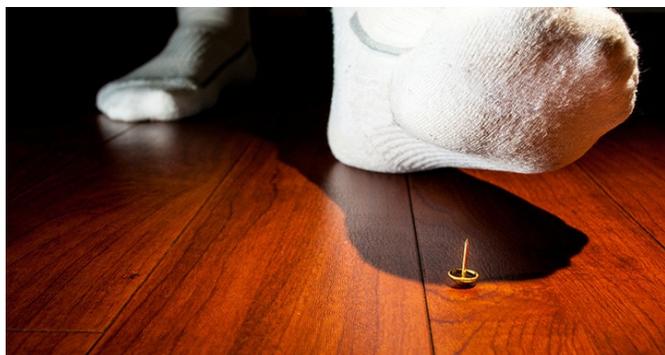


# Intangible Risky Business

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The national, and many times global, reach of most businesses, regardless of size and physical location, continues to drive the ever increasing importance and value of intangible assets. In fact, a business's intellectual property ("IP"), its intangible assets, typically represents a greater proportion of the total value of the business than the value of its tangible assets such as real property, equipment, and inventory.

This is because IP covers a variety of intangible assets, including:

- Patents for inventions, processes, and product designs;
- Trademarks and trade dress encompassing brand names, logos, symbols, and the overall aesthetic look and feel of a business or its products;
- Trade secrets including customer lists, vendor lists, and formulations; and,
- Copyrights protecting websites, promotional materials, product packaging, software, and other visual art.

Despite the value and universal importance of IP to essentially all businesses, many do not accurately inventory the creation, protection, management, and exploitation of their IP assets. The challenge is typically finding the resources and management buy-in necessary to prioritize the proactive identification, protection, and management of IP assets. Many times, the immediate and urgent issues of the day-to-day operations take precedence until the IP assets become the urgent matter at hand. This can result in IP assets that simultaneously qualify as a business's most valuable asset and represent the highest liability, waste of resources, and loss of potential revenue.

## Best IP Asset Practices

An Intellectual Property Audit ("IP Audit") is the best business practice to minimize IP risks and liability and safeguard the protection and enforcement of valuable IP assets. It is a systematic, solution-based review of a business's assets and policies used to identify, manage, and leverage IP assets and the related risks and opportunities. IP Audits evaluate, preserve, and enrich IP rights; correct IP asset deficiencies and errors; identify opportunities to leverage IP assets that would otherwise be underutilized; minimize infringement liability; and result in the development of best practice policies and procedures for IP asset management.

## Purpose of an IP Audit

- **Identify IP Rights:** The efficient and effective management of a business's assets, including intangible IP assets, is essential to the bottom line. If a business has not identified or is unaware of its IP assets, it cannot manage or protect them from damage or loss. Thus, the first purpose of the IP Audit is to identify all IP assets (owned or licensed).
- **Enhance IP Value:** The IP rights that comprise IP assets are created and protected by a myriad of state and federal laws, case law, and the Constitution of the United States. These laws set forth different ways in which IP rights are

created, protected, and enforced depending on which IP assets—copyrights, patents, trademarks, or trade secrets—are being considered.

Businesses often unknowingly lose, diminish, or destroy IP assets due to a lack of understanding of the varying requirements for each type of IP. IP Audits provide an integrated approach for avoiding loss, increasing value, and strengthening the rights related to IP assets.

- Understand IP Limitations: IP assets, and the use of those assets, can be limited, encumbered, or compromised through contractual agreements. IP Audits include the review of business agreements pertaining to IP assets such as licenses, employee agreements, independent contractor agreements, joint venture agreements, and settlement agreements.
- Minimize IP Risk: IP disputes are complex, lengthy, and expensive. The effect is that businesses forgo enforcement (resulting in loss of IP rights), cede certain IP rights to reach a resolution (limiting business opportunities), or spend resources defending against an inadvertent infringement (wasting valuable resources). IP Audits can help identify, and many times assist in, avoiding or minimize potential disputes through strategic planning and proactive remedial action.

### **Benefits of an IP Audit**

- Opportunities: The IP Audit process requires the involvement of legal professionals and employees from all levels (e.g., inventors, managers, executives) and from all departments (e.g., marketing, research, finance). The resulting synergy of combining the industry and business knowledge of the employees with the IP knowledge of the legal professionals can be its own competitive advantage.

Once there is an understanding of existing IP assets and how those assets can be better leveraged, the business is in a better position to recognize opportunities for developing new IP assets and more quickly capture and leverage them before there is any loss (or risk).

- Revenue and Budgeting: IP Audits provide businesses with information regarding the economic benefits and value of IP assets such as the creation and maintenance cost, replacement costs, and the potential income and present cash flow values. IP Audits can identify unnecessary cost by isolating obsolete IP assets or opportunities to dispose or license IP assets that no longer align with the business's strategy.
- Business Transactions: IP assets can play a large role in business transactions. IP Audits provide information that allows a business to be nimble and responsive to business opportunities such as offers to purchase, expansion opportunities, joint ventures, licensing request, and financing requirements.

### **Conclusion**

The IP Audit process can provide a business with more than a list of its IP assets. It can provide a thorough, detailed awareness of the value and risks associated with a business's IP assets; many of which may be unknown without an IP Audit.

This knowledge can give a business an improved strategic position by providing strategies for mitigating risks and leveraging IP assets. Regardless of the size of a business, its location, industry, or the scope or makeup of its IP assets, approaching IP assets through the lens, and as a result, of an IP Audit is essential to the fiscal growth and success of businesses in this national and international economy.

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