

SPENDING TIME AND MONEY AT THE BOTTOM OF THE IP CLIFF

“What is important is seldom urgent and what is urgent is seldom important.” – General Eisenhower.

In many companies CEO's and managers struggle to get beyond day to day business demands – the focus is “keeping the car on the road” rather than strategic or long term issues. As a business owner myself I can understand the sentiment. Unfortunately however “sacrificing the important to the urgent” only works for so long. Eventually the decisions put off, short cuts taken and stop gap measures catch up and something goes badly wrong: the car ends up at the bottom of a very tall cliff.

In our area of business - intellectual property strategy - we frequently find ourselves as the ambulance at the bottom of that cliff. The scene is familiar: the client has discovered a contractor, not them, owns a core piece of IP; their breakthrough invention has been published somehow; their new technology turns out to be not so new; their intellectual property spend has grown completely out of control; or they have been sued for infringement.

Unfortunately these situations often have a catastrophic impact on the business and the cost of getting the car back on the road and the occupants back in one piece (if possible at all) is high. Years of R&D have been lost, court cases have to be settled or initiated, markets have to be retreated from, brands damaged and customer relationships burned. The irony is that a proactive attitude towards intellectual property strategy early would have prevented the problem or at the very least caught it before the car left the road.

Instinctively we all know this but the next moment we hear ourselves saying ‘yes, that IP stuff is definitely important, but we have more urgent matters requiring our attention right now.’ Unfortunately in the world of technology and intellectual property that's a recipe for disaster: the stakes are high and well-resourced offshore competitors take no prisoners.

How then do we get from the bottom of the cliff to avoiding flying off the road in the first place? One way is to understand the issues you are likely to face (what the road in front looks like) in advance so you can drive to the conditions and know the intellectual property issues you are likely to encounter.

Below I have describe the key intellectual property considerations faced at each stage of a business' evolution:

1. Initial Concept & Start Up:

- Who owns the IP?
- How should you protect this IP for subsequent commercialisation? Should the idea be published?
- Will you have a sustainable IP position?
- Are you going to infringe on third party IP?

2. Emerging Business:

- Have you acknowledged your IP as an asset in your accounts?
- Have you developed an IP strategy and is it linked with your business and investment plans?
- Are you protecting your IP in the contracts you are signing with parties such suppliers, clients and employees?

3. Expanding business:

- Are you going to infringe on anyone else's IP in new markets?
- Have you developed a branding and trademark strategy?
- Are you controlling and managing your IP as the business expands and to minimise costs?

4. Mature successful business:

- Have you identified your IP as a profit centre within your business and are leveraging it to its full potential?
- Is your IP strategy linked into your innovation and R&D strategy?
- Are you taking IP into account in capital events (i.e. IPOs and investments) and other major transactions (i.e. M&A activity)?

General Eisenhower was absolutely correct when he said “what is important is seldom urgent and what is urgent is seldom important”. Intellectual property considerations can easily fall at the wayside as business gets busy and growth kicks in. But whether you spin out due to an unforeseen obstacle or your brakes fail due to lack of maintenance that sends you over the cliff, the results are never pretty for drivers (management, employees and directors) or passengers (shareholders). The key lesson: if you are not managing intellectual property like it's important, you're are facing an urgent problem.

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