

Subject: Business Metamorphosis September 2018 Newsletter

From: Business Metamorphosis LLC <rb lazey@businessmetamorphosis.com>

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To: rb lazey@businessmetamorphosis.com



Business Metamorphosis LLC



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Newsletter - September 2018

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Obviousness?

In order for an invention to be patentable it must be Novel, Useful and Unobvious. The first two criteria are easy to prove and rarely challenged by a patent examiner. The patent examination process usually focuses on the 3rd criteria, that of Obviousness.

The definition of Obvious used by that patent office is that if the invention could have been made by someone "skilled in the art" who had access to all the information in the world prior to the invention (the so called prior art) then the invention is not patentable. That person is often called "The Straw Man"

There are two recent articles in IPWatchdog which shed more light on these definitions. One [article](#) is a

Expedited Patent Examination for Seniors

I have just learned that the US patent office will offer their expedited service, which reduces the examination time from 18 months to as little as 3 months is free to those 65 and older. See Section IIIB of this [link](#).

Letters to the Editor
Section at the End of
this Newsletter

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Checkout the latest postings to our new [YouTube Channel](#). You can find videos on many of the topics covered in the newsletters.

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tongue in check essay written from the point of view of a teacher grading a students paper but using the patent office criteria.

The other more serious article explores the recent application of the obviousness principal to a chemical patent application. The issue dealt with in that article is the "expectation of success". The pro and con points of view were based on different hypothesis as to whether the prior art provided enough information for the "strawman" to have a reasonable expectation of success.

The difference in interpretation between the majority and the dissenters rested on an interpretation of the meaning of several prior art experiments and patents.

"The majority determined that prior art teaching was insufficient for a skilled artisan [the strawman] to have a reasonable expectation of success. To the dissent, however, the majority's analysis was flawed because it ignored the fact that the law required only a reasonable expectation of success, not a guarantee. One might say the majority viewed the glass as half full and the dissent half empty."

"As UCB shows, an expectation of success analysis can be highly fact-dependent and result unpredictable because of each side's distinct view of what the facts teach."

What these articles teach is that the meaning of "Obvious" is by no means clear and rests on the interpretation by the examiner of the case made by the patent attorney and significantly the supporting information that is provided. Not just the prior art patents but as is shown in the second article, the literature on the subject found in other locations such as journal articles and thesis.

In my experience these other sources are not often consulted in routine patent applications but when the stakes are high or when the application is challenged by another party either during or after issuance they all come into play.

So choose your patent attorney wisely and be sure you have access to the most relevant resources relative to your application.

BML can help you and your attorney find those resources. Just call or email.

Richard Blazey
Business Metamorphosis LLC
rnblazey@gmail.com
585-520-3539 www.bmlc.net

Non Core Licensing



Companies who have invested in a portfolio of patents to protect their core business are often unaware that those patents can be licensed to other companies for use in areas in which they do not compete. For example, a company made a very popular breakfast cereal based on a Granola formula and protected it with patents.

While they realized that the same cereal could be pressed into energy bars, they had neither the market channel, equipment or interest to enter that market. They didn't realize that they could easily license the formula for their granola to a company who was in the energy bar business owned the equipment and channels that they lacked.

One way for a company to determine the licensing potential of their technology is to "map" it. There are various companies

that do patent mapping and at one point our sister company BML offered that service.

A patent map plots the patents in a portfolio against a set of axes. In the BML patent map we used Technology, Market and Applications.

The Market axis can be used to identify companies that might be interested in the patents. Another thing that can be helpful here is to also include competitors patents in the patent map.

That is how we identified the Granola bar opportunity which was discussed earlier in this article.

It is not, however, necessary to go to the degree of complexity required of a patent landscaping to find licensing targets. Companies often have a good knowledge of their competitors and their products.

A good place to start is with a simple list of your competitors and their products. Identify those that are marketed to different customers or have different properties than your products.

For example for mechanical ,electronic and medical devices you can look at products that are used in more extreme environments than your product. Could your competitors who may have access to technology that you don't go after markets that you had never considered for your product?

One customer of ours makes a product to help clean out blood vessels in the brain. However it is not designed for blood vessels in other parts of the body and might be adapted for those uses by companies specializing in the heart, lungs or other organs.

ITTr may be able to help you to find those other applications and the companies that might be interested in licensing your technology to pursue them. Just contact us when you are ready to talk about it.

email rblazey@businessmetamorphosis.com
or give us a call at (585) 520-3539

Article 3



Business Structure and Size

This quarter OA has been reading "The Practice of Management" by Peter Drucker. One of the important issues that Drucker deals with is defining the management structure that is needed for each size of business. A common cause of business failure occurs when it grows beyond the structure needed for a particular stage of business and does not transition into the structure appropriate to its new size.

Drucker identifies 5 stages of business size: 1) The Single Person business 2) The Small business 3) The fair size business 4) The Large Business and 5) The Very large business.

Drucker tells the story of how a fair size business was completely destroyed by fire because the owner continued to try to run it like a small business where he controlled every aspect of the operations, something that could no longer be done at the stage of growth the business had reached.

One difficult problem in assessing when to change the structure of a company is in deciding what metric to use. Is it Revenue? Profit? Number of employees? All are possible choices but not necessarily the correct ones for a given situation.

Drucker recommends a careful consideration of this decision as part of the future planning process for the company. If these issues have been carefully thought through in advance there will be less likelihood of having to make a decision to change structure in a crisis or after the company has already entered a period of decline from staying with the old structure too long.

If you would like to talk about these issues, just call or email.

(585) 520-3539
rnblazey@gmail.com

We appreciate your responses to our newsletters. Please send us your comments. We are always interested in what you want to know. See the New **Letters to the Editor** link in the block below

Sincerely,

Richard Blazey
Business Metamorphosis LLC

Comments and Letters to the Editor

To Readers of the BML Newsletter:

Many of you have wished to comment on articles in the newsletter and up until now there has been no mechanism to do so. Now if you wish to comment you can just [reply to this article](#). Please mention the issue of the Newsletter (Month, Yr) and the title of the article you are commenting on. Add your name if you wish

Best Regards,

Dick Blazey

Disclaimers

Please realize that this newsletter contains only our opinions on patent matters. We are not authorized to give legal advice. If you are seeking such advice please contact an attorney.

Referrals Welcome

We are never too busy for your referrals. If you know someone who could benefit from any of our services, please introduce them to us by phone or by email. It will be much appreciated.

Business Metamorphosis LLC, 108 Timberbrook La, Penfield, NY 14526

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