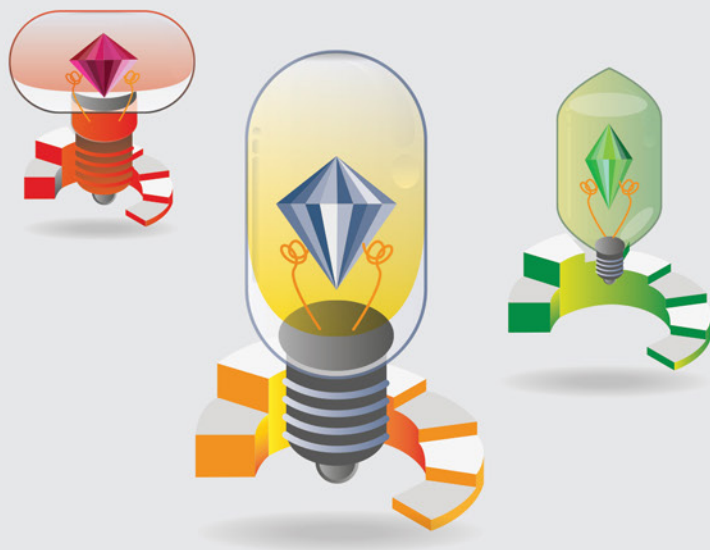


KNOWING YOUR COMPETITION

Tapping on intellectual property information for business intelligence





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Introduction

One of the core principles of intellectual property is that it should relate to a unique and individual creation. The international IP framework provides you with a means to reap the rewards of creative or inventive activity like this by providing you with monopolistic rights over the use of the asset you have devised. Whichever type of IP right you obtain, however, it may be open to challenge if it transpires that your creation or invention is not as unique or individual as you first thought.

When your company devises a new 'piece' of IP, whether it is a new potentially patentable solution to a problem, novel design, unique trading name/style or original copyright-protected content, it is important to know whether it is genuinely new or whether some other company has thought of the idea before. If your idea is not new, depending on the type of right and scope of protection, you may not have rights to use it.

It is best to know the facts as early as possible before significant sums have been invested in development so that you can decide whether to pursue your current line of activity or rethink it. This guide examines both freely available and paid commercial services for searching patent, trade mark and design databases (as copyright does not require official registration, similarly comprehensive databases do not exist for it).

As well as considering how you can use them to determine whether your idea is novel, what protection might be available for it and whether your activities might infringe anyone else's IP, the guide discusses strategies you can employ to determine if a third party is using your IP without permission.

Once you are familiar with database searching, you will find that these services can also be used strategically. They can help you identify new areas where your innovation efforts could be profitably focused, get a better idea of what your competitors are planning, and find new potential customers/suppliers or distributors for your products or services.

If any of the intellectual property terminology used in this report is unfamiliar, you may find it helpful to refer to another guide in this series —**Safeguarding Your Competitive Edge**.

Produced by IPOS International, these intellectual property management (IPM) business guides aim to deliver a suite of IP solutions for enterprises based on industry best practices. As the expertise and enterprise engagement arm of the Intellectual Property Office of Singapore (IPOS), IPOS International helps enterprises and industries use IP and intangible assets for business growth. Some of these engagements may be eligible for Enterprise Singapore (ESG) funding, such as the intangible asset audit and strategy development aligned with business goals. IPOS International's business portal www.iposinternational.com also contains case studies and videos of enterprises leveraging IP to gain a competitive edge in their innovations. Should you have questions on IPM matters or wish to speak with our Intellectual Property Strategists, do email us at enquiry@iposinternational.com or call +65 63308660.



Searching for patent information



01

1. Searching for patent information

Why is patent searching important?

It's possible to file a patent application without conducting any searches at all—and sometimes, if matters suddenly become time-critical (for example, when an invention is about to be disclosed in a publication), it can make sense to

file quickly just to establish a priority date. However, there are a number of reasons why having a clear idea of where your invention sits in the patenting 'landscape' is advantageous; here are just three of them.

1. The first reason is a simple budgetary one: the patenting process is quite expensive. After the initial filing, which will require the services of a patent agent, you will have to bear further costs for search and examination, prosecution, grant and renewal as well as applications to extend the scope of protection to other countries, together with any associated translations. There is usually little point in bearing these costs if there is no realistic prospect of obtaining protection, as any marketing benefit you can legitimately derive from 'patent pending' status is likely to be short-lived.
2. The second reason relates to disclosure risk. When your patent is published which generally happens 18 months after filing (unless your application has been accelerated), anyone else in the world can find out about your invention. They can then challenge it if they consider it as infringing on their existing IP (NB in some countries this can be done pre-grant, however in most countries, it is linked to the patent grant procedure; in Singapore only after the patent is granted). If such a challenge is successful, you will lose the chance of obtaining a patent and no longer have the fall-back possibility of protecting your invention as a trade secret since it is already published.
3. The third reason relates to litigation risk. Out of the entire IP family, patent infringement cases are generally the most expensive to defend (or to pursue), particularly if they involve the US market. It is difficult to win such cases if your adversary is large and well-funded (and not all territories always enable you to recoup your costs even if you do win). If you lose, you could find yourself facing an injunction that could prevent you from trading in the affected goods or services altogether in certain countries. So the 'stakes' are quite high.

“Searching can help you avoid unnecessary cost and reduce your business risk exposure”

Accordingly, while database searches cannot tell you everything—for example, you can't retrieve information about patent filings that are yet to be published—they can prevent you from running unnecessary business risks.

What types of patent searches are typically performed?

There are a number of different types of patent searches that can be conducted. Generally, these searches are divided into three categories (though the terms may vary a little): patentability/prior art, freedom to operate and patent landscaping.

Each of these search types has a different purpose. They will find different patents and cover different aspects in varying levels of detail. Sometimes the results are presented graphically and at other times in a table or free text format.

This range of searches exists because your motivation for performing them may vary quite widely. For example, you may want to know whether the idea you have had is new, whether you will be able to launch your new product or will need a licence or what patents your biggest competitor owns.

Figure 1 below lists some of the most common reasons for searching a patent database and the type of search that is normally performed in each case.

