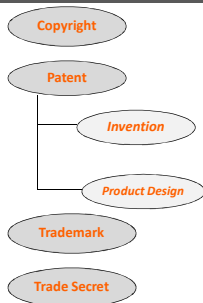


IP Harmonization and the AEC

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Intellectual Property System



Intellectual Property (IP) refers to...
creations of the mind: inventions, literary and
artistic works, and symbols, names, images, and
designs used in commerce.



Maxim

- ❑ A business without commercially valuable IP is nothing.
- ❑ IP, if not used, is useless.
- ❑ Prevention is better than cure.

IP-related Obstacles for the AEC

- Development of IP laws and enforcement mechanisms differ from one country to another
- Different treatment of IP infringements in different countries i.e. government's active collaboration, court experience, and IP procedures
- Various degrees of exceptions for IP infringements
- What is illegal in one country might not always be illegal in another country

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ASEAN's Strategic Goal for IP

- ASEAN IPR Action Plan (2011-2015)
 1. Balancing the IP System for registration and enforcement
 2. Accession to International Agreements regarding trademarks, designs, and invention patents
 3. Enhanced awareness at all levels
 4. Active regional participation in the international IP community
 5. Capacity building for government officers

Source: DIP's Annual Report 2011

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Business - Strategic Goal for IP

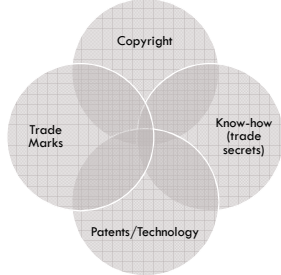
- | □ Defensive | □ Offensive |
|--|---|
| <ul style="list-style-type: none">▪ IP Registration<ul style="list-style-type: none">• Trademark• Patent▪ IP Licensing | <ul style="list-style-type: none">▪ IP Enforcement & Litigation |

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Business - Strategic Goal for IP

Identify ALL of Your IP



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Defensive IP Strategy

- Register Your IP
 - Trademark
 - Patent
 - Invention
 - Design
 - Copyright Recordal



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Defensive IP Strategy

- Licensing
 - Maximize your IP value
 - Manage your suppliers
 - Facilitate the exchange of ideas to further support academic-industry partnership



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Defensive IP Strategy

Major concerns regarding “ownership” and “validity” that one should consider when entering into IP agreements:

1. The IP is suitable for the business;
2. The IP is owned by the seller; and
3. The IP does not infringe any third parties.

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Defensive IP Strategy

Avoiding Problems with other People's IP

- Defensive IP (securing IP rights to prevent others from gaining the same rights)
- Creating IP on your own
- Buying other People's IP
- License-in
- Designing around
- Reverse Engineering with serious precautions

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Defensive IP Strategy

Preparing yourself when being sued

- Select your litigation team
- Identify the weakness of the opponent's IP rights
- Study non-infringement arguments
- Investigate other defenses
- Determine who can pay for you

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Offensive IP Strategy

Discouraging Infringement

- ❑ Giving notice of your rights
- ❑ Publicity
- ❑ Public awareness
- ❑ Enforcing IPRs regularly/aggressively
- ❑ Warning the infringer



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Offensive IP Strategy

❑ Determine the Right to Sue

- ❑ IP Owner
- ❑ IP Co-owner
- ❑ Licensee
 - Copyright, Trademark, Patent, Trade Secret, etc.
 - Exclusive, Non-exclusive, merely distributor

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Offensive IP Strategy

❑ Select the litigation team

- ❑ In-house lawyer
- ❑ Law firm
 - Generalized or specialized firm
 - Local or international firm

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Offensive IP Strategy

- Assessing your weapons
 - Patent
 - (Validity Analysis, Infringement Analysis, Patent Amendment)
 - Copyright
 - (Proof of Ownership, Existence of Copyright Protection)
 - Trademark
 - (Registered or non-registered, use or non-use)
 - Trade Secret
 - (Commercial Value, Secrecy Measure)

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Offensive IP Strategy

- Identify the infringer(s)
 - Company Infringer
 - Individual employees
 - Company Directors
 - Affiliated Parent Company

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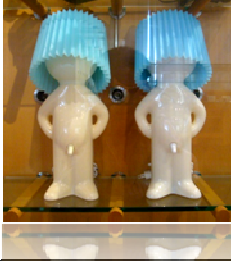
Offensive IP Strategy

- Anticipate the defenses to be used by IP Infringer
 - No act of infringement, parallel import, fair use, research/educational purpose, descriptive use, etc.
 - Invalidating IPRs
 - Patent litigation is sometimes an invitation to invalidate your patent.

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Case Study

Original or Counterfeit? / Infringement or Non-Infringement?



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