

Business method patents

Protecting your firm's inventions **Interviewed by Leslie Stevens-Huffman**

Following a landmark decision in 1998 by the Federal Circuit Court of Appeals, the business method patent was officially born. As its name suggests, a business method patent grants its holder exclusive rights to a particular way of doing business. Since inception, however, there has been an on-going debate as to the extent such patents should be granted — especially when the solution doesn't involve the use of technology.

It can take as long as 54 months to go through the business method patent approval process and, at one point, the U.S. Patent and Trademark Office (USPTO) was only approving 11 percent of the applications it received, says Richard E. Campbell, partner and head of the Patent Prosecution and Counseling Group at Procopio, Cory, Hargreaves & Savitch LLP. While the current business method patent approval rate is now up to 20 percent, CEOs still need to be judicious about what types of business processes they submit for approval.

Complicating matters further is the fact that so many businesses today operate, or plan to operate, globally, so protecting the output that results from your firm's intellectual prowess on a worldwide basis will take substantial investments of time and resources. However, if successful, patents absolutely equate to increased company value.

"The term 'business method patent' is more misleading than helpful," says Campbell. "From a patent standpoint, companies should focus on what their employees are creating and whether it is cost effective to obtain patent protection for those innovations."

Smart Business spoke with Campbell about what CEOs should consider before applying for a business method patent.

What business methods are patentable?

Businesses that employ creative people who are designing solutions to problems should consider business method patent protection for their unique ideas and innovations. Companies that hire engineers, information technologists or other technical professionals should conduct regular reviews of newly created solutions to make certain they aren't overlooking a



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valuable competitive advantage that they don't want to make available to competing firms. Sometimes the term 'invention' causes people to think that patenting is only applicable to inventions such as Thomas Edison's light bulb, which simply isn't true. To uncover all of the potential patentable business processes in your company, ask yourself: What problem has my team solved and what competitive advantages has it created?

For example, Amazon.com devised a method for expediting online orders, known as the 'One-Click' system. The method allows a repeat customer to bypass address and credit card data entry forms, and they were granted a patent for this process in 1999. That system solved the customer problem of repeating data entry and created a competitive advantage by delivering a better shopping experience.

What evaluation criteria should CEOs use to decide if applying for a business method patent makes sense?

You should definitely do a cost-benefit analysis and you should consider how valuable the solution is to your business. Going through the patenting process can be expensive and the cost goes up depending upon the complexity of the application

and the number of countries where you'll need to apply. Filing the patent application should be completed before rights are lost through public disclosures or sales activity. Ask yourself how damaging it would be if your competitor had the same process. Ask yourself how much better off you are if you have exclusive rights to the process or system. Keep in mind that having patents and patent applications definitely adds value to your company, and early stage firms often garner higher valuations because they have patents and patent applications on file.

Must technology always be a factor?

Generally speaking, yes. The process or business methods that have been patented, particularly outside of the U.S., have been driven by technology or included a technology component. In Europe, for example, you can't get a patent on business processes that solve an administrative problem. Although, there have been processes that were patented that focused on creating a unique user experience, such as an online catalogue experience. Additionally, business methods have been patented in the areas of financial models, data analysis, tracking and measurement, system and process automation, software implemented solutions, and many other areas.

What's the best advice for CEOs to assure success with the business method patent application process?

Success is a function of the creativity of your team and your attorney's skill and experience. Identify potential areas for protection by identifying what problems your team has solved and what business advantages it has created. Analyze the potential value of each item so you can perform a cost-benefit analysis. Not all ideas are worth protecting. However, do not undervalue patent applications directed to what you think are business methods. They are often protectable, and they can be very valuable.

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