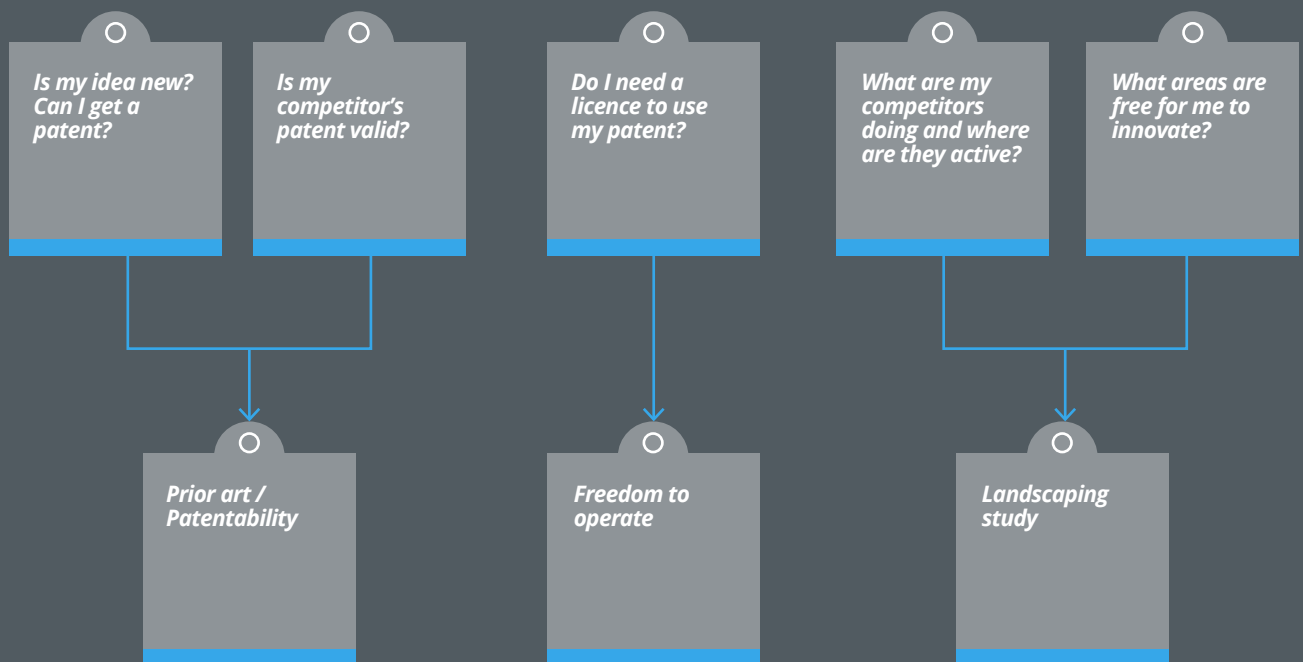


Figure 1. Reasons for conducting patent searches

What are the main differences between these types of searches?

The approaches used and results obtained from these three main types of search vary considerably. It's important to choose the right one in order to make sure that the information you obtain will answer your primary question as accurately as possible. This brief guide should help you make the correct choice.



Prior art

A prior art search (also sometimes called a patentability search) attempts to find other previously published material (usually amongst patent applications, scientific references and journal articles) that predates your application (i.e. they were filed before your priority date). It looks for material that may make the invention being searched invalid for

1. Searching for patent information



patent protection on the grounds that it is not novel (i.e. it is not totally new) or not inventive (i.e. it is obvious based on what has already been published).

This type of search is typically performed early on in the invention process, once an idea has been formulated and before a patent application has been filed, so that an assessment of the chances of obtaining a granted patent can be assessed. It is the type of search that a patent examiner will perform during the granting procedure. It can also be used to invalidate a competitor's patent by showing that it should not have been granted, due to existing prior art that was present when the patent was filed.

A **freedom to operate search** (also sometimes called an infringement search, a clearance search or a right to use search) is much more detailed, costly and complex to perform than a prior art search. It is sometimes needed owing to the fact that a patent is a negative right, in that it prevents a third party doing what is outlined in your patent claims. It is not a positive right—it does not give you any rights to do what is in your patent. Therefore, when you try to practise your invention in a particular country, you would need to check whether there are any patents that are preventing you from doing what is outlined in the claims of those patents.

It may be that you have a perfectly valid granted patent, but you are unable to practise your invention without accessing an invention belonging to a third party by means of taking out a licence. As a simple example, you might own a patent that describes a clever use of a widget of some type. However, a competitor holds a patent to the widget. Therefore, to be able to use the widget according to the manner outlined in your patent, you would need to legally obtain the widgets; this may require a licence from the competitor.

A freedom to operate search examines each aspect of your invention and assesses whether it is likely that you will be infringing another company's patent or whether you are free to practise the invention described in your patent claims. Unlike a prior art search, which looks at documents published across the world and looks for both patent and non-patent literature, a freedom to operate search focuses solely on patents (and sometimes pending patents) in a specific territory.

“Make sure you conduct or ask for the right type of patent search based on the question you need to answer”





Landscaping study

A **landscaping study** does not look at a specific invention but instead examines an entire technological area. It examines which companies are filing a lot of patents in a particular technological space; what aspects of this technology they appear to be focusing upon; and where 'hot-spots' lie compared with regions where there is little patenting activity.

A landscaping study is a strategic tool, useful for assessing your company's strengths and weaknesses compared with your competitors, finding areas where your innovation efforts should be focused and identifying areas where you and a competitor may be clashing.

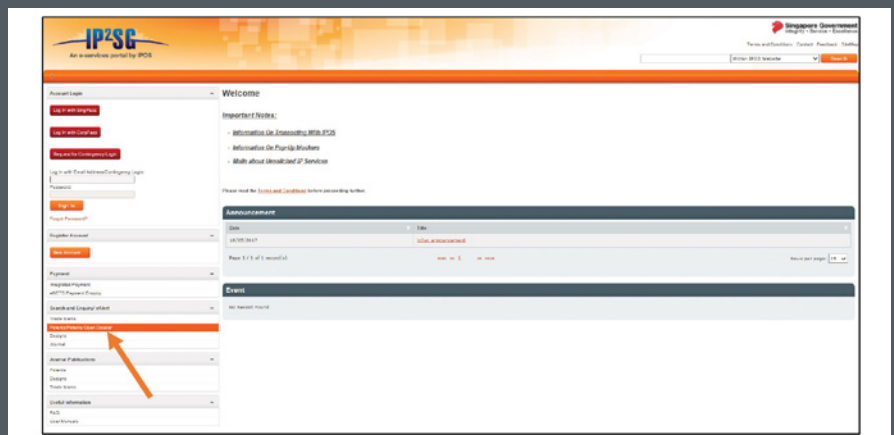
Which public patent databases are available and what information do they contain?



There are a number of patent databases available that are free for you to search. These databases allow you to find patents based on a range of criteria. These include keywords in the abstract or full text of the specification, the detailed classification of the subject matter of the patent specification, and the inventor or owner identity.

