IP Risk and IP Risk Management

What solutions are there to mitigate IP risk?

Introduction

Hello and welcome to the Academy by PatSnap course on IP Risk. For this series, we're delighted to welcome our partners and experts in this field, Chawton Innovation Services, who will be guiding us through the complex environment of risk and how that relates to intellectual property. Once again, Donal O'Connell, Managing Director of Chawton Innovation Services, will be our host for this session. In this module, we're going to turn our attention now to some of the solutions that will help to mitigate risk.

Donal O'Connell:

Hello everyone and thanks for joining us. Risk, as we're defining it here, is the chance of something going wrong, and the danger that damage or loss will occur. By its very nature, there are both rewards and risks associated with IP. For anyone involved in IP, then IP related risks are part of working life.

Not all IP related risks are the same and they may be broken down into a variety of different categories, such as the form of IP involved (for example, patents, trademarks, copyright, trade secrets, and so on); the impact and probability of the risk; the source or origin of the IP related risk; the date when the risk is likely to materialise; the IP activity impacted; the geographical nature of the IP risk; whether they are generic or specific in nature; and the group or sub-group most impacted by this risk in the organisation; amongst others.

Any company faces a variety of IP related risks, some foreseen others unforeseen. I have yet to meet a company who does not have one or more IP related risks to consider.
However many ignore the risks associated with IP or only react when the risk has materialised, which is most times too late. Also, many of the IP related risks that companies face are due to their own lack of awareness or proper understanding of IP, and/or their own actions or lack of actions.

IP litigation is a threat to all businesses, large and small but it is by far not the only form of IP related risk. There are indeed many different types of IP related risks that a company may face. The bottom line is that IP related risks are a significant issue for many companies. With so much value encapsulated in intangibles it is a fiduciary duty for directors to have clear understanding of IP risks and plans in place to offset those risks…

With that in mind, let's talk about IP risk mitigation:

IP risk management is about ensuring that the business really understands its IP related risks, and then mitigates pro-actively. The rationale for this may be driven by the need for freedom to

use technologies already in use or being considered for use in the company's products, but there are many other reasons why businesses need to take IP risk mitigation seriously.
The focus should be on risk mitigation and not just of risk evaluation. Risk mitigation covers efforts taken to reduce either the probability or consequences of a threat. Risk mitigation efforts may range from physical measures to financial measures.

IP risk management is the systematic application of management policies, procedures and practices to the tasks of establishing the context, identifying, analysing, assessing, treating, monitoring and communicating. IP risk management includes both IP risk evaluation and IP risk mitigation.

However, each company is different and faces different types of IP related risks in different business environments. Each company needs to develop a unique plan to manage its IP related risks efficiently and effectively.

The IP risk management policies, procedures and practices will therefore differ from one company to another.

Ok, now we'll delve deeper into this:

What does risk management mean? Is it just identification, assessment and planning and controlling IP related threat to the organization? Is the concept only about transferring the IP related risk or reduce its negative effects?

Well, the answers for the above questions is "no". The process of IP risk management is not only restricted to controlling the IP related threats or reducing their negative effects. It is a much deeper concept that also involves IP risk avoiding as well as IP risk taking.
Almost every business activity involves some or other kinds of IP related risk. Sometimes you avoid, sometimes you control the phenomenon and sometimes you simply let it come.
So, what are the Fundamental techniques of IP risk control?

Indeed, there are a number of fundamental techniques for IP risk control available to each company. Some of the fundamental techniques we'll discuss include:

- IP risk avoidance
- IP risk reduction
- IP risk transfer
- IP risk sharing
- And… IP risk acceptance

Starting first with IP risk avoidance:

IP risk avoidance is the best means of loss control. This is because, as the name implies, the company is avoiding the IP related risk completely. If the company's efforts at avoiding the loss have been successful, then there is a 0% probability that the company will suffer a loss (from that particular IP related risk).

This is why IP risk avoidance is generally the first of the risk control techniques that is considered. It is a means of completely eliminating an IP related threat.

Next, IP risk reduction:

IP risk reduction is a technique that limits, rather than eliminates, loss. Instead of avoiding an

IP related risk completely, this technique accepts an IP related risk but attempts to minimize the loss as a result of it.

IP risk reduction involves various measures to reduce the frequency or severity of losses, also known as loss control. IP risk reduction or optimisation involves reducing the severity of the loss or the likelihood of the loss from occurring.

The third strategy is IP risk transfer:

IP risk transfer is an IP risk management and control strategy that involves the contractual shifting of a pure IP risk from one party to another.

One example is the purchase of an IP insurance policy, by which a specified risk of loss is passed from the policyholder to the insurer. The purpose of this action is to take a specific risk, which is detailed in the insurance contract, and pass it from one party who does not wish to have this risk, the insured, to a party who is willing to take on the risk for a fee, or premium, the insurer.

IP risk transfer is a risk management technique whereby risk of loss is transferred to another party.

Another technique, IP risk sharing:

IP risk sharing is similar but not identical to IP risk transfer. The IP risk sharing technique involves identifying other parties in the company's eco system who are willing and able to participate in the company's IP risk management activities, and share some of the associated burden.

It may be possible to share the IP related risk with for example a supplier. IP risk sharing partnerships with suppliers is common in many industry sectors.

Finally, IP risk acceptance:

IP risk management can also be implemented through the acceptance of risk. This involves accepting the loss from an IP related risk when it occurs.

IP risk acceptance or retention is a viable strategy for small IP related risks where the cost of insuring against the IP risk would be greater over time than the total losses sustained. All IP related risks that are not avoided or transferred are retained by default.

So what are the some of the solutions we can consider to mitigate this risk:
Now, there are a variety of IP risk mitigation techniques available, but of course their effectiveness will vary from one particular IP risk to another, on timing, and from business to another.

Some of the IP risk mitigation techniques might include the following:

- Raising awareness of the importance of IP across the organisation
- Leveraging technical cooperation with others
- Using Standards with fit for purpose IP policies
- Obtaining indemnities
- Participating in patent pools
- Licensing IP
- Designing around
- Finding prior art to invalidate 3rd party IP
- IP acquisition
- Taking out IP insurance

This list if not exhaustive, by any means, but, what is important is that a company builds up a good understanding and appreciation of the various IP risk mitigation solutions which exist - and if and when they should be deployed. There are a growing number of specialist external IP risk mitigation solution providers which should also be considered.

Now, the key IP risk management components:

IP risk management is not easy and a number of components need to be in place for a company to truly master this aspect of IP. I strongly suggest that the following components are needed:

- Good IP and IP related Risk awareness and education
- A robust fit for purpose IP Risk Management process
- IP Risk Management system / tool
- Data (such as IP related risks, actions, documents, reports)
- A variety of IP Risk Mitigation solutions
- IP Risk Management resourcing (so… people, budget)
- Proper IP Risk Management governance

I suggest that IP awareness and IP governance are like the bookends, keeping everything else in proper order. Governance here is about management putting IP risk on their agenda and regularly asking themselves whether they have the right culture, people and processes in place.

The skills needed to succeed with IP risk management do not match exactly those needed to be successful with the other key IP processes, such as IP creation, IP portfolio management, IP exploitation and IP enforcement. The mind-set is just different for those charged with IP risk management.

Conclusion

Many thanks there to Donal O'Connell for this fantastic overview. In our next session, we will join Donal again to explore the IP risk register. Thanks for watching and see you on Module 4.