

## OTTAWA BUSINESS JOURNAL

Patent pursuit imperiled by purse strings?

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**Trend of dropped patent applications following downturn especially prevalent among life sciences firms, experts say**

While most tech watchers agree that protecting intellectual property is one of the most important activities in a company's future, even this sector hasn't been immune to the far-reaching effects of the global economic downturn, observers note.

"What we noticed certainly last year was a decrease in the number of patent applications being filed, a trend that has been seen not only in our own firm, but ... Canada- and U.S.-wide," says Mark Vickers, a patent agent with Perley-Robertson, Hill & McDougall LLP, who notes industry associations and others in the field have been seeing a decline of about five to 10 per cent.

"Folks are taking a harder look at their business needs and focusing on their core technologies, so technologies that were somewhat on the sidelines are being pursued less aggressively."

*It's no wonder that patent creation and application has suffered when considering the cost associated with the process: depending on the technology, it could set a company back by \$10,000 to \$40,000 after accounting for the research needed, filing costs, patent agent fees and various other expenses, according to Ian Clarke of Ogilvy Renault LLP.*

*It can also be a lengthy process spanning several years from when a filing is made to the actual registration of the patent, he says.*

*"At the end of the day, as companies try and figure out ways to tighten the purse strings, one way to do it is to restrict money going into R&D," says Mr. Clarke, noting that patent costs are usually included in R&D budgets.*

Often, it's not so much the cost of filing that's prohibitive as is the expense and time creating the information that goes into a patent, says Ian Curry, CEO of DNA sample collection technology maker DNA Genotek.

Mr. Curry, whose firm actually ramped up its patent filings in the past year, says employing a patent agent, for example, can get expensive. But he says it's a necessary cost to ensure the company has an expert to assess the strength of the patent, and what will be accepted by the system.

Part of the complexity of the patent process is that it can be a whole different ball game from what companies are accustomed to with their other research and development work.

"In some ways, creating products is an exercise in focusing on a specific set of requirements. It's almost the inverse of that with patenting, as you're taking that set of requirements and broadening the application ... That can create a significant amount of work," Mr. Curry explains.

As such, he says it makes sense that research and development activity will shrink, as people focus less on innovation and instead on selling what they already have.

***“It’s reminiscent of the tech bubble,” notes Mr. Clarke.***

Although the scope of the trend of dropped or delayed patent applications is more widespread this time around, it’s still more noticeable in the technology sector, especially in the life sciences, he says.

***“It’s not surprising the life sciences sector has been hit ... The amount of investment involved in R&D can be astronomical, with the payoff being very seldom and very rare, and companies become more risk-averse in times of economic difficulty,” says Mr. Clarke. “They’re going to pull back their R&D and not want to find that miracle drug, and will focus instead on what they know will be a revenue generator downstream.”***

***Both Mr. Clarke and Mr. Vickers say patent application activity is starting to pick up again in 2010, although there’s no knowing if the trend will continue.***

Regardless, all parties agree that protecting intellectual property, even partially, is something that ought to be done in spite of tough times and cost cutting.

“Intellectual property is the lifeblood of biotechnology,” says Mr. Curry.

He notes that companies can choose to delay some of the costs associated with applying for patent protection across several countries by filing through the U.S. Patent Co-operation Treaty, which sets out a single, unified application procedure so that companies are able to find out from one place about the likelihood of their patents being accepted.

***Mr. Clarke adds that companies can put as much or as little information as they want into a provisional patent application, and then hash out more details later on. “The novelty of ideas needs to be protected ... or you’ll be kicking yourself if the invention is disclosed.”***

Focus is also a key part of trimming patent costs, says Mr. Vickers. “You have to really consider your business needs and commercialization opportunities and intentions are in line with your patent portfolio.

“At this point it’s really important for patent attorneys and agents to have an understanding of ... what their immediate business needs and how to best protect that.”

Read more: <http://www.obj.ca/Technology/2010-03-08/article-889008/Patent-pursuit-imperiled-by-purse-strings%3F/1>