

Know and Protect Your Intellectual Property

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For most, the topic of intellectual property (IP) is a hot mess of "I-don't-knows" conflated with "I-don't-cares." But it shouldn't be. Knowing what IP is and how to protect it is fundamental to most businesses' success, whether they know it or not. A common trap related to this attitude is to "trip over dollars to pick up dimes." Especially for startups - for whom "keeping the lights on" trumps "protecting my IP" by several orders of magnitude on their wish-lists - this trap is almost universal. But even knowing a few simple, low-cost steps could save your company millions down the road. Likewise, many small- to mid-sized companies will not even bother to protect their IP unless the underlying technology is seen as "game-changing," which it rarely is in the vast majority of cases - that is, at least, initially. No one has a crystal ball to show them the true value of their IP down the road. Thus, unfortunately, the default action is usually inaction - that is, not to spend very much on IP protection. This is an understandable position, because no one wants to be identified as the person who spent money and has nothing immediately apparent to show for it. No one wants to be "that guy." It's an understandable stance. It's also a shortsighted one.

It's shortsighted for two reasons. First, by way of illustration, an obvious lesson. Everyone knows the name Mark Zuckerberg. But apart from those who viewed the 2010 movie "The Social Network," very few know the name Cameron Winklevoss, or that of his twin brother, Tyler. Why? Because the Winklevoss twins failed to engage Mr. Zuckerberg's services with IP protection in mind up front. They thought they were simply "using a coder" to, well, "code." But that "coder" kept and protected his IP rights in what would ultimately become Facebook. The lesson: Once IP is finally recognized by all as important enough to protect, the window to do so has likely long since passed. The layman's expression for this error is, "Hindsight is 20/20." But your company simply can't afford for this consolation catchphrase to be its motto. Second, because the big companies - companies like Amazon, Apple, Google (Alphabet) and Facebook - have amply demonstrated they know the true value of IP, we can observe their actions to gain insights into their more profitable, more circumspect approaches. Apart from their highly protected trade secret frameworks and branding empires, for example, these four

companies have collectively and quietly applied for over 35,000 patents since 2009. Moreover, notwithstanding their dismissive propaganda downplaying the value of patents, every one of them has been ramping up - not slowing down - patent acquisitions. Perhaps it's a good idea, then, to take a little deeper dive into the subject of IP to find out what's really going on and what these companies might know that others do not.

While we don't purport to "one-up" any of the countless articles, blogs, and essays written about IP, we do want to make sure you understand the aspects of this topic that are critical to your company. Why? Because we want your business. And we think the best way to get your business is to arm you with a workable definition for what IP is, and then provide you a practical roadmap to use that definition to identify, evaluate, and protect your IP - hopefully, eventually using our expertise. We also think that once you understand the value of a "you"-focused IP law firm that doesn't see you as "just another number," but rather, as a business partner trying to solve a problem together, you'll soon be a client whose future we will have helped enable and secure. To do this, however, you'll need to stay with us for this three-part series in which we will walk you through the steps you'll need to take to identify the IP you have, evaluate that IP's worth, and then protect it. Let's begin with a discussion of how to determine what IP you actually have.

PART 1: KNOW YOUR IP.

This task can be a lot harder than it seems, for a number of reasons. First, you have to understand what intellectual property (IP) is in the first place. Everyone thinks they know - and perhaps most do, at least at some abstract level. But few really know enough about it to be able to identify what IP they actually have - let alone why and how to protect it. IP is composed of four basic sectors: patents, trademarks and service marks (or more broadly, "branding"), trade secrets, and copyrights. "Licensing" is perhaps another category, but in any case it is the contractual vehicle through which IP rights other than ownership are conveyed by the owner to another. If you aren't familiar with the various forms of IP, you should learn a little more about them before reading on: [USPTO Slideshow: Fundamentals of IP](#).

Second, you have to be able to define "IP" in a meaningful way so you can use it. One way of defining IP is to think of it as the legally protected "thought" that can give you a competitive advantage over your marketplace rivals. This definition is coarse and imperfect but it's solid enough to provide a practical framework for thinking about how to identify the IP in your company. Why is identifying your IP so important? Because if you don't know what your IP is, odds are it won't be yours - or at least, yours alone - for long. IP without IP protection is simply charity. But to be useful, we must move beyond "legally protected thought" to a working definition of IP. That definition might be best rephrased as a question: "What does my company have that our customers and/or competitors want and only we have?" Whatever the answer to that question is, odds are that your company's IP is at the center of it: Your company's good name and brand; its secret method for fixing a problem or providing a service; its innovative process, machine or application; its cost margins and client lists; its training manuals; or even its general body of know-how - all of these are forms of IP that you can and should protect.

Finally, you need to be able to use this working definition to identify your IP. You don't need to be an IP specialist or IP attorney to conduct an IP inventory. You just need a pen, paper, and your time - but that

will be time well-spent. Jot down your IP as you find it or think of it and ask others in your company to do the same. Then combine all the lists to render a reasonable approximation of your company's total IP portfolio. Finally, sort the IP into its various categories - trademarks/service marks (i.e., your company's "brand"), patents, copyrights, trade secrets, and licenses (either owned or granted) - to get a better idea of what kind of IP protection you'll need to protect a particular item or group on your IP list. Once you've identified and sorted your IP inventory, the next step is to evaluate the worth of your IP. We'll address this piece in [PART 2: EVALUATE YOUR IP](#).



Contact:

Jack Stuart

Jack@MartensenIp.com

719-354-2508

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