

Houston Business Journal - July 30, 2007

<http://houston.bizjournals.com/houston/stories/2007/07/30/focus8.html>

# HOUSTON BUSINESS JOURNAL

BUSINESS PULSE SURVEY: [Has the meltdown in lending made it more difficult for your company to borrow mo](#)

## Intellectual Property

# Turn intellectual property novice into an employee who is IP savvy

Houston Business Journal - July 27, 2007 by [Henry \(Bud\) Ehrlich](#)

It's important for both employers and employees in all business segments to have an understanding of intellectual property. Companies that fail to take steps to turn the IP novices in their organizations to the IP savvy may be setting themselves up for problems.

IP savvy business executives understand that IP is an asset. They are proactive in obtaining, creating, protecting and maintaining IP of value. IP savvy businesses understand that IP takes many forms, each form providing certain rights and value. Understanding the value of IP, these businesses are armed to capitalize on their business goodwill, diligence, creativity and innovation. They have implemented policies and procedures for success.

IP novices may be unaware of what IP includes, unaware of the IP they have created, or of the value of their IP. They are not in a position to capitalize on their hard work and business goodwill.

### A Lesson in IP

Companies learn a valuable lesson in one of three ways:

- **Epiphany scenario.** The first is the epiphany scenario, wherein someone realizes that they may have something of value. Joe is watching late night cable television and sees an invention service commercial. Adam reads an article on famous trademarks that have become generic. From that seed they take the step to becoming IP savvy.
- **Panic scenario.** The second scenario, and the least desirable, is the panic scenario. Susan is trying to obtain a business loan and the bank is inquiring about the value of her business' intellectual property, or John has found that a competitor is doing business with a logo very similar to his logo and the competitor is benefiting from his experience, quality service and advertising. These businesses have to react, then become IP savvy.
- **Inventory education.** Any business, from sole proprietorship to multi-national conglomerates, from conception to third-generation can become IP savvy by taking an IP inventory. IP inventories require knowledge, data collection and evaluation. Every business, no matter the type or experience level, should conduct inventories on a regular basis.

### Asset types

Intellectual property is a broad term that encompasses trademarks, copyrights, patents and trade secrets. Some intellectual property rights accrue automatically and some require formal action, such as applying for and obtaining a registration. Even with automatic rights, it is often advisable to register the property to obtain the full benefit of the laws.

- **Trademarks.** A trademark or service mark is a word, name, symbol or device that is used in trade with goods to indicate the source of the goods or services and to distinguish them from

the goods or services of others.

Trademarks are obtained automatically. Additional benefits can be obtained through registration on the state and national level. A common mistake made by businesses is in not properly selecting or using the mark. Significant money and work may go into branding without acquiring a trademark. Also, many famous trademarks have been lost due to becoming generic.

- Copyright. Copyright is a form of protection provided to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. Copyrights are automatic rights; however, registration can provide significant benefits.

Copyright material is often overlooked by businesses. For example, an artist that creates a logo (trademark) for a business may have the copyright as opposed to ownership of the copyright by the business. Product brochures, operation manuals and the Internet are often the source of copyright disputes.

- Patent. Patents relate to new and unobvious products that are useful. Patents can be obtained for various types of constructions, methods, compositions and aesthetic design features. Patents have a limited life and require periodic action to remain in force.
- Trade Secrets. Trade secrets relate to devices, methods and formulae that are confidential and give one an advantage over a competitor. Trade secrets include business plans, customer lists and training manuals.

The right questions

The asset type will dictate some of the information that should be collected. For example, for trademarks it will be necessary to determine the marks that are being used, that are intended to be used and marks no longer in use:

- Is there a state or federal registration for the mark?
- Have common law rights been established?

The patent inventory should include information such as the date of issuance, expiration date, correlation of products to the issued patents, inventors, assignment information, patent applications pending and critical dates for actions to maintain the patents.

Each asset category should include policies and procedures:

- Are there confidentiality agreements in place?
- Are invention disclosure procedures in place?
- Are exit interviews conducted?
- Is access to confidential information restricted physically and electronically?

So what places the IP savvy business ahead of the IP novice? Knowledge and action. IP savvy businesses do not just create goals, they proactively create and implement policies and procedures to achieve those goals.

*HENRY 'BUD' EHRLICH is a registered patent attorney in the Houston office of Winstead PC*