

Special Report:

Securing Intellectual Property

Obtaining patent protection and other IP rights can pay for itself by enhancing value and protecting a company's investment

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Intellectual property (IP) is as important to avionics as avionics is to an aircraft.

Properly securing, maintaining and



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and generate revenue. Properly securing, maintaining and policing intellectual property rights will help maximize a company's ability to attract investment, protect its business advantage

and generate revenue. In all likelihood, a company derives most of its value from intangible assets, like sales revenue, expertise, innovation and intellectual property.

Yes, intellectual property — brand names, written and electronic materials and confidential information. One does not have to make formal filings with the government to acquire copyright, trademark and trade secret rights for such material.

However, adding to existing intellectual property by obtaining formal trademark and copyright registrations and patents, and by undertaking steps to safeguard the confidentiality of sensitive information, will add to the value of a company's intangible assets and may help attract investment.

During an evaluation of a company as a potential target for merger or acquisition, the acquirer will keenly evaluate and value a company's intellectual property assets. Similarly, institutional investors will value a company's IP assets for purposes of determining whether to invest.

Devoting resources to obtain patent protection and other IP rights may easily pay for itself and then some by enhancing a company's value and maximizing its attractiveness.

Different flavors

In addition to being a separable value component of a company, intellectual property serves to protect a company's investment in its brand, products and innovations, and to guard against wrongful or unfair competition. In this regard, the different "flavors" of intellectual property — trademark, copyright, trade secret and patent — each confer different benefits.

A trademark benefits a company by providing protection for brand, product name and appearance of products — protection from a competitor who may use a confusingly similar brand name or product appearance. All the goodwill earned over the years by turning out quality reliable products, by providing good customer support and by spending significant sums of money on advertising — it's all tied

up in the brand. The brand name is worth protecting.

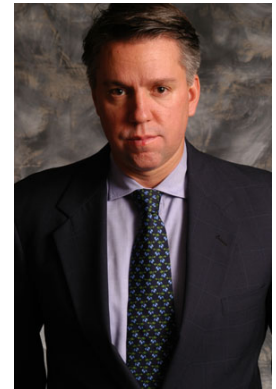
While using the brand name in commerce automatically confers some trademark protection without the need to file a formal trademark application, securing a trademark registration from the U.S. Patent and Trademark Office (USPTO) will strengthen a company's rights.

A registration will increase the geographical scope of the protection, enhance the company's ability to collect damages for infringement, provide evidentiary presumptions and eliminate

defenses — all helpful when the need to enforce a company's rights arises.

Another benefit of trademark protection is a company can maintain its own registration as long as it continues to use the trademark in business.

A copyright benefits a company by providing protection for written, electronic or other original materials, such as data, software, product brochures and Web sites. Copyrights will protect against a competitor who creates substantially similar materials based on written or electronic materials.



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These electronic and written materials may be the products themselves, or an aspect of a company's products. They may form a material basis of customers' decisions to purchase the company's products. This fact and the fact that it costs a great deal of money to develop these materials justifies protecting these assets by securing copyright registrations from the U.S. Copyright Office.

The benefits of copyright registration include relatively inexpensive procurement costs, long duration (typically longer than the useful life of the protected materials), the ability to commence infringement litigation, remedies including statutory damages and attorneys fees, and evidentiary presumptions. A registration provides rights that will come in handy in the event that a company must enforce its rights.

Does a company have confidential information that provides it with a competitive edge? How about a manufacturing process, business plan or customer list? Think carefully for a moment about what would happen if a competitor were to get its hands on some of that confidential material.

If this is a concern, consult with an IP attorney about some relatively simple and inexpensive steps to protect confidential information as a trade secret.

In the meantime, take affirmative steps to prevent public disclosure of confidential information.

In addition to a greater range of remedies available for a trade secret, a nice benefit of trade secret protection is it confers legal rights without the filing costs and disclosure requirements associated with the other forms of IP, and without having to meet the stringent requirements for patentability.

Although there are strict requirements to obtain a patent, in

certain situations a patent is the only viable form of IP available to protect innovations.

This is especially true where innovations are embodied in the products themselves and cannot be kept confidential, such as when innovations are embodied in GPS systems, multifunction displays (MFD) and digital communications and navigation equipment.

Imagine spending millions of dollars developing a new generation MFD, having the product become an instant success, and then watching a competitor roll out the same product through reverse engineering for a fraction of the cost the original company incurred.

Unlike trademarks, copyrights and trade secrets (which confer some automatic protection without filing an application), the only way to prevent this nightmare from happening is to acquire patent rights by filing a patent application with the USPTO.

Once obtained, a patent will confer the exclusive right to make, use or sell the patented product or method. This exclusive right extends to uses in other business lines that you may not have even contemplated.

And better than copyright or trade secret protection, a patent can be used to enjoin a competitor even where the competitor independently developed the same innovation.

A feature of the patent system that has proved highly popular is the "provisional" patent application which is an abbreviated application that essentially acts as a rights placeholder for up to one year.

The provisional patent application is easy to file, inexpensive, secures a filing date and provides a one-year window during which the commercial viability of an idea may be evaluated before proceeding with a full-fledged, and more expensive, regular patent application.

While you should consider each form of IP — trademark, copyright, trade secret and patent — to protect your business advantage and reduce competition, you also must recognize when a competitor is using ill-gotten IP rights to unlawfully preclude legitimate competition.

Smart strategies

Maintaining regular consultations with your IP attorney will help you recognize the appropriate strategy to develop and launch a product that, on first blush, appears to be protected by patents.

In our experience, it is possible to successfully develop products and enter billion-dollar-per-year markets where existing patents were scaring off competition. The cost of obtaining and maintaining IP protection may very well pay for itself many times over. Intellectual property protection for an innovation, even if never commercialized, may result in substantial damage awards in favor of the IP owner.

Some of the more famous examples include a case where Microsoft was ordered to pay a company with just one employee, Eolas, \$521 million in damages for infringing Eolas's patents. There is the BlackBerry case where, out of fear of a large damages judgment, the maker of BlackBerry, Research In Motion, agreed last March to pay NTP \$612.5 million to settle a patent infringement litigation, even though NTP never commercialized the technology it had patented.

In the avionics arena, Honeywell sued Universal Avionics for infringing on Honeywell's patent rights in its Terrain Awareness and Warning System. In 2004, a jury sided with Honeywell and awarded it \$5.5 million in damages. A co-defendant, Sandel Avionics, was found to have not infringed on Honeywell's patent.

The ability to collect damages is not limited to cases concerning

patent infringement. Rockwell Collins recently filed a suit against the avionics equipment servicing company Avcom for allegedly violating copyright and trademark laws.

The lawsuit claimed Avcom breached license agreements with Rockwell Collins by engaging in the unauthorized use of software. Avcom recently agreed to pay Rockwell Collins \$3.4 million to settle the case.

Nor is the ability to generate revenue limited to damage awards. Fees generated by licensing IP may generate substantial revenue. Revenue may be generated even by licensing IP for use in technology outside the scope of a company's business.

Patents and other IP may provide bargaining chips which can be used to acquire rights to new technologies. These bargaining chips may open the door to a cross-license

or joint venture to gain an edge on the competition.

Contracts to develop products that fall within the scope of your IP may also be an unanticipated benefit of your IP investment.

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