

TechRoadmap *Directions*

Intellectual Property Issues of Interest to High Tech Companies

Vol 5 Issue 3

March 2005

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Welcome

Last month I answered a question from a reader (his son, actually). Although I hadn't planned on making it a habit, this month I have another question sent in by a reader that I'd like to reply to in *Directions*.

The question comes out of a class on commercializing emerging technologies at WPI. The class was discussing **the case of Netflix**, which apparently has a patent on its business model of online DVD rental. However, we've seen the entry of Blockbuster and Wal-Mart into this market. What does this tell us about NetFlix patent strategy? Read my thoughts on this question in "So you have a patent; now what?".

Who else should
read this?



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- **It's showtime!**

Filing for and being awarded a patent is certainly important to a company's competitive position in the market. But *getting* the patent is like *filming* a movie; **blocking** the competition or **licensing** your invention - that's "showtime", when you learn if you have a blockbuster or a dud.



Acting as your Director of Intellectual Property TechRoadmap helps you develop strong patents that are worth the high price of defending. Visit our web site to learn more about our services.

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- **So you have a patent; now what?**

My reader's class on commercializing emerging technology noticed that Netflix had obtained a [patent](#) on its business method for on-line video rentals. With 100 claims this was **not an inexpensive patent** to obtain. **Yet, it seems, Netflix has let Blockbuster and WalMart establish similar approaches to video rentals.**

review



We would be happy to schedule a visit to your facility to help you review the good and not so good IP practices you use. Sign up on our web site with the link below.

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IP Links of Interest

- [US Patent Office](#) A host of useful, official information.
- [EKMS, Inc.](#) A strategic IP management partner of TechRoadmap.
- [The Patent Cafe](#) An on-line portal for IP matters.
- [AlvaMed, LLC](#) A medical device consulting company we work with.
- [Technology Insurance Special Risk](#) An specialist in insurance for technology companies - for example, patent insurance
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The class wanted to know, "**Does a patent lose power if the holder fails to defend it?**" A second question they might have asked is "**Why would Netflix let competitors infringe?**" Both questions get to the heart of your IP strategy; if you're not willing to defend your patent rights should you be spending money on a patent in the first place? Would you be better off hiring the staff you need to get your product to market or improving your product?

Regarding the first question (and remembering that only an attorney can give you legal advice), in general (unlike a trademark), a patent is intellectual property and **you do not lose your property rights** - the "power" of your patent - by failing to defend it. You may, however, [lose the ability](#) to stop the specific infringer you know about but ignore.

The second question - why hasn't Netflix asserted its patent against its competitors - really addresses actions that you, as a patent holder, have control over. There are at least five considerations:

- Unless you have additional info, **you don't know that Netflix isn't taking action**. Such action takes time to show up in public.
 - **Perhaps Netflix has decided to license** their competitors because they feel confident of being able to compete on quality of service and operating efficiency. That way they make money whether they rent you a movie or Blockbuster does.
 - Without a hearing, **none of us knows if Blockbuster is infringing** - remember you can't patent an idea, so a court has to construe the patent claims and (typically) a jury has to compare the infringer's "product" to the claims to determine infringement. Maybe there's nothing for Netflix to sue about.
 - **Business methods patents are usually weak** and hard to defend (personal observation). Maybe Netflix is rethinking its strategy
 - **Perhaps Netflix doesn't have the money** to pay for an infringement suit. (Which then begs the question of why did they spend the money to get a patent).
- **Tip of the Month**
- Before spending \$10,000 - \$20,000 or more on obtaining a patent decide how and if you are going to defend your rights. Perhaps you want the patent only for "marketing" purposes or to establish your technical credibility. But if you think it is going to block competitors from the marketplace you should start planning for the expenses of that campaign now. Have you considered patent

insurance?

- **Disclaimer**

Nothing in this newsletter should be construed as legal advice. TechRoadmap serves as an interface between companies and their legal counsel.

- **Patents are property rights**

Remember, a patent defines a property right just like a deed to land. If you let someone use your land for long enough (you know, the tree on your land is second base) without mentioning anything to them you can lose your right to stop them in the future but you don't lose the right to stop others from similarly using your land.

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