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Reducing risk, increasing value with intellectual property

We are often asked to identify the things businesses need to know about intellectual property (IP). Of course, there are many, but in this article we will address our top four: 1. It's all about the brand, 2. Know what your intellectual property is, 3. Make filing decisions early, and 4. Watch your competitors (they are watching you).

It's all about the brand

Studies show the multiple companies receive over their book value depends on their intellectual property — their brands, know how, patents, copyrights, etc. Those studies also show strong brands cause the highest multiple. Patents expire, confidential information leaks out, employees leave, but the brands continue. To protect and enhance their business, organizations need an intellectual property strategy driven by how each type of IP affects the long-term health of their brands — as well as short-term cash flow and profits.

Know what your intellectual property is

If you don't know what you have, you can't protect it; you can't count it; you can't take inventory of it. Most organizations go through elaborate efforts to know where their hard assets are, but sophisticated companies also know what their intellectual property is and how to use it to increase profits, reduce risks and cut costs. In short, they know how to use their IP to increase value.

Every company has intellectual property — websites, advertising copy, photographs, trade secrets, customer lists, logos and other trademarks, etc. They usually have a number of inventions that are of great potential value, as well. However, few have a system to identify innovations early enough to make intelligent decisions about them. Likewise, most organizations have licenses to use software or other products, but many are unfamiliar with the terms. For example, some licenses terminate when there is a change of control of the company. This can be expensive for an investor. Even supply agreements can cause IP risk; some organizations misunderstand how much infringement liability they take on in those agreements.

Make filing decisions early

Some forms of intellectual property require an application, and others have some protection without any registration. Successful organizations make conscious decisions about which applications to file early in the product development and marketing processes. Additionally, they revisit those decisions, periodically, to prune back branches of the portfolio not worth future investment. Meeting deadlines in the IP processes is critical. With an IP portfolio management program, they are reviewed, budgeted for and met.

Watch your competitors (they are watching you)

There are public records that will let you know a lot about your competitors' IP strategy, but you have to look. For example, most patent applications are published 18 months after they are filed at the Patent and Trademark Office (www.uspto.gov). You can search for them by the name of the inventor, the name of the assignee and just about any other term you would like. Patents usually take more than 18 months to issue; so knowing there is a patent that may cause a problem may give you the ability to make changes (and give you freedom to operate without infringing).

Likewise, trademark registrations are published for "opposition" after an examiner decides to issue a registration, but you have to watch for the publication to file an opposition proceeding before the deadline expires.

In conclusion, build the IP budget and protection strategy around the brand; it gives you the biggest multiple. Audit your IP so you know what to protect — and where to spend scarce dollars. File applications before the deadlines expire, or let them expire as a conscious budget decision; but don't let ignorance cause a loss of valuable rights. Finally, use the public information to keep an eye on your competitors, and remember they will be doing the same.

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