

THE USE OF PATENTS IN THE MICRO

AND SMALL COMPANIES OF PERU

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Micro and Small companies must keep in mind that patents can be a powerful commercial tool for their business growth. Innovation and entrepreneurship are factors that can determine productivity, competitiveness and increased profits of companies in a country with high growth and development of new technologies.

A patent is a property right granted by the State for an invention that is new, involves

an inventive activity and is liable of industrial application. The patent gives its owner, for a period of time, the exclusive right to prevent third parties from manufacturing, using, selling or importing a product or process based on the patented invention without his or her authorization.

On the other hand, micro and small companies in Peru are those made up of businessmen dedicated to the commercial or industrial area,

and other businesses that have a small number of workers and moderate incomes. In Peru, MYPEs (Small and micro-sized enterprises) constitute 98.3% of the country's economy and are the main source of employment generation in the private sector, since they provide abundant jobs, contribute to national income and the country's economic growth.

Nowadays, when a company develops a product it is



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important that they request its proper registration before the Peruvian Patent Office. It is important that they are aware of the intellectual property system, because in addition to providing a positive image of the company, patents are useful tools that help MYPEs to be more productive and competitive. Patents, as instruments of protection, can improve profit opportunities by providing exclusivity for the commercialization of an innovation.

Likewise, by making use of the exclusive property right of a patent, they can avoid engaging in illegal commercial activities or prevent third parties from trying to benefit from the development of their creations.

For example, if a small business owner develops an invention or a procedure that helps improve their fruit production and it is successful in the market, but does not arrange for its registration with the Peruvian Patent Office, it is likely that other companies will try to manufacture products with identical technical characteristics or very similar to those of their product, taking advantage of the effort that the employer and the workers developed for its elaboration and use it for their own benefit.

The exclusive rights granted

by a patent to its owner give him the possibility of preventing competitors from developing products or using processes that infringe their rights, as well as, the possibility to request compensation for the damages suffered. For this, it is important that all kinds of innovation or novel processes that the entrepreneur is using are registered.

For example, an agricultural trader who is familiar with the intellectual property system may work with new species, varieties or in the improvement of aspects in farming or animal husbandry methods by applying for the respective exploitation licenses of each variety or genetic resources that is protected.

Given that innovation in the agricultural sector is characterized in large part by the permanent introduction of new varieties, as well as by the techniques of crop management and livestock farms, having knowledge of the intellectual property system will help avoid possible legal problems that may arise.

If a MYPE puts a patented invention on the market, it gains various economic benefits, such as; selling the patent to another person or company; assigning the patent to third parties under license or other strategic

alliances with other companies.

To sell a patent, the patent owner must assign all rights of the invention to a company through a sales contract between both parties for the exploitation of the patent in exchange for an amount of money. On the other hand, through a license agreement, the licensor grants only some rights in order to authorize a third party (the Licensee) to use the patented invention for mutually agreed purposes. The agreements of transfer and exploitation of patents allow a company to obtain more income, and are quite useful if the company to which the invention belongs to does not have the capacity to manufacture a product that it wishes to commercialize or that its quantity in the market is not sufficient to cover a certain need.

On the other hand, through the use of patents, companies can also access new markets; For example, if a MYPE is considering to export any type of service or product, and possesses a patent of invention, then it can generate additional economic benefits through the transfer of patents under operating licenses. It is important to note that the invention must also be protected in the corresponding foreign markets.

Likewise, it is important to

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highlight that for a patent to have commercial viability and generate tangible benefits in a company; in addition to being novel, having a concrete utility and presenting a solution to a need of a large group of people, it must be actively marketed.

A patent in itself is no guarantee of commercial success, but if it complies with the elements above, a company's ability to benefit from its inventions would be increased, the company's bargaining power would be enhanced, and this way, the success of the company would be almost guaranteed to result in a high economic benefit.

Following the same line, as indicated by the World Intellectual Property Agency in one of its newsletters on innovation "the commercial success of a new product in the market does not depend solely on its technical characteristics. No matter how good an invention is from a technical point of view, if there is no effective demand for it or if the product is not marketed correctly, it is not likely to attract consumers. Therefore, commercial success also depends on other factors, including product design, availability of financial resources, the development of an effective marketing strategy and the price of the product compared to that of competing products or replacement products"

On the other hand, it is important to highlight that in Peru many MYPEs have a low tendency of patenting their products or services, since they believe that their creations developed are not inventions that can be protected. Likewise, many businessmen affirm that carrying out the process of registering an invention in Peru is difficult and expensive. The foregoing does not necessarily imply that there have been no attempts to obtain a patent; there is a significant number of applications that for different reasons are rejected or remain unfinished at some stage of the process.

For example, some of the applications for a patent of invention don't make it because they fall into the examination stage in a way that means that the applicant did not correct observations made by the Peruvian Patent Office, within the period established by Law. Other requests are withdrawn, since the applicant voluntarily requests not to continue processing the invention or, in most cases, fall into abandonment, which is an administrative instance where an application is submitted but the applicant does not respond to any of the requirements or observations established within the deadlines.

The lack of advice and adequate preliminary searches to determine the feasibility of

patentability, is explaining a high rejection of applications, once they are subject to advanced explorations on the state of the art.

A Peruvian company that has one or more patents will be more likely to increase its profits by having better market dominance, generating interest from potential investors, and even internationally, it will be able to expand and generate new market opportunities.

Finally, it is important to highlight that the Peruvian Patent Office is playing an active role in the implementation of the use of the intellectual property system in MYPEs. Through various programs, it provides advice and support in the protection of inventions, innovations or product designs of small entrepreneurs so that they can protect their economic interests and generate more growth opportunities.

Likewise, through its programs, protectable material is identified in inventions, innovations or designs, its patentability potential is analyzed and guidance and advice is provided for the adequate preparation of national applications for patents of invention, utility models and/or industrial designs that emerge from these developments.

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