

Every business has some intellectual property (IP). IP is at the centre of many businesses today. Apple, Microsoft, Disney and Procter and Gamble are examples of those at the 'big end of town' whose activities are IP focused. IP allows businesses to differentiate themselves from their competitors. Both Coke and Pepsi manufacturer and sell a carbonated cola soft drink. What differentiates them are their IP.

However, do you know the answers to these questions:

1. What do you own, who else has an interest, and do you need to protect your title?
2. Who owns something you need or something that causes you grief?
3. What do you need to do to protect what you own?
4. How would your IP withstand a challenge of non use or that you are not the valid owner?

Knowing the answers to these questions about your IP will allow you to decide whether you are making the best possible use of your IP and budget for creating more. Unfortunately, many business do not know what IP they have or how to protect it. An IP Audit can identify strengths and weaknesses to maximize business opportunities and mitigate risks, thereby helping you to:

- (a) If you have an IP strategy; decide if it aligned with your overall business strategy;
- (b) If you do not have an IP strategy; it will give you the information to devise an IP strategy to then decide if it aligned with your overall business strategy.

Etienne Lawyers offers a wide range of IP audit services to commercialise your IP.

An IP Audit:

1. reveals the IP rights you currently have;
2. identifies IP rights that could and or should have; and
3. makes recommendations about commercialising the IP rights in the context of your business plan.

Who needs an IP Audit?

Potentially every business could benefit from an IP Audit. For example, a high-tech company will need to know what patent rights it has, what possible new patents it can obtain, and also will need to understand the value of their patent rights.

A company working in the creative industry may want to know what trade marks, registered or unregistered design rights and copyright they have to protect their brands and images.

Even professional services firms such as accountants could benefit from an IP Audit. They might want to know about the rights in their name and their websites, such as who owns the domain name and any photographs.

Etienne Lawyers IP Audit Stages

Stage 1

The Auditor will aim to find out as much as they can about the business. For instance, determining the commercial sectors it operate, its business plan and the features of the business that are important and unique with respect to the competition.

This information is gathered in many different ways and differs for different clients, but can involve site visits, undertaking a comprehensive review of a business's assets, reviews of products, manuals and marketing material, reviews of license agreements, searches of electronic databases such as patent and trade mark registries, or competitor analysis.

Stage 2

Identify and locate IP assets, and then assess the nature and scope of the IP to evaluate their benefits and allocate risks associated with the ownership or use of the relevant IP assets; in particular, it seeks to determine whether the relevant IP is free of encumbrances for its intended business use(s).

Stage 3

Identify potentially patentable inventions, registrable trade marks, or designs, dependent upon available information. Unregistered rights such as confidential information, branding, domain names, and unregistered design rights are also investigated. The Audit could identify trade secrets and copyright material such as databases, photographs and written material in the company websites and product/promotional materials.

Stage 4

Identify problems in and barriers to the transfer, hypothecation or securitization of the IP assets under consideration.

Stage 5

Report on IP of the business.
Specific recommendations to improve the business's IP if needed.
Comment on commercialising the IP.

What recommendations might result from an IP Audit?

After completion of an IP Audit, specific recommendations to improve the company's position could be provided.

For example, the Audit may advise on the company's use of non-disclosure agreements to make sure that confidential material is kept confidential. It may also advise on IP-related aspects of employment contracts, including internal contracts and those when engaging external contractors, to ensure that the company will not miss out on new IP that is created or commissioned.

Significantly, new company procedures could be proposed which will ensure that maximum benefit can be obtained from the company's IP. These procedures could include:

- Improving how know-how and other confidential information is captured and recorded.
- Identifying unregistered IP such as design rights and copyright; or trade marks where registration might need to be deferred until distinctiveness has been acquired through use.
- Ensuring evidence of use of the trade marks is captured and recorded, for proof of use in the event of non-use challenge or the need to rely upon mature registrations in proceedings brought against others.
- Identifying potentially registrable IP.
- Prioritisation and valuation of registrable and registered IP rights. The value of an IP right will depend on the company's business plan.
- Infringement clearance procedures. Will the launch of a new product or brand infringe any third party rights? Can anything be done to "clear the path" because of existing rights?
- Publication clearance procedures. Ensuring that potential IP rights are not lost by inadvertent disclosure.
- Maintaining up to date proprietor, licensee and contact details for registered IPRs, including domain names.
- Marking of products, services and literature with application and registration numbers and using TM or ® or © symbols as appropriate to the country of registration; or using the © appropriately for copyright works.
- Ensuring that IP rights and strategies are reviewed regularly.
- Making staff more aware of IP in general and the company's IP assets and strategy in particular.

How do you get an IP Audit, and what do they cost?

All businesses can benefit from an IP Audit. If you are in doubt as to the benefits of conducting an Audit for your own business, contact us for further information. We can also discuss the type of Audit you require and tailor it to your specific requirements.

The cost of an IP Audit will depend on the size and type of the company in question and upon the required depth and purpose of the Audit. For SMEs (less than 100 to 20 employees) who need to control costs, we provide a fixed fee Audit for \$4400. For businesses with 20 or fewer employees we provide a fixed fee Audit for \$2200. For that price we produce a report that assesses existing rights as identified above, including our recommendations for commercialising your IP. This could also include a face-to-face meeting afterwards to discuss the report and explore recommendations.

To protect your IP call Etienne Lawyers now.

