

RECOUPING YOUR INTELLECTUAL PROPERTY INVESTMENTS

Your intellectual property is valuable. And there are ways to extract additional value from it. The patents and trademarks in which you previously invested can now be used generate cash flow, increase the value of good will, and expand market share. The key is realizing this value through means other than litigation.

License to Make a Killing

Patents convey an exclusive right to make, use or sell something. Trademarks uniquely identify particular goods or services with a source. Each of these intellectual property rights creates a barrier to market entry and increases risk to actual and prospective competitors. Lowering these barriers and associated risks creates value. One way to do this is to license your intellectual property. For example, even a patent that is not currently being practiced can still be licensed.

Or consider lending the goodwill established in a particular brand by licensing a trademark.

Image is Everything

Draw attention to your patents and patent applications in marketing and sales materials. Many consumers and potential customers associate positive qualities like innovation, market presence, and reliable performance with patents. Take advantage of this by associating products, techniques, and features with applicable patents. Whether a patent application was just filed yesterday or is under review at the U.S. Patent & Trademark Office years after filing, use the phrase "patent pending."

To Protect and Serve

Trademark owners need to police their marks to prevent complete or partial loss of rights.

This means monitoring competitive goods or services in the marketplace and searching the internet for possible infringers and cyber squatters. An effective policing strategy should include monitoring attempts by other parties to obtain federal registration of similar marks. If such a mark is identified—one that may lead to a likelihood of confusion—consider opposing registration, or cancelling an existing registration. These administrative proceedings not only demonstrate an owner's commitment to policing a mark, but in some instances can result in settlement payments in exchange for a permitted use of the mark.

Sold to the Lady in the Second Row!

In some instances, a patent owner may have little interest in enforcing its rights against infringers or introducing a particular product into the marketplace. When licensing isn't an option and potential buyers are difficult to locate, IP auctions may present an option. Values that are fetched at auctions can vary dramatically, as can the rules governing such auctions. Nevertheless, for patent owners with few other options, patent auctions present an alternative to complete abandonment.

The Bottom Line

Depending upon how intellectual property is acquired, it may be treated differently for accounting purposes. In turn, this may ultimately affect the overall cost and benefit of intellectual property. For example, can all your IP be characterized as goodwill? Can it be amortized? How should transfers of IP be treated? Characterization of IP assets and selected accounting procedures may ultimately affect the benefits that can be extracted from your intellectual property portfolio.



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