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IP Stimulus Plan For Detroit's Big 3

Law360, New York (February 20, 2009) -- More than ever, Detroit's Big Three need an Intellectual Property stimulus plan. Forget the debate about the actual cost of labor for General Motors compared to Toyota. Leave that to economists!

Like any average American, all I know is that American automakers need to come out with better cars.

To do so, American automakers need to invest more in technology and innovation in order to make better cars. To stay competitive in the long term, however, they must also have an IP stimulus plan.

I am a patent attorney and, not surprisingly, I fully support President Obama's call during his campaign for connecting and empowering all Americans through technology and innovation.

Investing in technology and innovation alone, without a long term IP strategy, however, may not be sufficient to stay competitive in the marketplace, specifically when your competitor may copy the technology and make cheaper cars.

Even before this unprecedented economic crisis, American automakers were already in trouble for losing market share to their Asian competitors.

Put aside this economic condition, American automakers' dire situation is eerily similar to that of American semiconductor chip makers in the 1980s. If history provides us any lesson, that lesson is that American automakers need a sound IP strategy.

In the 1980s, Texas Instruments survived the market invasion by Asian semiconductor manufacturers. At the time, cheap Japanese and Korean memory chips flooded the U.S. market, driving prices down and putting U.S. firms out of business. In response, Intel exited the memory chip market. So did Motorola and National Semiconductor.

Texas Instruments' survival, however, was primarily attributable to the effective utilization of patents against Asian companies.

Before Texas Instruments, many companies used patents in much the same fashion as kids trading baseball cards. Texas Instruments, lead by a patent attorney named Melvin Sharp, decided to sue its Asian competitors with patent litigation.

For months, Texas Instruments' team of patent attorneys and engineers painstakingly analyzed all its patents on memory chips and its competitors' products. In the end, Texas Instruments sued many of its Asian competitors in a federal district court and before the International Trade Commission.

The rest was history: Texas Instruments received about \$1 billion in royalties over the next five years and, more importantly, Texas Instruments recreated a level playing field for competition in the memory chip market.

Indeed, Texas Instruments was arguably the first major American company that extracted any meaningful value out of its patents. And it gained competitive business advantages as a result.

Today, many challenges that American automakers face are the same. Yes, they need to make better cars. Yes, they need to invest in technology and innovation in order to make better cars. But American automakers also need to develop an IP strategy to stay ahead of the competition (assuming the auto bailout plan works).

How about patenting the most valuable innovations and being prepared to assert intellectual property rights if that's what it takes to regain competitive business advantages?

Unfortunately, American automakers are also losing the IP competition. The recent data from the U.S. Patent and Trademark Office indicates that Toyota files almost 40 times more patent applications than Daimler Chrysler, 10 times more than General Motors, and about three times more than Ford.

If American automakers do not step up their efforts in protecting their most valuable assets — intellectual property (i.e., technology and innovation), no matter how many auto bailouts or economic stimulus plans Congress passes, American automakers could be yesterday's news. Therefore, they need an IP stimulus plan now!

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