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Recipe for good business

Seminar assesses strategies for taking research to the market successfully

What brings technologies into the market is not just their commercial potential nor their innovative content. Rules of the world of business are also needed, and adapting correctly to them is even more important when it is a question of raising funds and of finding markets abroad. To discuss the theme, the Institute of Technological Research (IPT in the Portuguese Acronym) staged the seminar on International Marketing of Brazilian Technology on November 29th last year, on the institute's premises, with the support of FAPESP. "We all have a lot to learn on the subject", said Edgar Dutra Zanotto, the coordinator of FAPESP's Nucleus of Technology Licensing and Patents (Nuplitec).

The challenges that arise for the marketing of Brazilian technology were addressed by Robert Sherwood, an American consultant who assisted with the reform of the intellectual property systems of 11 countries, working for the Inter-American Development Bank and the World Bank. He stressed that, before prospecting for funds, it is fundamental to check whether the technology that is the subject of the research has not yet been invented, and if there are opportunities for it on the market. The next step is to register the patent.

He emphasized that this process has to be started before the publication of the work - which, evidently, does not mean that the results of the research should not be published. "Premature publication strikes a mortal blow against any prospect for future marketing", he said. "The analysts receive hundreds of business plans, and they simply eliminate, right away in the first selection, those in which the problem of intellectual property is not addressed", he said.

Sherwood stated the most difficult thing in the search for capital is to raise funding for research. He pointed out that this is something that is practically unknown to Brazilian researchers, as a result of the support mechanisms available. "However, cases where the Brazilians' immense creativity bears fruit from the commercial point of view are still rare. And the taxpayers who finance research have the right to condemn the lack of concern with the economic potential of the technologies developed in Brazil."

In Sherwood's assessment, the slowness in the patenting processes in Brazil may be an obstacle to obtaining funds. He recalled that starting the patent registration process in Brazil is not the only possibility available, he suggested starting with the markets where the application of the technology has the greatest commercial potential. He also said that Brazilian legislation, in spite of the improvements brought about in 1997, still leaves investors apprehensive, for

example, about the government's power to decide to break patents for reasons of the public interest, and about the impossibility of patenting some goods, like GMOs and software.

The specialist stressed that it is necessary to protect information referring to patentable technologies by the so-called *non-disclosure agreements*, which should be drawn up with clarity. In projects that provide for shared research, it is best for the agreements to lay down clearly the responsibilities of each one of the parties involved.

Walter Bayer, a vice-president of GE Licensing, the General Electric division exclusively dedicated to the licensing of patents, defined the licensing of technologies as a business. In Bayer's assessment, a good business plan starts with the identification of the interested parties. Just holding the intellectual property rights over a given technology is not enough, if there is no effective potential for licensing. The expectations for the return of investments should be quantifiable. "Arguments like "any little shop will sell them" should not be used", Bayer warns. Regarding patents, properly speaking, is concerned, Bayer noted that ideas cannot be patented: in any part of the world, there has to be something tangible.

In the same way, the so-called trade secrets are not liable to protection by patents - they are formulas, or even processes, which companies put under lock and key for their value as a competitive differential. In this sense, the best known example is the Coca-Cola recipe, but there are thousands of others, far less evident. "In a software company, an idea is transformed into a code, and a source code may constitute a trade secret". In this case, what can be patented is the software product, which acquires tangibility by means of recording, for example, in a CD. The decision to patent a technology or to treat it as a trade secret depends on an assessment of the risks involved and of a careful comparison of the costs and benefits of each option. Patenting is the safer choice.

From Bayer's point of view, a successful licensing policy should, among other things, be supported by a broad and competitive portfolio. Even when it is a question of licensing just one technology, the ability to foresee all possible applications, immediate or future, makes a difference. The business plan should be based, however, on short term results and use an aggressive style of argumentation. From the commercial point of view, it is also necessary to keep flexibility, leaving an opening for the future licensee to carry out modifications that may be of his interest. "A patent is not a monopoly", Bayer said.

Conflicts of interest

Christopher Ostrovski, the president of Technology Partners International, an agency specialized in the transfer of technology, located in Guelph, Canada, commented on a study carried out by him that had as its objective a better understanding of the conflicts of interests that often permeate the relationship between universities and companies. "The researcher's objectives include the right to publish his works, to transfer intellectual property to society, and a commitment to the development of the research", he detailed. "In turn, the company wants a competitive advantage, the construction of a solid technological base, and a vision of the new technologies". The solution of this conflict lies with an awareness of the needs of the other party, and one of the questions to be resolved is the one that puts the protection of intellectual property rights before the publication of the works.

Ostrovski believes that the two parties should be willing to establish long lasting relations, in

order to develop mutual confidence, and one of the easiest ways to this is by drawing closer. "To carry out the marketing of its technologies, the university should appoint representatives who have communication skills and are capable of administering the philosophical differences between the academic world and industry". As far as prospecting for funds is concerned, Ostrovski advised the researchers to pay attention to the several possible kinds of investors - from friends willing to bet on technology to banks, from the so-called "angels"(rich individuals who like the technology sector and act almost like the patrons of the arts) to the institutional investors, and, in the case of companies with a technological basis, the opening up its capital.

Lawyer Juliana L.B. Viegas, of Trench, Rossi e Watanabe, gave an explanation on the evolution of the concept of intellectual property in the context of Brazilian legislation. "In a career of over 30 years, I have seen many cases of the import of technology and, at the most, two or three cases of the export of Brazilian technology, and perhaps this is the moment to turn the tables." From the legal point of view, she said that the country does not have the concept of licensing technology - what there is only its permanent transfer. Another difficulty that she pointed out is the restriction on the remittance of royalties and on the deductibility for tax purposes of between 1% and 5% of net sales, and the obsolescence of the definition of essentiality that guides the approval of imports of technology, which dates from a 1958 law.