Patent owners are given rights that are sometimes described as 'monopolistic'. In fact what the patent provides is the right to stop others being allowed to practise the specific invention for a period (usually 20 years), in exchange for publicly disclosing how it works.

Public disclosure is thought to be beneficial for society in general because it allows others to improve and build upon an idea, and provides details that others can use once this 'monopoly' period is over.



“Espacenet, Patentscope and Google Patents are popular free sources of patent information”

For this reason, most countries have publicly accessible databases of patent specifications (whether they are in force, applied for or lapsed) that can be used to examine the content and legal status of patents in their jurisdiction. For example, to check the status of a patent application in Singapore, the Intellectual Property Office of Singapore (IPOS) provides its own *IP²SG* service; similarly, to check the status of a US patent, the US Patent and Trademark Office (USPTO) provide a service known as *PublicPair*.

1. Searching for patent information

“Work performed by agencies should be formally assigned to your company”

Perhaps the two best-known services, both of which offer access to data aggregated from many registering bodies are the Espacenet service and the Patentscope service. Espacenet is run by the European Patent Office (EPO) and hosted both directly by the EPO and by a number of contracting states; Patentscope is run by the World Intellectual Property Office, an executive body of the United Nations.

The Espacenet service contains full-text patents from a large number of countries, covering bibliographic details and abstracts from over 90 million patents and patent applications worldwide. It has sophisticated searching capabilities and links to the prosecution histories of the patents in a number of countries (known as the Global Dossier). It is relied on by patent professionals across the globe.

The Patentscope service began by listing international applications filed under Patent Cooperation Treaty (PCT) provisions but quickly moved to listing national phase applications derived from the PCT and other national filings. It now contains details of over 58 million patents and patent applications.

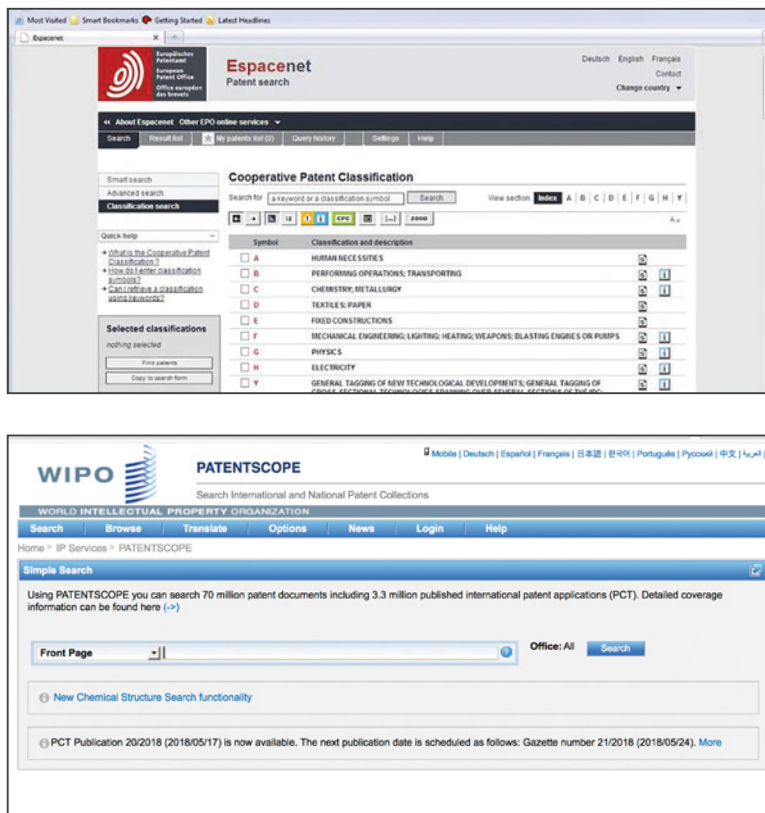


Figure 3. The Espacenet and Patentscope patent searching services

There are also a number of free patent databases available from the private sector. Probably the best known and most commonly used is the service offered by Google. At the time of writing, the Google Patents database contains full-text of 15 million patents from a number of countries and organisations including United States, Japan, China, South Korea, Germany, United Kingdom, France, Spain and a number of other European countries as well as EPO and WIPO.

The Google Patents interface is relatively simple to use and it allows searches based both on text and classification codes (see next section).



However, it should be noted that some professional search firms and patent examination offices avoid using Google; this is because previous search terms may, at times, be shown as suggested search terms to future users of the service, and this might, in some territories, be considered prior disclosure. Caution should, therefore, be exercised in using Google Patents if the search is sensitive.

How do you search a patent database using keywords or classification codes?

Efficiently finding the information you need in a large patent database requires a degree of skill and experience. It generally involves the use of complex queries containing logical operators, and the use of classification codes to narrow down the search. Various materials are available to help you.

Clearly, to find the relatively small number of patent specifications that are relevant to your business from a global database of over 90 million documents, you will need to use quite sophisticated search strategies. If a poor strategy is employed, either a large number of documents with little relevance will be returned from the search and will have to be filtered out, or a vital document will be excluded.

Fortunately, WIPO offers a number of detailed video tutorials on how to perform a simple, category-based and more advanced search of the Patentscope database. Similarly, Espacenet offers detailed tutorials on how to search its database. Both organisations also run regular training webinars to assist users in patent database searching techniques.

During the examination process, patents are allocated to one or more classes depending on the technology involved. These hierarchical classification systems, known as International Patent Classification (IPC) or Co-operative Patent Classification (CPC), allow patents to be categorised in detail according to the exact subject(s) of the invention. If you know the CPC or IPC code of a technological area you are interested in, it is often more efficient to search for patents in this area using that specific code than it is to rely on keywords.

“To efficiently find the most relevant information in a patent database often requires complex queries and the use of classification codes”



When keywords are used, it is important to think of as many synonyms as possible and to use ‘stemming’ (e.g. using the query term ‘rotat*’ to match the words ‘rotate’, ‘rotating’, ‘rotated’ and ‘rotator’) to ensure that relevant patent documents are not inadvertently excluded from the search results.

If a number of synonyms are discovered (for example, you may wish to use ‘rotating’, ‘turning’, ‘twisting’ and ‘spinning’), it is possible to combine these with ‘AND’, ‘OR’ or ‘NOT’ operators.

