

Why medtech needs innovations in the law department to protect intellectual property



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Here's the scenario: after investing millions of dollars and years of resources in R&D, your company has received approval to market your cutting-edge medical device. If your flagship device does not establish a strong foothold on the market, the enterprise will likely be doomed and your investors will lose most, if not all, of their capital.

That's a real possibility because despite the fact that you developed – and patented – the technology, an established player with vast resources is gearing up to market a competing device that relies on your technology. You have a brilliant and devoted team, and you believe your competitor is clearly violating your patent, but given the resource disparity, you're just not likely to win in the market.

There's only one solution: take the fight to court to protect your intellectual property and halt your competitor's work. But the litigation will cost millions – and you need that money to operate your company.

Do you go ahead and hire an outside IP law firm to litigate, hoping you can somehow cover the cost down the road? Do you plow all your cash into the legal action then hope you can justify a sky-high burn rate without scuttling your next funding round?

Or do you look for a third way, an innovative solution that lets you aggressively protect your IP without draining your cash, like a few creative medtech executives who are leading the way in arranging new fee structures with outside law firms, or using tools like the litigation financing provided by firms like Longford Capital?

Expanding innovation

The medtech industry employs some of the world's great innovators, scientists, technologists and executives capable of revolutionizing the way we treat illness, monitor our health, counteract disabilities and improve our quality of life. However, even the most sophisticated among them seem to struggle to see where legal departments fit into this ecosystem.

Too often, companies pour their inventive energy into advancing new products but fail to treat the accompanying patents like valuable

assets in themselves. Simply obtaining a patent is not enough to protect your IP in today's medtech space. Companies need to deploy creative strategies to forcefully defend their IP without compounding already enormous cost pressures.

Rising costs not only pose a problem for medtech executives and shareholders. The problems are inevitably passed on to consumers. The cost of healthcare is estimated to be rising by 7% a year, according to the Hastings Center, and the increase largely due to new or increased use of medical technology.

Realizing that rising costs could eventually put unsustainable pressure on the public and private players that keep the medical device industry vital, companies are searching for ways to contain spending without losing their competitive edge. Executives are pursuing mergers and acquisitions as they chase economies of scale, lobbying for the elimination of medical device taxes and shifting development



and production to lower cost centers, illustrated by China's emergence as a hub for research and manufacturing.


This focus on core businesses and regulation is understandable, but in an industry where leading companies spend hundreds of millions on litigation costs alone, turning their immense capacity for innovation toward their legal departments is crucial.

Stop slashing

Too often companies choose the obvious solution of slashing legal spending. This will save millions in the short-term, but it creates a huge liability in the long-term. Foregoing key IP protections not only puts future earnings at risk but also creates the potential that millions in R&D investment could be wasted if valuable patents are violated. Tools like litigation finance offer a more elegant solution.

Litigation financing is structured to smooth over the inefficiencies that prevent companies from aggressively protecting their IP. A financier provides a company with the funding to cover the full costs of litigation – paying for outside lawyers, discovery costs, expert fees etc. If the company wins in court, the financier gets a portion of the proceeds. The company incurs no costs for the litigation, and it takes no risk – if it loses the case, the financier recovers nothing. Litigation financing not only shifts the risk away from the IP owner, but also offers flexibility in choosing a path for seeking redress – from the courts to patent panels to the International Trade Commission.

Whatever the forum, litigation finance is a viable tool as long as there's a resolution point and a way to put a value on a positive outcome. Companies

across the spectrum, from major medtech firms with portfolios of patents to startups looking to break through with their first device, can direct more of their capital to core businesses, and invest in R&D with the confidence that they will be able to protect what they create. 

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The opinions expressed in this blog post are the author's only and do not necessarily reflect those of MedicalDesignandOutsourcing.com or its employees.

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