

How to protect your intellectual property and leverage it to fund commercialization

Whether your company is commercializing products or providing new or improved services, Intellectual Property (IP) is one of the most important assets for technology-based companies as it relates directly to cash flow generation. In the long term, the protection of your IP is the key to controlling all potential revenue streams from your invention.

During the development of IP, companies can take advantage of lucrative federal and provincial Scientific Research and Experimental Development (SR&ED) tax credits to help generate annual cash flow which can be reinvested in continued development and eventual commercialization of newly developed technologies. There are many similarities between the SR&ED tax credit and IP patent application filing processes, and therefore gaining a full understanding of both can help you fund commercialization and future development of your invention.

Is IP ownership right for your company?

The main benefits of securing a patent for your invention are reinforcing the value proposition of your business and providing a strong negotiating position for partnerships by creating a legally meaningful barrier to entry for your competitors. As such, IP plays a crucial role in giving companies an innovation-based advantage that can help secure new markets and prevent competition for the duration of the patent. Conversely, protecting an innovative advantage that is not part of your value proposition does not provide as much benefit to your corporation. Therefore, from a financial perspective, your company needs to conduct a forecast to ascertain whether your research and development expenditures relative to revenues from the addressable market justify the costs of securing a patent.

From an intellectual property perspective, the general requirements for patentability include statutory subject matter, novelty, inventiveness, and utility. More specifically, a process, machine, manufacture, or composition are eligible for a patent if they are unknown to the public, involve an inventive step, and are susceptible to utilization for industrial applications.

Exploiting SR&ED and IP synergies can save time and resources

While most companies are familiar with the SR&ED tax credit program, as well as with IP, many are not aware of the numerous similarities between information required for patent application filings and for SR&ED tax credit submissions. Through the SR&ED program, the Canada Revenue Agency (CRA) offers tax credit incentives and refunds for companies that perform Research and Development (R&D) in Canada. Created in the mid-1980s to encourage technical development in Canada, the SR&ED program provides an average of over \$3 billion to Canadian companies each year.

To be eligible for SR&ED tax credits, your company must demonstrate that a systematic investigation was conducted to overcome a technological uncertainty and a technological advancement was achieved. The SR&ED requirement for technological uncertainty bears resemblance to the novelty requirement for patentability, as this uncertainty means that there must be a question without an established answer, in a viable field of science, which can only be resolved through experimentation based on a formulated hypothesis. Meanwhile, the systematic investigation component, which verifies the initial hypothesis, is akin to the inventiveness criterion for patentability, although the SR&ED program constrains eligible investigation work to that which strictly follows the scientific method.

Patentability criteria for utilization with regard to industrial applications

Finally, the SR&ED program requires that the experimentation leads to a conclusion that advances the technological base in a meaningful manner, such that it can be applied to future projects. This parallels the patentability criteria for utilization with regard to industrial applications.

The similarities between SR&ED and patent application processes can be leveraged to make filing a patent in parallel with submitting SR&ED tax credits easier for your company. This can minimize application costs, reduce overhead, and ensure compliance by consolidating both processes in an efficient manner, thus enabling your company to harness the full commercial value of your innovations.

Gerry Fung is a Professional Engineer with a CPA, CMA designation who has been involved with the SR&ED program since 2003. Gerry holds a B.Sc.E. (Computer/Electrical) from Queen's University, an M.A.Sc. (Biomedical Engineering) from the University of Toronto and an MBA from Wilfrid Laurier University. Gerry's practice at NorthBridge Consultants focuses on advising

companies how to access government funding programs in order to finance projects for innovation and growth.