

Keys to protecting your medtech AI from competitors

Artificial intelligence is a hot area in medtech. A panel of intellectual property experts had advice on protecting the IP.

DEVICETALKS

Between 2002 and 2019, annual artificial intelligence (AI) patent applications more than doubled, and AI patent applications increased from 9% of all applications to 16%. AI is a white-hot area for investment and creation of valuable intellectual property (IP), including AI related to medical devices.

Protecting medical device-related AI was the topic of a recent episode of **MassDevice** and **Medical Design & Outsourcing's DeviceTalks Tuesdays**, sponsored by **Finnegan**, a law firm that handles all aspects of IP.

The discussion involved Anthony Del Monaco and Cecilia Sanabria — partners at Finnegan — and two CEOs of healthcare companies that have developed exciting AI-related IP: Jan De Backer, CEO of Fluidda, a respiratory imaging company, and Todd Usen, CEO of Activ Surgical. In the case of Activ Surgical, the company makes a small device that attaches to any scope, a camera system that captures information that humans can't see, a proprietary cloud platform that stores video data, and a proprietary annotation system. Both CEOs' companies have IP related to AI.

Four takeaways on protecting this IP are:

1. Companies that develop IP need to protect it or risk losing it.

"Why do you need to protect this IP?" asked Del Monaco. The answer is simple. "The primary reason is because if you don't protect it, you may lose it."

2. Common ways to protect IP are patents and trade secrets.

With a patent, the public can see the information, but the patent owner potentially obtains a monopoly on that idea for 20 years. Two ways to file patents are provisional and nonprovisional applications. A provisional application is easier and faster to file, and provides one year of protection for an idea, during which time a company can go to market and sell. The provision application route buys time to file a more comprehensive nonprovisional application.

Trade secrets are different. With a trade secret, information that might not be patentable is kept secret (such as the formula for Coca-Cola). A company takes steps to protect the information. Trade secrets might include sales and marketing statistics, customer lists, proprietary tools, design concepts and more.

Del Monaco emphasized, "The real takeaway is to make sure you get protection."

3. When entering into agreements companies need to protect their IP.


Companies that have developed AI-related IP often pursue business strategies such as licensing or entering into joint ventures. These activities require well-crafted agreements with several important terms. "The first thing to think about is what exactly is the AI that's going to be the subject of the agreement?" Sanabria said.

Also important, according to Sanabria, is "who is going to own the data and who has access to it?" Agreements should also specify rights and liabilities — a critical consideration if, for example, a party claims the AI harmed them. In a licensing agreement, joint venture, or a vendor/supplier agreement, who is going to be liable? Agreements must address liability. Because of the uniqueness and complexity of AI, agreements involving AI have more factors to consider.

4. CEOs who know better make protecting their IP a top strategic priority.

As leaders of innovative healthcare companies, both CEOs view protecting their most crucial IP as a top priority and a CEO-level matter. Usen explained: "We see IP as an asset that provides a runway to commercialize our technology. If we are heavily investing in something, we want to make sure we have good IP."

Both CEOs described going through rigorous processes to think through the particular IP they want to protect. For example, Activ Surgical is interested in protecting its computer vision AI, algorithms, workflows and hardware. Fluidda is most interested in protecting its proprietary engine that generates insights and data. These companies are using multiple ways to protect their IP, including provisional patents and protection of trade secrets.

For guidance in the process of protecting valuable IP, Usen acknowledged, "I think the No. 1 thing that we do — and it's a credit to firms like Finnegan — is to partner with the best firms in the world when it comes to IP protection." In addition, he suggested that other healthcare companies with valuable AI-related IP do the same. 

Provided to Medical Design & Outsourcing by BullsEye Resources



ON
DEMAND