1. Searching for patent information



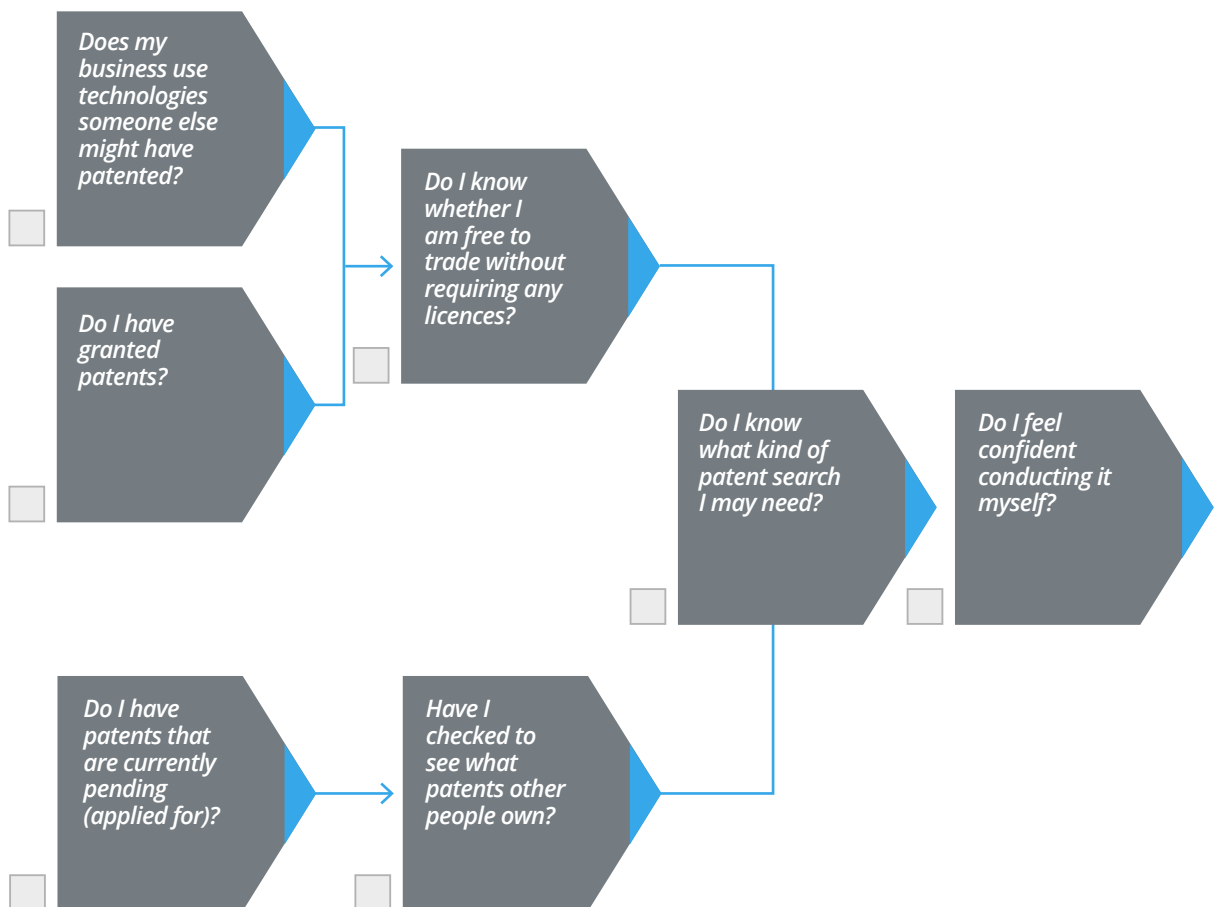
Another very useful operator is 'NEAR', which allows you to search for two words which are close to each other in the text—this can be used to exclude false positives where these two words appear in a patent document but are not related to each other. Separately, it is also possible to search for a number of words that are found in the same sentence or are adjacent to each other.

Using these advanced keyword searches increases the relevance of the results, though the search terms used can become quite complex.



SUMMARY

The following chart provides you with a set of high-level questions to help you determine whether patent searching is relevant for your business. And if so, how you might go about gathering the required information.





Source of information on other IP rights



02

2. Sources of information on other IP rights

Why should I search before registering trade marks or designs?

Before you launch a company or even a product or service you intend to brand in some way, it pays to make sure that the name you want to use is available. Similarly, before you launch a new product that has strong visual appeal, it's best to ensure it is not already in use or protected. Here are some reasons why.

“It is important to determine who has similar trade marks to the ones you are intending to use as early as possible whether your intended trade mark is similar or identical to any of those already in use by others.”



Risk management and safeguarding your investment

Risk management and safeguarding your investment — If you had invested substantial sums of money developing a name or identity, or a design for a product and only to discover later that it is already in use or protected by someone else, that investment will be down the drain. The owner of the existing brand or design will have the legitimate power to stop you from trading with it.



Gearing up for international business needs

Gearing up for international business needs — As explained in the first guide in this series—**Safeguarding Your Competitive Edge**, IP protection is territorial in nature. If you plan to expand internationally now or in the future, it is helpful to know at an early stage whether your brand and/or design has a strong distinct identity overseas. In the case of designs, you need to find out whether this is the case early on, as you have a limited time window within which to extend an existing design registration to other countries.



Room to grow your business

Room to grow your business — The scope of protection for trade marks relates to classes of goods and/or services specified in the registration. It does not mean that you are able to use your mark once registered for all goods and services. You might be able to use the brand you have created for one particular class of goods/services but find yourself restricted when it comes to other classes. Hence it is important to consider registering those classes that you are using or may venture into in the future (however, be aware that you may need to provide evidence of use or intention to use in such classes).



Know what your competitors are doing

Know what your competitors are doing — By conducting a search, you will be able to understand what kinds of trade marks or designs your competitors are using or seeking protection for. You are also able to sense the type of goods or services your competitors are venturing into. This gives you an edge for your business planning and strategising.



Strategise
filing
decisions

Strategise filing decisions — Pre-filing searches enable businesses to get an early indication of potential conflicts in the respective territories and allow them to strategise their filing decisions accordingly. This can mean potential cost savings in filing and legal fees subsequently.

What trade mark databases are available and what information do they contain?



There is no single database you can access that will give you complete information on trade mark usage across the whole world. However, there are a number of free services you can consult in order to determine availability, depending on where you want to trade.

To determine whether a mark is available for registration in Singapore, it is possible to use the IPOS IP²SG to conduct a search. This tool not only allows you to search for marks owned by a particular company but also allows similar mark searches on text and/or figurative elements as well as the classification of goods and services.

“Registering a trade mark in Singapore does not automatically grant you rights elsewhere – these will need to be applied for separately”

Besides searching the Singapore database, it is also important to search more widely in other countries for which you intend to trade in, since owning/registering a mark in Singapore does not give you any rights to use the mark elsewhere in the world. Within the ASEAN region, it is possible to use the ASEAN TMview service. At the time of writing, this service covered over two million trade marks and trade mark applications from Singapore, Brunei Darussalam, Indonesia, Cambodia, Lao PDR, Myanmar, Malaysia, Philippines, Thailand and Vietnam.

