Patent and Business Opportunities in the World of Digital Technologies

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Copyrights are important for source codes and compiled data protection, as well as graphic design and video in the case of apps. In addition, apps names and logos may be protected by trademarks, and icons by design registrations. Trade secrets may keep exclusivity of at least core parts of the technology.

There may also be opportunities to patent inventions arising from the now ubiquitous digital technologies. However, what is eligible for patent protection today in these fields is still not clear and varies depending on the countries.

In the important US market, the Supreme Court decision *Alice Corp. v. CLS Bank International* acknowledged that applying abstract concepts in the IT environment will not suffice to transform such concepts into patentable items.

In Canada, as laid down by the Federal Court of Appeal in *Schlumberger Canada Ltd. v. Canada (Commissioner of Patents)* and more recently in *Canada (Attorney General) v. Amazon.com, Inc.*, a data-processing technique may be patentable if it is “one of a number of essential elements in a novel combination.”

A first step still remains to identify what makes a technology different and desirable compared to your competitors and how these characteristics can be translated into subject matter that can be precisely described and *patentable*. For example, by digging behind the algorithmic aspects of an invention and into its electromechanical features; or, in the case of software applications such as those frequently found in smartphones, deeper than the algorithmic treatment of information into the concrete actions performed on starting data to effectively obtain end transformed data by relating robots and their way of processing information, such as needed for the robots to learn new skills. For instance, in the car industry, how can you relate your innovations in artificial intelligence to

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mapping, sensors and connectivity?

As in any other field, one must consider whether the invention is also non-obvious and if it is *worth* patenting considering the company's strategic goals, and the shelf life of the innovative features in light of a rapidly evolving technology. A careful review of the prior art to identify patentable subject matter, as well as of the company's overall business, development and IP strategy are required.

Despite a number of caveats, a review of patent opportunities should be done in a comprehensive IP strategy planning to optimize the commercial value of digital technologies.

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