E-business and intellectual property

Law

Companies may find that licensing is an attractive way to market their products in the United States particularly in industries wheretechnologycan quickly become obsolete. Licensing may be more effective and less costly than either exporting goods or establishing a branch or subsidiary. The U. S. government plays no part in promoting licensing in particular sectors. The U. S. system of patents and trademark licensing is highly developed and many licensing arrangements are possible between U. S. and foreign companies. Companies themselves may use licensing to tap into the domestic market expertise of U. S. companies but the disadvantage would be that companies may find the patent application and defence process to be expensive and time consuming and that licenses are subject to U. S. antitrust laws, such as the World Trade Organizations Trade Related aspects of Intellectual Property (TRIPS) framework.

When analyzing the legal issues of e-business and intellectual property, one must include privacy, ethics and security. The U. S. has well developed systems of licensing that protects patents, trademarks and copyrights. Each has its own set of rules and procedures. The U. S. Patent and Trademark Office (USPTO) of the Department of Commerce issues patents and trademark registrations. Any person who invents or discovers any new and useful process, machine, manufacture or composition of matter or any new and useful improvements of these may obtain a U. S. patent.

The Patent laws make no distinctions based on the inventors citizenship. It is legal and customary to require employees to assign their patent rights to their employers. The basic law specifying the subject matter for which a patent might be obtained and the conditions for patentability took effect in

1953 (Title 45 of the US Code). The Ominbus Trade and Competitiveness Act of 1988 amended U. S, patent law to expand protection for owners of U. S. process patents. A U. S. trademark relates to any word, name, symbol or device used in the trade of goods or services to indicate the source or origin of the oods or services and to distinguish them from the goods or services of others. Trademarks may be obtained to prevent others from using confusingly similar marks, but they may not be used to keep others from manufacturing the item or offering the services concerned. Trademark rights in the U. S. are now acquired through common law use requirements and not as in many countries, through first registration. U. S. law does not allow for the filing of intent to use application which provides a constructive first use date based on the filing date. A trademarks continued use, therefore is necessary for the protection to remain in force.

The Trademark Counterfeiting Act of1984imposes criminal penalties such as seizure, steep fines and possible prison terms for trafficking in goods or services bearing a counterfeit mark. Trade secrets are considered a form of property. Since enactment of the Economic Espionage Act in 1996, the U. S. Department of Justice has been granted jurisdiction over the protection of trade secrets. The departments' computer crime and intellectual property section is the responsible agency. Following the general guidelines of the trade secret doctrine the owner of a trade secret has the right to use it to his economic advantage.

The law protects the holder of a trade secret against disclosure gained by improper means, such as theft, wiretapping, or even aerial reconnaissance. Trade secret law does not offer protection, against discovery by fair and

honest means, such as independent invention, accidental disclosure or reverse engineering. The copyrights act of 1976 provides that the U. S. copyright protection is automatically extended to original works of authorship, at the time of their creation. This provides the owner with exclusive rights to reproduce and sell a work.

Works that can be copyrighted include motion pictures, sound recordings and computer software. So as we assess the different types of and legal protections for intellectual properties we see that the holders of a U. S. patent, trademark or copyright may sue the infringer through the U. S. Federal court system, though the process can be long and costly. The holder may also obtain an injunction and sue for damages.

References

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