Is risking protecting intellectual property by patent or secret?

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Outline

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3- Risk factors to protect IP by patent or secret

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1- Introduction

- Intellectual property (IP)

  - “Refers to any intangible asset protectable contractually such as know-how, trade secret or secret and other intangible asset protectable by a law such as patent, copyright, trademarks, technical drawings, topography, etc.” (Arundel, 2001).

- In a competitive context - to innovate.

- Some mechanisms to protect intellectual property: patent, secret.
1- Introduction

➢ Research question

• Face to the different types of mechanisms to protect IP, why a company makes decision to choose patent or secret?

- Mechanisms to protect intellectual property.
- Factors that explain risk taking.
2- Main mechanisms to protect IP

- **Secret**
  
  Secret or trade secret is defined as “a piece of information that is intentionally withheld by one or more social actor(s) from one or more other social actor(s)” (Hannah, 2005: 71).

- Secrecy allows firms to protect their process inventions which are not captured by the sales of new products (Hussinger, 2005: 22).
2- Main mechanisms to protect IP

- **Secret**
  - Important for inventions that are not commercialized yet.
  - Enables the company to keep an exclusive technological advantage and to have higher chances of success.

Trade secret offers a perpetual protection.
2- Main mechanisms to protect IP

- Patent

  Patent represents “legal instruments to protect IP by granting the patent holder a temporary monopoly position including the right to sue for infringement” (Hussinger, 2005: 22).

  Patent protection is used to secure monopoly profits where they are large.
2- Main mechanisms to protect IP

Patent

In a competitive context

Patented technology can be disclosed in order to show to the competitors what is protected.

Patent relies on disclosure regime.
2- Main mechanisms to protect IP

- **Patent or secret?**
  
  - At the beginning of the protection of invention firm uses secret (secret is less expensive than patent).
  
  - After a period of time, when competition increase, firm ask to protect invention by patent.
  
  - The disclosure requirement of patenting makes patents and secrecy mutually exclusive alternatives once an invention has entered the market (Hussinger, 2005:4).
3- Risk factors to protect IP by patent or secret

- A risk

  - Risk is represented by a “possibility of physical and/or social and/or financial harm/detriment/loss due to a hazard within a particular time frame” (Rohrmann, 2008: 2).

  - “Hazard refers to a situation, event or substance that can become harmful for people, nature or human-made facilities”.

  - Exposure to risk depends in part on the behavior of individuals (e.g., compliance behavior), (Vertinsky and Wehrung, 1990: 3).
3- Risk factors to protect IP by patent or secret

Factors

- **Legal environment**
  - Constraints of the regime of protection of each country.
  - Global incitation to innovate and other countries.

- **Variables concerning personal, financial, and professional characteristics**
  - Personal: age, dependents, education, and nationality.
  - Financial: wealth and income.
  - Professional: position, authority, seniority, firm size, and industry

There is the risk when environment is uncertain.
4- Conclusion

- A set of variables linked to the decision to protect IP
  - Technology and sector level, process of innovation (Hussinger, 2005).
  - Competition of the product on the market, costs, (Denicolo and Franzoni, 2004).

- To choose a mechanism to protect IP, decision makers must consider environmental variables (Davies, 1981):
  - Nature and structure of property rights;
  - Environment uncertainty;
  - Financial costs.

In this context, they can reduce risk taking.
4- Conclusion

Guidelines to succeed

- To apply the environmental scanning:
  - Environmental scanning requires the use of information sources which are influenced by perceptions of environmental uncertainty, source accessibility, and source quality.
  - The knowledge of environment would assist management in planning future courses of action (Auster and Choo, 1993).

- To choose secrecy when product market competition is fierce, duplication costs are small.
Thank you for your attention!

Any comments and questions?