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## **Can Robust Patent Strategy Be A Key To Help Preserving the Small and Mid-Sized U.S. Manufacturing Base?**

On a recent business road trip up the Interstate 85 corridor between Atlanta and Charlotte, I was surprised by the large number of empty small and mid-sized manufacturing facilities lining the expressway. On the drive north to Charlotte, I passed a dozen or more large, but abandoned, industrial buildings with empty parking lots and "Available" real estate signs visible from the road.

In a significant manner, these empty facilities demonstrate the debilitating effects of globalization on the formerly vibrant small and mid-sized manufacturing base that previously dotted the landscape of the U.S. After establishing the markets and building the customers for, as some examples, specialty plastics, packaging materials or electronics, these companies lost the "race to the bottom" on price against low cost foreign manufacturers and, as a result, went out of business. When these companies closed their doors, well-paying jobs, the owners' assets and the local tax base were each lost, maybe forever.

I believe the demise of these small and mid-sized manufacturers may not have been inevitable even in this globalized economy. And, perhaps more significantly, the remaining small and mid-sized U.S. manufacturer base could be bolstered by embracing patent strategy as a bulwark against competition from foreign knock-off products.

Put simply, these small and mid-sized manufacturers were innovators before innovation was "cool." Small and mid-sized manufacturers have always innovated on a regular basis to meet the needs of their customers. These companies are typically nimble and are able to respond to customer needs more quickly than larger manufacturers and, accordingly, they have often become the preferred providers of non-commodity materials to their customers. Indeed, that is why so many small and mid-sized companies use the word "specialty" in their names or to describe their product lines. Such innovative differentiation in their products is the "secret sauce" that makes their products more desirable than those of their competitors.

However, innovation is expensive: it requires market research, R & D and sales expenditures to identify the market need, invent the appropriate product and to develop the market for the product. Unfortunately, once the products are on the market, the "secret sauce" is often no longer secret. When the product is proven for the customers' use, they will often put the product out to bid for a foreign manufacturer to duplicate the formerly secret sauce at a much lower cost. The innovator is thus cut out of the picture and is left to continue spending money on additional innovations to stay ahead and keep developing new customers for its products or, as shown by the abandoned facilities on 1-85, to go out of business.

A well-thought out patent strategy could slow or stall the race to the bottom faced by these small and mid-sized manufacturers. These businesses could be well-served by developing a robust strategy directed toward protecting those aspects of their products that differentiate them from those of commodity manufacturers. If the manufacturer's solutions are truly innovative and strategic patent rights can be obtained, the customer will not be readily able to source the manufacturer's product to a foreign manufacturer for knock-off at a lower cost. The customer will then be faced with the decision to continue paying a premium for the manufacturer's product or else select an inferior product based on price because the manufacturer's patent rights can be enforced to prevent knock-offs from entering the U.S.

An important qualifier here: merely providing a description of the innovation to a patent attorney to draft a single patent to protect a differentiated product is probably not sufficient to prevent foreign knock-offs of the manufacturer's product. Rather, to be effective, patenting must be strategic and this strategy must proceed the patenting. A single patent may result from this strategy, but the strategy will define the scope and direction of the patent rights to best protect the differentiated product from foreign knock-offs.

Of course, patent strategy is not a panacea for all of the ills of small and mid-sized manufacturers. However, in today's global marketplace, it can be virtually guaranteed that an innovative product will be knock-offed and sold for a lower cost, thus leaving the innovative manufacturer to compete on cost, or to stop making the product. Adoption of a robust patent strategy may be a key to preserving the longevity of many of the remaining small and mid-sized U.S. manufacturers of specialty products.