

Intellectual Property: A Big Asset You Didn't Know Your Business Had

Before you sell your business – hopefully long before – you need to figure out what your intellectual property assets are and what they're worth.



By Jeffrey M. Verdon, Esq.

For decades, Harold has been building his business after starting it from scratch. He is now preparing to **sell his company** by identifying all of the company's assets for a prospective buyer. Harold and his CFO identify the valuable tangible assets, such as equipment, rolling stock, cash, equivalents and accounts receivable. They chronicle the balance sheet and send it to their business broker, lawyer and CPA for review.

Almost immediately, Harold's lawyer calls and asks him where the intellectual property is located. Harold tells him that he has none, adding that he has no patents, no trademarks or copyrights. He tells his lawyer that there simply aren't any IP issues.

Harold's attorney replies that of course, the company has some IP. He reminds Harold that he doesn't do the exact same thing as his competitors the exact same way. Harold agrees.

The attorney adds that this means

there is intellectual property, adding that Harold just wasn't aware of what it is, where it is, or how to best protect it. He cautions Harold that he does not want him to sell his company and its intellectual property without getting paid for it.

It's Common: Money Left on the Table

Harold is seeking maximum value for the business he created and grew with blood, sweat, tears and sacrifice. Yet he was about to leave a significant amount

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Continued from previous page

of money on the table because he failed to understand his ownership of valuable intellectual property. His lawyer drives the point home even further, warning that if he doesn't identify his IP on a schedule of assets that two potentially disastrous things can happen:

- First, Harold won't receive any value for the IP, so money will be left on the table when he sells the business.
- Second, if a competitor does try to compete against Harold by stealing any technology, or if a key employee walks away or goes to work for someone else taking company knowledge with them, the seller (or the buyer) will have no chance to stop it because there was no representation that there was any intellectual property to protect.

But all does not have to be lost.

On the eve of selling a company it is too late to first have a conversation about protecting IP, but better late than never. Companies have intellectual property, but they might not know where or what it is. And even though a business owner may not know quite how to protect it, or exactly how valuable it is (that's what your intellectual property lawyer is for), it needs to be identified. If that can be accomplished, you can work with an IP attorney to secure it and make it exclusive to you for your benefit.

Where to Look for Your IP

Where is this intellectual property typically? It's usually not in patents, and many companies, especially those in the B2B space without consumer-facing products or services, don't have valuable trademarks. But almost every company has know-how. For example:

- Do you have a unique sales or customer service technique that makes your customers want to work with you?
- Do you have a business process that helps you deliver services faster, better, or less expensively?
- Do you have a way of creating a business culture that keeps everyone pulling on the same end of the rope to maximize creativity, revenue and profitability?

Or how about this — you are a manufacturing company that has 50 machines to make widgets. One employee in one plant responsible for one of those machines has figured out how to turn the knobs and pull the levers on that one machine to make it run just a little better. That know-how is intellectual property. But wait, there's more! Did that employee know what they created? Does your company have a process for identifying important innovations so that instead of having one of 50 machines run better, that know-how is communicated across

the manufacturing base so that all 50 machines run better?

Protecting Your IP

It is likely you have intellectual property after all, and if you can identify it, you can protect it. Information you don't wish others to know about can be protected by strict adherence to a trade secret policy, which can be combined with strong security protections to secure those trade secrets under lock and key within the company.

Key employees, contractors and business partners can, and should, be bound by non-disclosure agreements to keep your information secret. The top innovators and business managers should collaborate periodically, sharing valuable know-how and business improvements (like the machine improvement) so the entire company can benefit.

If an innovation is going to become public, such as a new product going to market where it can be copied, an intellectual property lawyer can advise on the correct protections to keep competitors from doing just that. These protections might include utility patents, design patents, trade dress protection or other techniques.

As it turns out, Harold does have intellectual property he can identify. He just wishes he had gotten an intellectual property lawyer involved sooner.



Jeffrey M. Verdon, Esq. is the founder and Managing Partner of Verdon Law Group, LLP, a Trusts & Estates, and risk mitigation boutique law firm located in Newport Beach, California. With more than 40 years of experience in designing and implementing comprehensive estate planning and asset protection structures, the law firm serves affluent families and successful business owners in solving their most complex and vexing estate tax, income tax, and asset protection goals and objectives. Please call us for a consultation.

4695 MacArthur Court, Ste. 1100, Newport Beach, Ca. 92660
949-333-8150 • www.verdonlawgroup.com