

Employees are likely to be exposed to a company's Trade Secrets and of course they may move jobs from time to time. Employment contracts were described earlier (Section 29.6) and these generally expressly oblige the employee not to divulge the secrets of their employer, during and possibly after employment. National laws often require an employee not to do anything against the interests of their employer during their employment and not to disclose confidential information even after their employment has ended. It can be a complicated issue however, as the distinction between the ex-employee's personal technical skills and the "know how" of the ex-employer are not always clear.

## 29.8 Defensive publication

The opposite strategy to keeping something secret is to deliberately publish it. Although not strictly a form of intellectual property, this can be a valuable protection tool. By publishing details of a technical invention you prevent other people who subsequently have the same idea from patenting it. Your publication becomes prior art and means that any later patent application for the same invention is not novel. Publishing can be an appropriate tactic if you do not want to spend money on a patent, perhaps because the technology is useful but will not generate significant revenue, or because it would be expensive to enforce when patented. By publishing you ensure that your future options will not be blocked by someone else's patent. However, a decision to publish should be carefully considered because the publication effectively prevents you from obtaining a patent in the future if you change your mind.

The content of a publication made for this purpose is typically similar to the content of a patent. It needs to give enough details to explain how the invention can be put into practice, or "enabled". Although in principle any publicly available disclosure should prevent a later patent for the same invention, in practice you may want the publication to be readily found by patent examiners. There are companies which offer journals and online databases specifically for publications of this type, such as *Research Disclosure* and *IP.com*. Publications may be made anonymously if you do not want competitors to be aware of what you are working on.

## 29.9 Strategy

To be effective, companies should have a plan of how they intend to use intellectual property to reach their long-term aims. The intellectual property strategy is an integral part of the overall business and innovation strategy of the company. IP strategy can be considered on a number of levels; from the top level – how IP

fits with the overall business, to the lower level – how and where to protect an individual idea or development. The strategic approach chosen at each level should be aligned.

### **29.9.1 High-level strategy**

A fundamental point for an organisation to consider is, what do we want to use intellectual property for? Some companies aim to make money from the intellectual property directly, for example by creating or buying intellectual property specifically to license and sell to others. This can be coupled with other services, such as a development firm who sells a license for their technology, helps to install it and often provides continuing support to their customers. There are also companies who enforce patent rights against accused infringers in an attempt to collect licensing fees but do not manufacture products or supply services themselves. Such companies are known by their detractors as “patent trolls”.

The most common approach by companies in the chocolate industry is to use IP primarily to protect the products and services they sell against copying by competitors. If your product has an advantage that none of your competitors can offer, then you can increase your profits by selling more and/or being able to charge a higher price. That advantage could be technical, perhaps protected by a patent, or it could be due to the strength of your brand and the quality that consumers associate with the brand, perhaps protected by a trade mark. Similarly, protecting a process which provides greater efficiency or lower cost provides a commercial advantage.

Generally, intellectual property rights are expensive to obtain, maintain and defend. It therefore makes sense to have a strategy to identify the countries where you will try to obtain rights. This should be aligned not just with your current business, but also with your future plans. Patents can last for 20 years, but there is only a limited time after the first filing when you can file the same invention in other countries. Ideally you would file in any country where you expect to be doing significant business during the lifetime of the patent and where there is an effective patent system (or there is expected to be an effective system soon). As well as the countries where you manufacture or have significant sales, you might want to consider obtaining protection in major countries where your competitors operate, particularly protection via patents. This can provide an opportunity to make commercial deals with your competitors such as licensing, but you also might want to avoid competitors becoming strong through exploiting your innovations in a market where you do not operate and then using that strength to compete against you with other products in your home market. However, the choice of where to obtain IP rights must be balanced against cost, and based on a realistic assessment of future opportunities and threats. For a small company it may make sense to concentrate IP protection solely in the home market. Even large companies typically do not have patent protection in every country where they operate. The choices need to be thought