

Patent And SMEs In Latin America: Chili

By Felipe Claro

The Patent Awareness of SMEs

Many Chilean SMEs have good ideas that never see the market, either because they don't know how to use the patent system in their favor or because they do not have access to good commercial partners. Sometimes, prospective partners simply copy the non-protected solutions and replicate them as their own. There is also a lack of local IPR (Intellectual Property Rights) management organizations that buy up idle patents and try to commercialize them among SMEs.

In spite of the above, more and more SMEs are realizing that patents, and more broadly IP, are really important to their commercial success. It should be considered that less than 4,000 patent applications are filed in the country every year, so the vast majority of worldwide patent filings (millions) directly go into the prior art zone, thus encouraging Chilean SMEs to take advantage of this valuable public domain subject matter instead of paying high royalties for few top of the art technologies that are not so useful to them. In Chile, depending on the field of technology, even a 25 or 30-year-old technology can be very valuable if correctly implemented. SMEs are reluctant or simply can't afford to pay high royalties.

WIPO should make an extra effort to provide complete information about PCT (Patent Cooperation Treaty) applications that don't enter the national phase, to permit SMEs to freely access those not so old non-patented technologies and use them in their favor to make an impact in the local market. These databases would give certainty to SMEs, who don't want to lose money by infringing IPRs. That information is crucial for SMEs in developing countries to discern how to navigate in the vast patent ocean.

The Government Policy to Promote Use of Patent by SMEs

The Government is educating SMEs about the convenience of using IPRs, and especially patents as part of their businesses. Generally speaking, the Government promotes patents through the following actions:

- It encourages people interested in developing non-conventional businesses.
- It drives companies to take risks and think of new ways to face challenges. To this end, it helps them to finance the creation and protection of new products, services or processes, or substantially improve those already under development. It is also concerned with the development of innovation projects.
- It seeks to support companies, so that through co-financing of projects and tax rebates, they can improve their management and innovation practices, to improve their productivity and facilitate their internationalization.
- It provides solutions to improve the access to financ-

ing of investment, innovation, entrepreneurship and development of companies of different sizes, deepening and developing more competitive markets.

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- It seeks to improve the competitiveness of the economy by strengthening human capital, innovation and productivity, in order to solve coordination failures and remove obstacles in strategic productive sectors.
- It promotes collaborative programs that connect companies, universities and technology centers.

How do SMEs use patents?

SMEs do not use patents as much as large companies do. Normally, they cannot afford costly investigation and instead of that they mostly adapt existing technology to meet new market requirements. Their approach to patents is more informal and have more flexibility to explore new solutions, which mostly lead to petty patents and industrial designs, where only novelty is required.

SMEs are more on the side of paying royalties than collecting them from third parties. When they realize about the importance of having their own IPRs and using them effectively, they can narrow the distance between status quo and commercial success, and also increase the company value. Proper legal advice is crucial to define if there is freedom to operate in the local market.

SMEs and Patent litigation

The limited resources of SMEs normally leads to affect their ability to enforce and litigate their rights in front of big entities. Many times they prefer trade secrets to patenting for this reason. They don't like being dragged by big companies into endless legal battles. In Chile there is not a patent litigation insurance scheme to give a hand to the SMEs as it normally happens in the Northern Hemisphere.

SMEs are mainly involved in patent litigation as defendants, trying to get rid of complainants accusing them of using patented material. This is especially common in the pharmaceutical industry, an area where important patent litigation takes place in Chile, regardless of the very low magnitude of patent litigation overall.

The patent culture is changing and younger entrepreneurs are more inclined to protect their IPRs, thus increasing the possibility of being involved in patent litigation not only as defendants, but also as patent owners seeking to protect and enforce their own IP assets. ■

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