If you are thinking of trading outside the ASEAN region, the main international databases for searching trade marks are TMview and WIPO Global Brand Database will be helpful. TMview, for example, is run and hosted by the European Trade Mark and Design Network (TMDN) and funded by the European Union. It contains details of trade mark applications and registrations from most EU countries, WIPO, the US, Mexico and Canada. It does not, however, contain information of trade marks filed or registered in Singapore or most other Asian countries to date (only Cambodia, India, Japan, Korea, Malaysia and Philippines are currently listed on TMview). The Global Brand Database from WIPO has a wider database from 35 national and international connections, including Singapore trade marks.

How do I check that the mark I want to use or protect is available?

A similar trade mark search can be conducted on the IP²SG search platform by entering the text or keywords describing the mark or figurative elements in the mark and using the NICE Classification of Goods and Services to restrict the search to certain classes of goods and services. The TMview search tool allows a more precise figurative element search by using the Vienna codes as defined by the Vienna Classification system.

A trade mark's main function is to help consumers identify the origin of a particular product or service, and thereby guarantee on their quality. A trade mark ensures that consumers do not unwittingly purchase the product or service from a different party because it is using a mark similar

2. Sources of information on other IP rights

to the one they have come to associate with the goods and services they sought for. Although a trade mark is mostly associated with a specific range of goods and services, it is possible for the trade mark owner to use the same mark on different or related goods and services, for reasons like brand extension and brand loyalty. Hence it is also fairly important to know if your proposed mark is available for related goods and services before you embark on further decisions.

However, not all trade mark owners would want to use the same mark throughout their course of trade, particularly when a strong reputation for a certain category of goods/services has already been established, and using the same mark for another range of goods/services may diminish the uniqueness of the mark.

“As goods and services are classified into different classes, a trade mark search can be narrowed by specifying which class(es) are relevant to your trade”

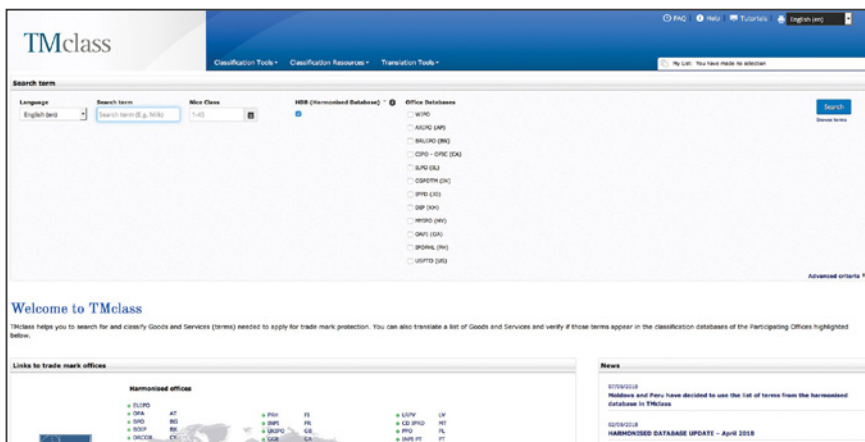


Figure 4. The TMclass tool can be used to determine which class(es) your goods or services fall under allowing you to narrow your trade mark search

Relevant classes search

To ensure that your search is comprehensive yet precise, it is possible to narrow your trade mark search using the NICE Classification system. This classifies all goods and services into 45 different classes. You can ascertain which class (or classes) your goods or services fall under by using the TMclass tool.

Searching for a word mark or composite mark (a mark that consists of a combination of words and figurative element(s)) is a relatively straightforward process. Both TMview and the IP2SG search facility allow words to be entered and results can then be returned which are either identical or are similar to the entered word(s). The IP2SG search facility also allows a search to be performed based on one or more Chinese characters.

Given that many trade mark laws are such that a trade mark may not be registered if it is identical or similar to earlier marks, or could cause confusion due to a similar or identical mark filed earlier in relation to similar or identical goods and/or services, it is wise to conduct searches of similar marks for identical/similar goods and services. For example, a spelling variation of an earlier mark may still sound the same and be rejected by a trade mark examiner. Therefore care should be taken when choosing a new trade mark to ensure it is not similar to an earlier mark.

“Searching for identical or similar marks is relatively simple by entering the key word(s) or words describing the mark and/or the figurative element(s).”

Figurative element search

IP²SG allows a keyword to search a list of figurative elements for which that keyword relates to (see Figure 5).

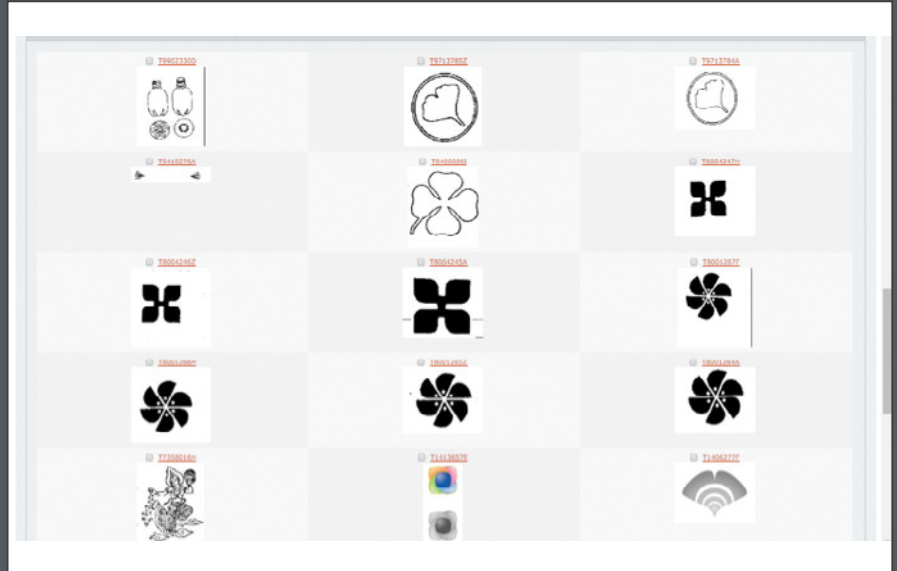


Figure 5. Extract from a search on IP²SG for image marks using the keyword 'Petal'

Instead of using a keyword, TMview uses the Vienna Classification to classify figurate elements of marks into categories, divisions and sections on the basis of their shape. This helps to facilitate and refine trade mark searches. Whether you choose to use the IP²SG keyword-based tool or a Vienna code-based search, search results may be very different and will have to be carefully examined.

