important to develop a strategy for protection that ensures coverage for core technologies as well as building a strong fence around those core technologies and the improvements that come later. Given that a strong IP portfolio can be a key driver in the valuation of a company and can help prevent competitors from entering the market, it's more important now than ever to work with strategic IP counsel.

The relationships between various patent offices globally are seeing some impacts from the current volatility. In some cases, we are seeing a more national approach that deemphasizes the value of patents in countries outside the U.S. Despite some impacts, there currently does not appear to be any action that is significant enough to cause a large shift in approach to protecting IP. However, this is something that is worth monitoring, as smaller fringe markets may become less worth the IP investment.

What sort of IP do buyers like to see?
Buyers are looking for strategic IP portfolios including patents that not only clearly cover core technologies, but also build a strong patent fence around those core technologies and later improvements. It can be particularly helpful to keep a patent application pending so a buyer can have the flexibility to make updates to the patent portfolio based on their own strategy, as well as their business goals, as they sometimes are not directly aligned with the goals of the selling company. A well-constructed IP portfolio, including trade secrets and trademarks, adds credibility and signals innovation, competitive advantage and potential revenue.

IP is a key driver in M&A because it can shorten time to market and strengthen negotiating positions. For smaller medtech companies, a robust IP portfolio can make them more attractive targets and can significantly increase deal valuation.

IP is not limited to just patents. Trademarks protect brand identity, while copyrights can cover software or marketing materials. A collective strategy showing commitment to all facets of IP can differentiate a target from others, especially in a tight market. Again, this is not simply IP for the sake of IP, but instead a thoughtful approach to IP that fits the business goals of the company.

How does an early-stage company balance growth of a strong IP portfolio with the rising costs of doing business globally?

Early-stage companies should adopt a strategic and proactive approach to IP. It may be worth revisiting your IP strategy and focusing on those regions that have provided a return on investment. Given the tariffs and global supply chain challenges of the moment, you may also consider pivoting to new potential markets for IP protection. Buyers want to see a forward-thinking IP strategy that not only protects current products but also supports long-term growth.

The U.S. is often the largest market for medtech innovations, so U.S. patents are expected. To offset rising costs, companies should be thoughtful about which foreign markets are desirable. For example, key foreign markets often include Europe, China, and Japan. However, it is worthwhile to thoughtfully consider the locations of manufacturing and possible sales, as not every foreign market may be needed and, as a result, costs for protection in countries that are less important can be avoided.

It is still important to file patents early and often, focusing on white space around core technologies to secure broad claims and, when possible, white space within a competitor's patent portfolio to block the competitor and create leverage.

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