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INTELLECTUAL PROPERTY AUDITS

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INTELLECTUAL PROPERTY

Intellectual Property Rights (IPRs) are legal property rights given to originators of products of the intellect. IPRs include copyright and its related rights, trademarks, patents, protection for utility models, industrial designs and designs of integrated circuits, trade secrets, confidential information and suppression of unfair competition.

IPRS ARE VALUABLE ASSETS

IPRs can prove very valuable to companies, businesses, corporations and institutions provided that they are diligent in protecting their rights; prudent in managing these rights and keen in the observance of rights belonging to third parties.

One valuable innovation or idea, which is properly protected by IPRs, can make a significant difference to an organization's worth and earnings. IP assets influence commercial transactions and sway investors one way or another depending on their validity and value.

The value of IP is clearest to technology and innovation companies, whose *raison d'être* is their copyrights, patents and trade secrets; to entertainment enterprises whose life line is their copyrights and related rights, and to consumer products companies, whose goodwill depends on their trademarks.

WHAT IS AN INTELLECTUAL PROPERTY AUDIT?

An Intellectual Property Audit is, in essence, a due diligence exercise into the status of an organization's intellectual property portfolio.

WHY CONDUCT AN IP AUDIT?

IP audits are necessary in determining the status of the rights affecting such assets and in examining the procedures being employed in the recognition, protection and management of these rights.

For many businesses enterprises and corporations intellectual property remains a hidden and untapped potential, which may only come to light by virtue of a sale, public offering or a need for financing. Their importance may surface in the

event of infringement that does damage to the company or from a threat of legal action against the company for alleged infringing activities. An IP audit is therefore a useful tool in discovering the potential worth of IP, which so often eludes when dealing with intangible assets as well as detecting unwitting infringing activities.

A LEGAL IMPERATIVE

IP assets are not often properly understood in spite of their economic value and Lawyers with expertise in IPRs are often called on to conduct an IP audit, which requires, among other things, a knowledge of IPRs, the applicable Statutes and Laws and the intricacies of licensing and rights management.

THE VALUE OF AN IP AUDIT

By determining the status of intellectual property rights in an organization the IP audit serves as a necessary precursor to establishing reliable mechanisms to identify potential intellectual property and to detect possible defects in the rights affecting that property so that remedial steps may be taken to perfect the rights.

The IP audit may, for example, reveal the need for the audited institution to enforce or reform its policy on intellectual property, or to set up regimes or units for rights clearance or licensing.

An IP audit may also assist with determining the origin of intangible assets, the ownership of IPRs in those assets, the extent of the entity's legal interest in the assets and the scope of rights, which third parties may have in the material.

WHEN ARE IP AUDITS NEEDED?

IP audits are needed by information technology driven firms and businesses with technology-based assets that are licensable. Specific IP audits are undertaken mainly pursuant to:

- 1) A sale or transfer of assets, from one entity to another, particularly when IP is among the assets being sold or transferred
- 2) The purchase or sale of businesses
- 3) The purchase of the shares or stocks in a business or company, which owns IP.

Other transactions that rely on the results of an IP audit include:

- 1)** Loans (a company may be able to use its IP as collateral)
- 2)** Investment (a company's IP portfolio is also critical to attracting potential investors)
- 3)** Public offerings (where IP is a major component of the company the audit affects the representations and warranties made by the company)

For companies, which may not be IP focused, but still generate or use IP as a part of their business activities, a general IP audit is a good tool for best practices and can be used to assess their IP potential. This is useful for both young businesses and old ones, which never paid attention to IPRs.

It is also prudent when entering a new company for in-house Attorneys to have an overview of the state of the company's IP portfolio. There may be IP ownership issues to be addressed between employers and employees, IPRs to be perfected and rights clearance systems to be streamlined etc. There may just be an infringement lawsuit waiting to hit and to be forewarned, is to be forearmed!