

## IP Rights: Raising Value And Minimizing Risk

*Tuesday, Aug 07, 2007* --- The United States is blessed with a ready supply of entrepreneurs who have the drive and creativity to develop new technologies, new products, and new companies. Venture capitalists and other investors will go to great lengths to assess the risks and barriers to success for your company. Intellectual property rights can play a crucial role in the success or failure of getting funded.

Great technology alone will not lead to success without the right team. Venture capitalists will scrutinize the team you have assembled to determine their experience and understanding of the market for the new technology.

For established markets, selection of a management team that is experienced in that market is crucial to gaining confidence from investors.

For new markets, selection of a management team with a track record of bringing new technologies to market is equally important.

Market distinction can be established through technological innovations, and patent protection should be secured around the core technologies of your business. Without patent protection you may have no ability to prevent “copycat” companies from springing up.

Patent rights can also create an asset that can be leveraged in the valuation process, which will undoubtedly be necessary to obtain funding. Moreover, in some instances, patents may be the only asset you have for valuation.

For example, emerging software companies typically do not have physical assets that can be collected for valuation, and patent rights can fill this void.

Market distinction can also be established through a carefully crafted branding campaign. Brand awareness can often be created through a series of trademarks or service marks. Stylistic logos and catch phrases may be important for creating an identity for your product. Without federal registration of your marks, it may be difficult to prevent others from copying or diluting the value of your identity.

The risks of entry into the market cannot be assessed without a full appreciation of the competition in the marketplace. For established markets, there may already be a minefield of intellectual property rights that must be carefully navigated. Freedom to operate studies and trademark searches can serve an important function in assessing these risks.

Freedom to operate studies can be used to identify and evaluate patents that

are already present in the same technology space as your products. After a search is completed, extensive analysis may be required to determine if your products implicate patent rights of others.

In some instances, if the product is covered by the patent rights of others, alternative technologies may be used to design around the patent. Without the understanding provided by a freedom to operate study, the product may face an unknown substantial risk of patent infringement, which could ultimately drive the company out of business.

Similarly, trademark searches can be used as a preliminary step to identify and evaluate trademarks that may already exist to determine if your proposed branding campaign is sound. An extensive trademark search can be used to evaluate federal registration records, state registration records, trade directories, business name lists and domain names. This preliminary step can be used to prevent expensive litigation costs that may occur in the future, in addition to the expense that may be required to re-brand a product or company name.

In addition to securing intellectual property rights, businesses must be careful to prevent theft of intellectual property by their employees. Imagine that you hire someone to develop a technology and they leave your company and hand over the newly developed technology to a competitor.

Employment contracts that include provisions for intellectual property rights should be utilized by every company that is involved in creating and developing technology. Assignment of intellectual property rights should be included as one clause, and other clauses such as reasonable non-competition clauses should also be included to prevent theft of important intellectual property assets.

The employment contract should also include a choice-of-law clause and forum selection clause so that the applicable law and appropriate venue of any potential dispute is controlled.

Success in every new business endeavor has many risks. An awareness of intellectual property rights can play a crucial role in minimizing the risk of failure and in increasing your chances of getting funded. Start the intellectual property process early to increase value and minimize risk.

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