



# Introductory Intellectual Property Audit

A Review of the Business Critical Intellectual Property Assets

**One of the Intellectual Property Services for Business  
from TBB plc**

## Introduction

Many businesses that are otherwise well managed and controlled often neglect the identification and protection of their proprietary Intellectual Property (IP). In an early stage, or even a well established business, this is often their most valuable asset and yet it is often unrecognised as such. Intellectual Property may represent 80% of the value of the business and as such it should be a critical set of assets that is monitored at Board level.

Understanding Intellectual Property is fundamental to understand the business and it is not just an academic exercise. Neither is it something that's only of importance to companies working with technology. Any company will be building up goodwill in brands and trade marks, business know-how, web sites, and client databases. All these should be recorded and monitored to ensure that the true value of the business is being measured and managed.

A strong intellectual property base is the foundation for future developments and is a defence against competition. Before embarking on any new developments the existing and competing IP should be reviewed. This ensures that the development money isn't being wasted by building on unsecure IP foundations, or even infringing another company's IP with potentially disastrous consequences.

It is important to educate the staff about the importance of IP both to ensure that developed IP is secured for the benefit of the company and also to ensure that the company is not exposed by the casual incorporation of external IP into the company's products and services. This can be caused by anything from the use of unlicensed software to the inclusion of ideas gleaned from scientific papers without regard to their IP status. The effects of infringement can be doubly damaging because of the wasted resources added to the possibility of financial penalties.

An Intellectual Property audit can help you identify the key IP in your business and show you the best way of protecting it. Once these assets are identified and protected they can be used as business collateral and may attract revenue streams in their own right through sales and licensing.

We can work with you to identify these key elements and also give you an insight as to how to protect other assets that you may create as the business develops. It is often critical to do this in a timely manner as some types of IP protection cannot be put in place retrospectively.

An IP audit is particularly relevant to early stage projects, helping to ensure that potential intellectual assets are identified and appropriately managed.

## The Need for Intellectual Property Protection

In the introduction above the importance of IP was emphasised but many companies, especially small ones, still don't take the prudent measures necessary to protect the core assets of their business. Often this is only discovered during due diligence for crucial issues like raising money or selling the business.

Owners of successful businesses can be shocked to discover that the business is only worth a fraction of their expectation because key technology and know-how has been put in the public domain and therefore is readily available to competitors at little cost. Valuable assets such as patents that could be used as collateral for loans are absent and barriers to entry for competitors are negligible because the technology and know-how is freely available.

It is not just about patents. Every key aspect of the business from fundamental technology to the commercial brands should be protected so that the whole enterprise is worth more than the sum of the parts. Without these protections in place the business may be little more than a client list and leased premises.

Increasingly as manufacturing moves to low cost economies it is vital that the differentiating and profit generating characteristics of the business that are based on its technology and designs are ring-fenced and protected. The first step on the road to protecting these assets is to audit the enterprise to ensure that the key elements have been identified. Then a strategy to protect them and enhance the value of the company can be developed.

# Intangible Assets

Intellectual Property is part of the Intangible Assets of the company. As well the more formal classifications listed below it includes licences and permits, contracts and agreements and of course perhaps the most vital of all is the know-how that is associated with the human capital of the company. The loss of any of these could have a damaging effect upon the fortunes of the company and a prudent company will have measures in place to recognise these assets and have processes and contingencies in place to mitigate the effects of any problems.

## Intellectual Property

The Intellectual Property in a business can be put into one or more categories. Some IP may be capable of being protected in more than one way. We can work with you to identify and classify your IP. The main forms of IP are summarised below. The first three of these need specific action to register the IP and protect it. Copyright is an automatic protection, Trade Secrets and Know-How can be protected by non-disclosure agreements.

### ***Patents***

A patent protects how something works. It can protect what it is made of, and even how it is made. It does not protect the appearance of the implementation. For that you must register a Design Right. So if your implementation has a new function or any technical elements, use a patent to protect it.

### ***Registered Designs***

Registered Designs protect the appearance of an item if it is novel. They do not protect the functionality. If your implementation is simply a new look for an existing product with no technical changes then design rights can be a cost-effective route to give you some protection. Unregistered design rights exist automatically for features of a design that are not capable of being registered. You can register your design with the UK IPO to protect it. If you need to protect how the implementation works, then you should consider using a patent in addition to a Registered Design.

### ***Trade Marks***

A trade mark protects things like brands, business names, product names, advertising slogans and logos. If you have a business idea for a new service offering, this may be the best and only way to gain some protection. The Trade Mark can be registered or unregistered. An unregistered Trade Mark gains some protection merely by being used. A registered Trade Mark can provide important additional benefits and should be used for any business critical branding.

### ***Copyright***

Copyright is an automatic right for the author of any artistic or literary work including engineering drawings and similar items. Copyright exists as soon as the work is created. You cannot register Copyright in the UK and you do not need to, provided that you can show you produced the original work.

### ***Trade Secrets and Know-How***

Obviously by their very nature if these are put in the Public Domain they are no longer protected so if a Trade Secret or Know-How is being provided as part of a business arrangement then it must be protected by a non-disclosure agreement.

Properly recording the formal IP is the first step in controlling it effectively. It can be expensive to maintain a large IP portfolio and periodic consideration needs to be given to the importance of the assets to the business. Those that are no longer key items can be considered for disposal and may even generate new revenue streams by way of sale or licensing.

## Scope of work

We will provide you with a preliminary questionnaire so that you can prepare and assemble the key information about your business. We will then visit your premises and work with you to review not only the information that you have prepared but your business in general. We will discuss your business with you so that we can understand its key elements and identify the important IP aspects.

We will then prepare a report setting our findings and recommendations for action with advice on how to proceed.

All this will be conducted under the constraints of a Confidentiality and Non-Disclosure Agreement that we will exchange with you prior to the review. This is not only to provide assurance that we will keep your business affairs confidential but also to ensure that any IP that might be the subject of a Patent application is not inadvertently put in the public domain by talking to us. Ideas that have been put in the public domain cannot be patented.

In respect of each category of Intellectual Property we will help you to do the following;

- Patents – identify pending applications, granted patents, potentially patentable technology
- Trade Marks - identify registered trademarks and unregistered brands;
- Designs - identify registered and unregistered designs;
- Copyright - use of copyright on websites, marketing/promotional material, photography, film, ownership issues;
- IP Management - to include confidentiality (or non-disclosure) agreements, trade secrets, employee agreements, licensing, international filing strategies etc.

We will summarise our findings in a confidential report that can be used as the starting point for developing an Intellectual Property Strategy that ensures the business is protected and that its value can be recognised.

## Who should be involved

Intellectual Property will affect all areas of the company and not just Research and Development departments. Human Resources need to ensure that staff contracts cover matters of confidentiality and assignment of IP to the company. Contracts for temporary workers and sub-contractors must also address these issues.

Sales and Marketing departments will be building up value in brands and sales collateral. The value of the goodwill in these items could easily exceed the value of the tangible assets of the company. Sales and Marketing are also a valuable source of information about competing products and services to inform decisions about infringement and development strategy.

Every department of the company needs to be made aware of the importance of IP and should be encouraged to participate.

## Getting an Audit

If you would like to discuss an Intellectual Property Audit from TBB then please get in touch with us.

You can contact us by email at : [audit@tbbplc.com](mailto:audit@tbbplc.com)

By telephone at : 05601 290240 (BT Standard Rate Number)

Or by post at

Trevor Baylis Brands plc  
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