Auditing Intellectual Property

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Introduction

- Meet the instructor
- Introduce the seminar objectives
- Review the program agenda
- Measure your knowledge
# Program Topics

## Overview
- ✔ Introduction
- ✔ Types of Intellectual Property
- ✔ Primary Sources
- ✔ Illustrations

## Specific Steps
- ✔ Planning the Audit of Intellectual Property
- ✔ Preliminary Review
- ✔ Specific Controls
- ✔ Detailed Testing
- ✔ Summary
Risks include...

• Loss of Market Share
• Lost Revenue
• Lost Opportunities
• Understated Liabilities
Exercise
Exercise

What is the extent of your knowledge of Intellectual Property?

a. Very Extensive Knowledge
b. Extensive
c. Moderate
d. Low
e. Very Low
Types of Intellectual Property

How many categories of IP are there?
Exercise
Exercise

How many categories of intellectual property are there?

a. More than 20
b. 10 to 15
c. 5 to 9
d. 4
e. Less than 4
Types of Intellectual Property

Patents
Trademarks
Copyrights
Trade Secrets
Types of Intellectual Property

Patents

Trademarks

Copyrights

Trade Secrets
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Types of Intellectual Property

Patents
Trademarks
Copyrights
Trade Secrets
Examples

• Trademark
Examples

Sheet Music
Examples

• Copyright

Sheet Music
Examples

Confidential
Client List
Examples

- Confidential Client List
- Trade Secret
Examples

Special Design
Examples

- Special Design

- Patent
Questions
Case Example
Use of company name on personal website – “employee of the year”

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- Patent
- **Trademark**
- Trade Secret

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Case Example
## Use of Similar Brand Name

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Use of Similar Brand Name

Infringement Type
- Copyright
- Patent
- Trademark
- Trade Secret

Was this a violation?
- YES
- NO
Different Outcome
Use of Similar Brand Name

Infringement Type
- Copyright
- Patent
- **Trademark**
- Trade Secret

Was this a violation?
- **NO**
Questions
Building Your Audit Program
Beginning Steps
Audit Program – Possible Steps

✓ Identify key IP personnel.
✓ Obtain biographies of IP personnel.
✓ Obtain copy of IP department flowchart.
✓ Inquire about handling of IP.
Audit Program – Possible Steps

✓ Inquire regarding categories of IP.
✓ Obtain a list of IP.
✓ Assess whether management inventories IP on a regular basis.
✓ Look to independent sources for existing IP.
Flowchart the process
Exercise
Exercise

- During the preliminary walkthrough, can you identify two practices you would examine?
Preliminary Review

✓ IP Discovery Process
✓ IP Internal Reporting
✓ Evaluation
✓ Documentation
✓ Recording
Perform Analytics

Revenues

Expenses

Trending Data is Critical
Trending Analysis

Including trend analysis and benchmarking intra-company, intra-industry, and inter-industry.
Questions
Controls
Many IP contracts are “exclusive” in nature.
Thus IP licensing should be subject to periodic bidding.
Contracts

In most cases the purchase or sale should be evidenced by a written contract.
Case Example
Design brought in by employee from a competitor?

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Another Copyright Case
**New York Times** – Rebroadcasting Articles and Photos on Internet (Contract is Silent)?

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- YES
- NO
Audit Steps
Organization

Executive Management

Intellectual Property Personnel (internal and external) assigned along product lines

Product 1
Product 2
Product 3
Product 4

Intellectual Property by Product
Organization

Executive Management

Intellectual Property Personnel (internal and external) assigned along territorial lines

Territory A
Territory B
Territory C
Territory D

Intellectual Property by Territory
Organization

Executive Management

Intellectual Property Personnel (Internal and external) assigned along product/territorial lines

Product 1/ Territory A
Product 2/ Territory B
Product 3/ Territory C
Product 4/ Territory C

Intellectual Property by Product/Territory
Case Example
A key employee leaves with a confidential client list.

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- **NO**
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Was this a violation?
- YES
- NO
Internal Generated IP

- Look for systematic process
- Well documented procedures
The R & D Department conducts research.

Is a particular development unique?

Document finding and store as appropriate

Documenting Discoveries Internally Developed
Prepare application materials for submission

Copy of Documents that reflect the development

Original Documents reflecting development

Personnel store development records

Documents timely sent for registration
Externally Generated/Acquired IP

- May be a one-time occurrence
- Need documentation
- May need updated filings
Has the company purchased a viable right?

Yes

Prepare application materials for submission

Original documents reflecting development are sent in for registration

No

Document findings and store as appropriate

Produce a copy of documents that reflect the development

Store records and related application materials in a secure location

Documenting Discoveries Procured Externally
Control Design and Questionnaire

✔ What is management’s overall philosophy?

✔ What steps does management take to ensure that intellectual property rights are adequately protected?

✔ How frequently does management test controls dealing with intellectual property?

✔ Can management identify key personnel assigned a responsibility of developing and maintaining intellectual property rights?
Exercise
What are the five assertions of management?
Build into the Audit Program

- Existence & Occurrence
- Rights & Obligations
- Presentation & Disclosure
- Valuation & Allocation
- Completeness
Can management produce documents of ownership?

Are ownership claims valid?

Testing Rights and Obligations

Is some ownership shared with a third party?

Have ownership rights been transferred to third parties?
Are rights properly valued?

Are expenditures incorrectly capitalized?

Are transactions reported in the correct periods?

Testing Valuation and Allocation

Is there sufficient evidence to support values?
Are disbursements accurate?

Are intellectual property liabilities recorded?

Are liabilities reflected on the financial statements?

Are the liabilities accurate?

Testing Completeness
Questions
Implementing the License

✓ Fulfill agreement obligations
✓ Calendar required events & payments
✓ Record terms in database
✓ Publicize internally & externally
Monitoring the License – Your Program

✓ Measure Regular Activity

✓ Review compliance with terms
  ✓ Quality & Quantity Benchmarks
  ✓ Key Milestones
  ✓ Periodic Reports – Great Control
  ✓ Payments – Accurate and Timely

✓ Obtain independent verification
  ✓ Ownership
  ✓ Management Activities
Reporting on the License

✓ Licensor and Licensee Requirements
✓ Possible Mandates:
  ✓ Annual reports
  ✓ Performance
  ✓ Copies of sublicenses
  ✓ Documentation
Accounting Under the License

✓ Invoice & collect all required payments
✓ Track allocable expenses
✓ Reimburse costs
✓ Distribute revenue
Areas of concern when testing the completeness assertion
Amending the License

- Identify rationale
- Follow process outlined in license
- Clarify goals of negotiation
- Protect technology & institution
Terminating the License

- Action of last resort
- Follow process outlined in license
- Document everything
- Keep inventor informed
The License – Expanding Testing

✓ The product hits the market!

✓ Is shared income with inventors accurate?

✓ Is news spread internally?

✓ How is news delivered externally to highlight public benefit & economic impact?
The Report

- Address the Impact
- Have sufficient examples
- Support positions
- Consider distribution
Illustrative Distribution List of the Audit Report

- HR
- Regional Managers
- Product Managers
- R & D
- Audit Committee
- Internal Counsel
- External Counsel
SUMMARY

✓ Centralized Process
✓ Well-Organized
✓ Frequently Evaluated
✓ Periodic Reporting to Management
Questions