Common law search

Common law rights exist in Singapore (and in some other countries like the UK or Australia), which give the owner of an unregistered trade mark rights to stop you using the same name, logo or trade mark (also known as "passing off") whether you have registered it or not. It is important therefore to consider a common law search also.

Common law searches typically consist of a company name search, a domain name search and a search of the internet using standard ISPs. Although such searches are difficult to be 100% accurate, they may identify similar marks that are not registered and you may wish to avoid.

(Note—in the long run it may be cheaper to register a trade mark as it provides you with stronger rights. To rely on common law (unregistered trade mark) rights, you must prove you have used the mark for a sufficient period and built up a significant reputation).

2. Sources of information on other IP rights

What public design databases are available and what information do they contain?

There are a number of databases of registered designs publicly available and it is wise to search as many as possible to widen your search territory due to the database limitations for different countries. Within the ASEAN region, it is possible to use ASEAN Designview, and for Singaporean designs, it is also possible to use the IPOS tool. Further afield

the international Designview database or WIPO's Hague Express database should be consulted.

There are a number of options available when searching for a registered design. The IPOS IP²SG tool contains up to date information on all designs registered and applied for within Singapore. It is also possible to search for Singapore-based designs (and designs from the wider ASEAN region) using the ASEAN Designview tool.

If you are planning to protect your design or trade outside the ASEAN region, the main international databases for searching registered designs is Designview or Hague Express database. It contains details of designs from most EU countries, international (Hague Convention) registrations, the USA, Mexico, Canada and China.

However, searching for registered designs based on their shape is notoriously difficult. The shapes are classified into one or more Locarno classes which are granular and complex (details of this classification system are available from the WIPO website). Both IP²SG and Designview offer the facility to enter the Locarno class and subclass; however, such a search is likely to produce a large number of very dissimilar designs. For example, a Designview search for designs in Locarno class 03 and subclass 01 displays all designs registered for any type of trunk, suitcase, handbag or carrier, generating a large number of matches.

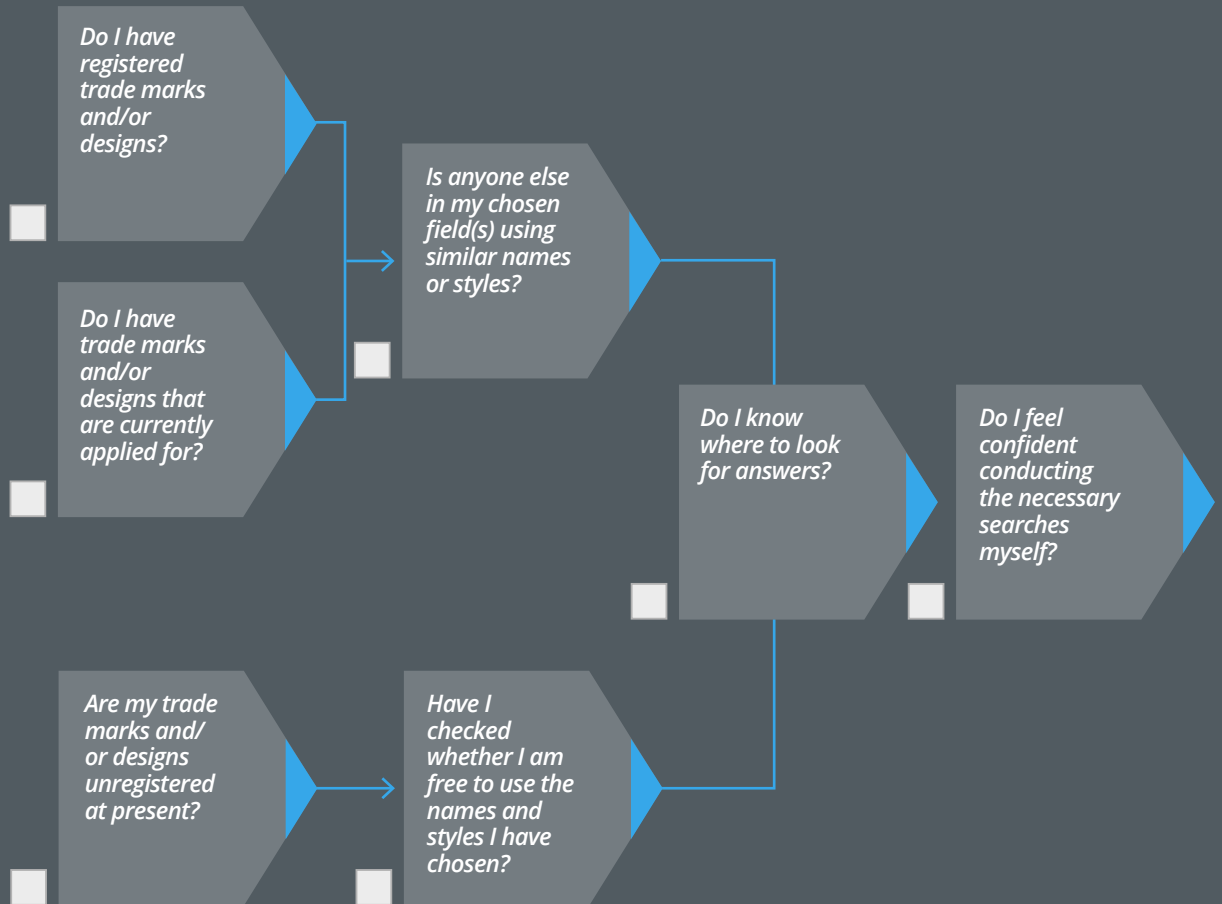
It is usually less problematic to search for a design based on its owners/ assignees, or on the number allocated to it, but this means you have to know who or what these are first. Using either the IP²SG tool or Designview in this way is a relatively straightforward process and will find all designs registered to a specific entity (or details of a specific design, if the registration number is known).

“Due to their granular classification, a large number of design results have to be examined to find ones of relevance”



SUMMARY

The following chart provides you with a set of high-level questions to help you determine whether trade mark and design registration searching is relevant for your business, and if so, how to go about it.





Commercial services providing IP intelligence



03

Which services specialise in IP searching and landscaping?

In addition to free intellectual property searching services, which are often provided by the government organisation granting the rights, there are a number of commercial providers of search, display, management and monitoring services that can be used.

Although free and useful for general searching, government IP databases sometimes lack sophisticated search criteria, comparison or graphical display methods that can make the searching and/or understanding of large selections of IP rights easier. Most services identified in the following table offer a free trial, and they all have detailed examples of their uses and features available free of charge.

