



Intellectual Property Information for Insecure Times

As we listen fearfully to the sound of financial institutions crashing all around us, instinct tells us to focus our attention on frugality. There are several steps that you can take to secure your Intellectual Property (IP) assets without the immediate assistance of legal counsel.

• *Take Inventory of Existing Assets* ID IP

In order to generate revenue from intellectual property you first must know how to identify it. This can be difficult since intellectual property is intangible; you cannot touch or hold it. There are four main types of intellectual property:

Patents protect new, useful, and non-obvious inventions or processes. Federal patent registration is required for patent rights to exist.

Trademarks are used to identify and distinguish the product or services of one company from those of their competitors, such as brands, logos, and taglines. Trademark rights inure to the first person or entity to use a mark. Although federal registration is not a prerequisite for trademark rights to exist, it provides numerous benefits.

Copyrights cover creative works of expression, such as text, graphic design, source code, photography, music, artwork and architectural works. Copyright registration is not required for rights to exist, but is required to file suit.

Trade secrets are business secrets that provide a competitive advantage because they generally are not known, nor easily discovered, by those who do not need to know, including those inside and outside the company. Trade secrets are never registered; as registration would reveal the secret, thereby destroying it.

If you don't recognize it when you see it, there are some great, inexpensive books by Nolo (www.nolo.com) that can help you, including, *Patent, Copyright & Trademark: An Intellectual Property Desk Reference*. Further, most IP attorneys offer "audit" services during which they review and analyze a business's IP assets and provide their client with recommendations for proceeding based on their client's goals.

• *Prioritize*

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the most exposure should be given the highest priority. Lesser-known and less profitable assets usually can be afforded lower priority. It also is important to evaluate the expected life-span of IP assets when determining what priority to assign to them. Assets that are expected to have a short shelf life, such as the name of a seasonal sandwich or the print materials for a one-time promotion likely are not worthy of protection since the legal process to obtain protection may take longer than the offering itself.

• *Budget*

After identifying the IP assets that your business owns and assigning a level of importance to each, you then should create a budget for the legal fees and costs associated with protecting these assets. Numerous variables determine the cost of IP protection, which makes it difficult to provide general cost estimates. For example, the cost of trademark protection is determined by: the length of use of the mark; the number of items on which the mark is used; whether the mark contains a design element; and whether the trademark owner has suitable evidence of its use of the mark, among other things. The cost of patent protection depends upon the nature of the invention and the science involved and the complexity thereof. IP Audits are most difficult to predict given that the amount of time that it will take to identify all of the assets depends on the nature and number thereof, which is unknown until the audit is completed.

The following estimates are rough guidelines of the attorneys' fees and costs associated with each area of IP protection:

Patent registration: \$10,000.

Federal trademark registration (no searching or clearance) of a mark that is in use for one product or service: \$1,150.

A single copyright registration application: \$550.

A Non-Disclosure Agreement to protect trade secrets: \$800.

The best way to budget for IP protection is to ask your IP attorney to provide you with estimates based on your specific nature and level of work. Some attorneys will provide complimentary fee and cost estimates as part of an initial consultation. While it is important to be thrifty,

even when hiring a new attorney, lowest cost often is not a suitable means by which to select counsel (IP or otherwise). Rather, it is more important to make sure that you find someone with whom you can communicate well and trust to understand your needs.

After you complete the identification, prioritization and budgeting processes for your existing IP assets, it may make sense to create IP procedures for your team to follow.

• *Create Procedures*

Most businesses have dynamic IP portfolios. This means that as the business continues, so does intellectual property creation and development. Written procedures for the handling of routine tasks and events associated with intellectual property ownership serves several purposes, including: guaranteeing consistency in the performance of the tasks; ensuring that things are done in the most efficient manner; reducing the likelihood that mistakes will be made; and providing for accountability.

You may want to implement procedures for the following six IP events that businesses routinely face:

IP Identification — who in your business creates what types of IP and what should they do next?

IP Clearance — how do you avoid infringing upon others' rights?

IP Protection — what is filed and when?

IP Usage — how is your IP used by your business and by third parties?

IP Monitoring — who makes sure your rights are being honored?

IP Enforcement — what do you do if someone infringes on your rights?

You may be able to obtain sample procedures online or from your colleagues, or you can ask your intellectual property attorney to assist you with their creation.

When times are slow, take the time to get organized. Now is the perfect time to secure your intellectual property.

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