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## **Protecting Intellectual Property From Potential Threats**

For many companies, intellectual property (IP) constitutes a significant group of assets, including trademarks, patents, copyrights and trade secrets. By implementing certain internal policies and procedures long before a litigation event actually occurs, your clients can help protect their claims to these assets.

Careful documentation of the costs and activities associated with IP development also plays a key role in helping valuation professionals establish their value. By facilitating the valuation process, internal controls and procedures can be pivotal in reducing your clients' exposure to potential future conflicts — or helping to ensure a successful outcome in the event of IP litigation.

**Create an inventory.** The first step in building stronger internal procedures entails creating a detailed inventory of all existing intellectual property, as well as any IP currently under development. The inventory needs to provide a thorough description of each IP, including all registration information, such as country and agency of registration, registration number and all pertinent registration dates (original, renewal and expiration dates).

**Document historical development.** For each intellectual property listed on the inventory, there should also be complete documentation of the historical development process. Important components of these records would be dates associated with the initial development phase, the names of individuals and departments involved in the process and details regarding internal and external expenditures. Any IP currently in development should also be included in the inventory, as should all licensed IP, including both inbound and outbound license arrangements.

**Centralize records and ownership.** It's also important that the owner centralize the IP inventory and all related documents in one convenient location. Key documents include registration applications, registration certificates, licenses and any important correspondence. Ownership of all IP should also be centralized in one country, or at least a very few countries.

Within the United States, ownership should be centralized in one state. While this sometimes requires the formation of a single corporate entity or a wholly owned holding company, it helps to support the existence and economic validity of all IP.

**Make one person responsible.** One person in the organization should be designated as being ultimately responsible for all intellectual property. Depending on the nature of your client's business or organizational structure, this might be a senior engineer, the general counsel, the company controller or possibly a marketing executive.

Other individuals may perform the IP development, registration, commercialization and licensing work, but this one person should have complete knowledge of all their activities — and others in the organization should know who that one person is.

**Conduct periodic appraisals.** On a regular basis, your client should conduct appraisals of all its intellectual property. While this process is definitely time-consuming and expensive, it does provide a number of benefits to the organization. First, it helps maintain current records regarding the existence and value of all IP. Periodic appraisals also help management establish prices for intercompany transfer or use of IP.

Further, they provide a determination of value for other purposes, including assessing insurance requirements, analyzing property tax assessments or exemptions, and estimating overall organizational value.

### **Determining the Value of IP**

A number of different methodologies are used to determine the value of trademarks, patents and other intellectual property. Generally speaking, these methods fall into one of the following major categories:

**Cost approach:** Determines value based on the cost to create or re-create the asset.

**Market approach:** Establishes value by evaluating actual sales of comparable intellectual property.

**Income approach:** Ascertains value by assessing the future economic benefits produced by the intellectual property.

Regardless of which methodology is employed, professional valuers will first turn to your client's internal documents and procedures to find supporting information that helps establish value. For example, assume the valuator is attempting to determine the reproduction cost of a particular IP. This cost-based approach requires that he or she assign a cost, at current prices, to every facet of creating an exact replica of the IP in question.

If the valuator lacks comprehensive details regarding the original development process, your client's valuation report will be based on solid research and assumptions, but won't be backed up by the historical record.

But solid internal controls and procedures regarding intellectual property have positive benefits beyond improving the valuation of these assets — they also affect your ability to protect them. If your clients' IP comes under threat, you'll be in a much better position to support claims of economic damages and other potential claims.

Solid internal controls — and the ability to conduct comprehensive valuations — go a long way toward ensuring that your clients protect and retain the full value of these critical assets.