The table below highlights some of the larger and more popular commercial services that are available. Please note that IPOS is unable to recommend any commercial service and does not represent that the list in the table below is comprehensive.

Company/Product	Main services offered
Acclaim IP/Anaqua	Advanced patent searching, data collection and analytics including optionally a number of visualisation tools.
Ambercite	Patent search and family cluster searching both using a search tool (Amberscope) and a per project Network Patent Analysis service.
Clarivate Analytics	One of the largest players in the market, providing search tools as well as producing bespoke reports and insights for companies. The company's products include the Thomson Reuters set of tools and services (which also extend to trade marks).
Google Patents	This free service allows searching of both patent and non-patent literature based on keywords, inventors or company names.
Innography	Provides IP analysis software that uses advanced analytics and visualisations to assist in developing an IP licensing, patent or litigation strategy. It also provides detailed company hierarchy and USA patent assignment databases.
PatBase	Allows a user to search, save, share, analyse and export patent data.
Patent Buddy	Advanced analytics helps users gain insights into patents, patent owners and inventors by compiling portfolios or patents and providing a detailed analysis of the patents in a portfolio.
PatSnap	Uses machine learning and artificial intelligence algorithms to search and analyse patent databases.
Questel	This company makes the Orbit tool which offers a number of services including patent quality analysis (based on citations and other patent data), competitive intelligence and landscaping studies and prior art searching.
SIP	This company has a detailed full-text patent database with comprehensive searching and result storing capability. It also provides a watch and legal status monitoring service.

3. Commercial services providing IP intelligence

If you do not want to do a search yourself or feel you could benefit from the services of an external third party, there are a number of companies who are willing to provide a search service. In addition to the government officials who perform a prior-art search as part of the patent prosecution, it is also possible to obtain a search on a bespoke basis from a number of the companies listed on page 21.

Patent attorney firms also often offer a patent search service (which they sometimes perform in-house and at other times outsource). It is also possible to use one of a number of specialist patent search firms that may offer competitively priced options.

Finally, it is also possible to use a company that uses crowdsourcing (e.g. Patexia or Article One) to perform a search (although as this would be classified as public disclosure, their use is better suited to searches for invalidity rather than patentability).

Most of the services listed above are focused on patents. However, there are also a few commercial services available that address trade mark searching (of registered trade mark databases and/or common law searches). In addition, one service seeks to solve the issue of image mark comparison by the use of image recognition software to find similar marks. Although this service does not, at present, consult image marks registered in Singapore, it will compare an image with trade marks registered in a number of large jurisdictions (primarily the USA, European Union and Australia) and also compare the marks to images from Google images, on the Apple App Store and Google Play store.

“Commercial databases offer additional services or search capabilities that are not available in official databases”



SUMMARY

You can use the following questionnaire to help you determine whether professional help with IP searching might be an attractive option. The more ticks, the more likely it is that investment in this area would be beneficial.

#	QUESTION	<input checked="" type="checkbox"/>
i)	My area of activity is technically very complex.	<input type="checkbox"/>
ii)	I have a lot of direct competitors.	<input type="checkbox"/>
iii)	I work in a field where competitors are actively patenting.	<input type="checkbox"/>
iv)	I don't feel I know who all my competitors are.	<input type="checkbox"/>
v)	I need to know more about the rights my competitors own.	<input type="checkbox"/>
vi)	I know there has been litigation activity in my field.	<input type="checkbox"/>
vii)	I am concerned that someone has been infringing my rights.	<input type="checkbox"/>
viii)	I need to give my customers confidence that my IP doesn't infringe anyone else.	<input type="checkbox"/>



Finding out if someone is copying your idea



04

4. Finding out if someone is copying your idea

Can I get notification when relevant patent applications are published?

It is possible to set up alerts that will inform you when a patent application from a competitor publishes in a field similar to yours. This is useful not only to provide an insight into your competitor's plans and/or development pipeline, but also to provide you with the opportunity to request a licence, and/or raise objections.

“It is possible to set up a patent alert using both private and public patent database services”

If you have performed a search and found a number of patents relevant to your technological field, you may want to be informed when new documents matching this search enter the public domain. These patent applications are also likely to be relevant to your business and may give you insights into the plans of your competitors or highlight patent applications that you may want to challenge before they progress further.

A number of the commercial services referenced in the previous chapter provide a 'watch' service, which will inform you when relevant new search results are published. It is also possible to use one or more of the free official databases for this purpose: for example, using Espacenet, it is possible to save your search results as an RSS feed and subsequent new patent applications which match that search will appear as a new RSS entry.

USPTO has established a similar alert system (in conjunction with Reed Technology and Information Services) that can send you an email alert when a new match to a previous search of the US patent database is generated.

Can I set up an alert to monitor new trade mark applications similar to mine?

It is possible to create an alert to warn you of new applications for trade marks similar to the ones that you own. This will happen automatically for word-based marks that are registered in the same class as a named registration.

As with patents, it is important to monitor new trade mark applications that resemble ones that you already own. A new mark that is similar to yours may cause confusion in the marketplace and this may lead your customers and other stakeholders to mistake the goods/services of the new trade mark owner with your own.

If you have applied for a trade mark, the public authority issuing your IP registration will usually write to you when a new trade mark is applied for, if it is regarded as being similar to yours and falls into the same class in which you have protection. This is part of the application procedure

“You will be informed if another trade mark similar to yours is applied for in the same class as one of your own. For alerts in different classes or for non-word marks, other commercial services are available”

and gives your company a chance to oppose the registration of the new mark before it is registered.

However, it's unwise to rely entirely on official procedures. There are times when the issuing body may not write to inform you of a mark that you may wish to oppose. This may occur, for example, when the application is in a different class to the one(s) in which you hold protection. If your mark has a substantial reputation, you will not want to allow registration of a similar mark for any goods/services even if they are dissimilar to yours, as this may damage it.

Also, with non-word based marks (e.g. images, sounds), it is harder to search and so there is less chance that similar marks will be identified automatically and that you will be notified by the authorities. There are some specialist services (for example from large trade mark agents and law firms) that advertise a more detailed trade mark watch service. Some services may use image analysis algorithms to alert you when an image similar to your registered mark is applied, for a fee.



SUMMARY

The following questionnaire provides you with a set of high-level pointers to help you determine whether setting up watch services is likely to be important for your business. The more ticks, the more likely it is that investment in this area would be beneficial.

#	QUESTION	<input checked="" type="checkbox"/>
i)	I work in a field where competitors are very active.	<input type="checkbox"/>
ii)	Cross-licensing is common in my industry.	<input type="checkbox"/>
iii)	I think that a competitor may be trying to copy me.	<input type="checkbox"/>
iv)	I have a mark with a reputation and want to prevent use of the mark for any other use.	<input type="checkbox"/>
v)	I am concerned about the possible threat from new entrants in my market.	<input type="checkbox"/>
vi)	I have image or other non-conventional trade marks which may not be identified in a traditional search.	<input type="checkbox"/>



Using IP-related information for business intelligence



05

How can I find out what my competitors are planning?

“The patent, trade mark and design databases are a great source of business intelligence”

Can I find other useful things with these databases?

“A piece of IP is an asset that can be used to attract new customers, distributors or suppliers”

By receiving regular updates on new applications made by your competitors, it is possible to use IP information for wider business intelligence purposes including gaining insights into what your competitors may be planning.

The various IP databases that have been described in earlier chapters of this guide contain a structured, detailed inventory of the most valuable and legally protected assets of your competitors. If interrogated correctly, these databases can be a great source of market intelligence.

For example, by examining your competitors' granted patents, it is possible to know in detail how their competing products work. This may allow your R&D team to either design around or improve upon your competitor's product.

It is also sometimes possible to work out your competitor's future plans by analysing the IP databases for new filings. For example, before Apple Inc. launched its smartwatch, commentators, bloggers and competitors were aware of their plans due to a series of patent applications describing the watch and its functions and a range of 'Apple Watch' trade mark registrations being made.

National and international IP databases can also be used to identify potential suppliers, distributors, customers and complementary technologies for your product or service.

Finding a potential infringer or a new entrant who is attempting to register a piece of IP that is similar to yours does not always have to end in conflict. These situations can often present opportunities for new partnerships and/or beneficial collaborations, or open up a new business opportunity, such as obtaining a new licensee for your rights. Alternatively, you might benefit from being able to license-in a relevant and compatible innovation.

To take a different example, a company may have started to import and sell a product similar to one for which you own a registered design. A carefully crafted letter, indicating that you are the legal owner of the design in question, may lead to the establishment of a new distributor relationship if you can persuade the company to buy from you rather than continue to import the competing product. This would be a win-win situation, giving you a chance to increase your sales, and the other company a means of avoiding costly litigation while still being able to trade.

These and similar opportunities can be identified either by taking advantage of the various 'watch' services that are available or (alternatively) by conducting your own periodic database searches.

5. Using IP-related information for business intelligence



SUMMARY

The following questionnaire provides you with a set of high-level pointers to help you determine whether the use of databases for business intelligence gathering is likely to be important for your business. The more ticks, the more likely it is that investment in this area would be beneficial.

#	QUESTION	<input checked="" type="checkbox"/>
i)	I want to know what my competition is thinking of doing next.	<input type="checkbox"/>
ii)	I need to understand more about how competing products work.	<input type="checkbox"/>
iii)	I would like to find sales opportunities among other firms working in my field.	<input type="checkbox"/>
iv)	I need access to related technologies in order to build new or better products.	<input type="checkbox"/>
v)	I am looking for additional distribution channels.	<input type="checkbox"/>



Finding room to introduce new products or services



06

CREATIVITY IS CONTAGIOUS
Pass it on!

6. Finding room to introduce new products or services

How do I find space to innovate?

A patent landscaping study will often identify areas of a technological field where there are concentrations of patents. It also typically identifies spaces with relatively little activity. This information

can be used strategically to focus R&D activity in the most fruitful areas and identify 'gaps' where patent protection may be easier to obtain.

One particular type of patent analysis discussed in Chapter 1—the landscape study, can be especially useful in identifying areas where R&D activity should be focused. In a landscaping study, patents from specific IPC/CPC classes or owned by particular specific entities are mapped (usually visually) to create a contour, heat or intensity map of a technological area. These maps will highlight areas where there is intense patent activity (sometimes called a patent thicket) and areas where few patents have been obtained.

A patent thicket is usually confirmation that a particular area of a technological field is related to substantial market demand, especially if the activity in question is recent. However, it is relatively difficult to obtain broad patent protection in such an area, due to the large quantity of prior art that exists and the high number of players in the marketplace who are likely to oppose any such patent application. A thicket also highlights areas that you may need to avoid incorporating into your product/service (or to design around) if infringement proceedings or a demand for a licence fee are to be avoided.

By contrast, areas where there are few existing patents present opportunities to build a unique product/service offering for your company where broad protection should be obtained relatively easily. Of course, you will also need to ask yourself a question: why is there comparatively little activity in this area?

If it is because technical challenges have historically proved difficult to overcome, then the opportunity may be large. However, there may also be a strong possibility that the reason there is no activity is that there is also no demand.

“A patent landscaping study can identify areas where there are a large number of patents (a thicket) and areas offering greater opportunity to innovate”

A well-organised landscape study will map your key competitors onto specific technological areas and help you to visualise where each has its strengths and/or weaknesses. If patents are important to your business, this can be a very useful aid to IP strategy development.





SUMMARY

The following questionnaire provides you with a set of high-level pointers to help you determine whether a landscaping study could be worthwhile. The more ticks, the more likely it is that investment in this area would be beneficial.

#	QUESTION	<input checked="" type="checkbox"/>
i)	I want to know where the gaps in current market provision may lie.	<input type="checkbox"/>
ii)	I keep running up against my competitors' patents.	<input type="checkbox"/>
iii)	It is hard for my company to differentiate its offering.	<input type="checkbox"/>
iv)	I do not want to waste time and money on patents that will attract litigation.	<input type="checkbox"/>
v)	I need a better overview of everything my competitors are doing with their technologies.	<input type="checkbox"/>
vi)	I think that the technology I have might be useful in other new markets.	<input type="checkbox"/>
vii)	I am currently writing an IP strategy for my company.	<input type="checkbox"/>

7. Where do I get help?

GETTING RIGHTS GRANTED

IPOS : www.ipos.gov.sg/resources

GETTING IP ADVISORY

- Intangible asset audit
- Intangible asset strategy and management
- Business and technology intelligence
- Commercial analytics on patents
- Due diligence on intangible assets
- Bespoke advisory services

GETTING IP TRAINING

- Executive programmes
- Certifications
- Undergraduate and postgraduate courses
- Regional training

GETTING PATENTS RIGHT

- Patent search and examination (for both national and international PCT applications)
- Patent analytics
- Customised search services

DEALING WITH DISPUTES

IP Legal Clinic (IPOS) : www.ipos.gov.sg/eservices

FOR INFORMATION AND ENQUIRIES

Website : www.iposinternational.com

Email : enquiry@iposinternational.com

Telephone : +65 6330 8660

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