

CREATING BUSINESS ASSETS FROM YOUR IDEAS

How intellectual property gets
created in your business





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Introduction

We live in a world of continuous improvement. To remain competitive, your business is likely to be innovating all the time: whether by launching new products and services, improving your manufacturing or production techniques, or making other improvements to the operation of your business.

Whenever you invent or create something new, you'll almost certainly be generating new 'intangibles' – non-physical things that may become assets you can use repeatedly (without wearing them out). This is just as true for retail and service businesses as it is for high-tech firms and university or research institute 'spin-outs'.

Just as your company should understand and value the intellectual property (IP) you already own, you should also have processes in place to identify all the new things you produce and think about how you should be protecting them. This is vital because if you don't take timely action to safeguard an asset that could be protectable as IP, you can lose the ability to do so.

This guide examines what you should do when you come up with a new idea, a new name, a new invention or a new creative work that may be useful for your business. It examines how you can assess your new asset to work out whether it is any good; and if it has the potential to be valuable, the key steps you should take to protect it.

Produced by IPOS International, these intellectual property management (IPM) business guides aim to deliver a suite of IP solutions for enterprises based on industry best practices. As the expertise and enterprise engagement arm of the Intellectual Property Office of Singapore (IPOS), IPOS International helps enterprises and industries use IP and intangible assets for business growth. Some of these engagements may be eligible for Enterprise Singapore (ESG) funding, such as the intangible asset audit and strategy development aligned with business goals. IPOS International's business portal www.iposinternational.com also contains case studies and videos of enterprises leveraging IP to gain a competitive edge in their innovations. Should you have questions on IPM matters or wish to speak with our Intellectual Property Strategists, do email us at enquiry@iposinternational.com or call +65 63308660.



The importance of protecting your ideas



01

1. The importance of protecting your ideas

Why should I worry about things I haven't developed or sold yet?

In the early stages of creating your business enterprise, your company's most valuable property will have been the 'big idea' (perhaps an invention or way of doing business) around which it was built. Over time, the way you implement your idea will need to change to respond to market developments, and you will create new things to offer to

customers. To grow in a sustainable manner, you need to look outwards to determine what your market wants next—and inwards to be aware of the ideas and inventions you are building.

Whether you operate in a hotly contested market with many close competitors, or you have managed to create some 'clear blue water' between your offerings and those of rival companies, your customers always have a choice of whether to buy your products or services (they might be content not to buy anything from anyone!). It's therefore very important to be aware of what your competitors are doing, and not to define 'competition' too narrowly.

In today's globalised markets, standing still is not a viable option. If you stop innovating and just carry on with 'business as usual', competitors will overtake you and eat away at your market share. Typically, they will do this by working out how to exploit new emerging markets that you could have owned; they will discover how to do what you currently do quicker, cheaper or better; or they will simply be more adept at working out what the market wants next.

With this in mind, it is important to embrace the idea of continuous innovation—introducing new ideas, new products/services, new designs, new brands, new copyright-protected content and new inventions all the time, to keep you ahead of your competition, and protect and grow your market share.

Intangible assets and particularly intellectual property (IP) are central to this process of innovation. These are often the things that separate a commercial success from a 'flop' and give your inventiveness and creativity a sustainable future.



How can I innovate when I am 'running to stand still'?

Small business owners are subject to many different pressures—to the extent that innovation may seem like a luxury that only other, larger companies can afford. Since 'standing still' is not an option, the secret is to have a good method in place for rapidly prioritising improvements that will make a substantial difference.

“It is important to continually innovate to keep up with the competition. The advances you make should be protected as you develop them”

“ Always be on the lookout for the opportunity to protect your proposed innovations ”

Every organisation, regardless of its size, needs to have focus (one reason why multinational corporations tend to set up different divisions to concentrate on particular products, technologies or market sectors). The smaller your enterprise, the more closely connected your strategy, marketing and operations are likely to be. This can be a big advantage, as you should find it far easier to say a conscious ‘no’ to new ideas that don’t fit with your vision of the company’s future.

The hardest part lies in making sure that something which seems like a good idea actually is! Most critically, if you want your business to be differentiated on anything other than lowest cost provision, you will need to consider whether other people are already implementing ideas that emerge from your trading activities and any in-house development work in which you are engaged. This means taking an interest in IP.



The following chapters of this guide are intended to assist you, even if your resources are scarce, by having a way of thinking about your investment in ideas from an IP perspective. It is important to make sure that new ideas which could make a difference to your company do not leak out before you have had a chance to give them proper consideration. Losing the possibility of obtaining future protection through ignorance or carelessness can prove to be a very expensive mistake.

If you want to prevent others from putting your idea into practice in the same way you intend to use, seeking proper protection should be on top of your priority list. In this case, the IP system should be your first port of call. You may also need to make checks to ensure that someone else does not have the power to stop you from pursuing your commercial objectives.



SUMMARY

The following list highlights guidelines to bear in mind when looking to maintain your competitive advantage with IP:

Understand your company objectives

Understand the influences over your market

Understand how any existing IP relates to your business model

Find the most favourable spaces to innovate

Generate ideas on how to capitalise on gaps in the market

Secure the rights you need to take advantage of these opportunities



Capturing new ideas



02

2. Capturing new ideas

What rights does a company have to the ideas its employees come up with?

“ Things that an employee creates or invents in the course of their job should belong to the company – but there are grey areas ”

If you're responsible for looking after ideas that are being developed internally within your business, there's one golden rule at the outset: make sure your company owns them! The law sets out certain basic principles, but your employment contracts are a vital component in providing the control a business needs.

In general terms, inventions and creations that an employee comes up with in the course of working for your business belong to your company, not to the individual. As explained in the following section, it is good practice to ensure that these are captured in writing or recorded in another appropriate way at the earliest opportunity. In this way, an idea that is set out in any fixed form creates a copyright asset, which by default belongs to the employer.

This does not give you rights over everything an employee does or creates. If, for example, one of your team writes and publishes a best-selling novel in their spare time, this is by default their property, not yours. However, there can be a grey area when it comes to inventions or creations that an employee comes up with in their own time, especially if it is not clear whether these have involved use of the company's resources.



The best way to deal with such circumstances is to make sure that your employment contracts clearly define the sorts of activity that would be considered to be part of someone's job. In brief, these documents should also have a clear definition of all the types of intellectual and intangible assets an employee might come up with, and which the company would consider to be its property. For invention-intensive environments, it may be a good idea to provide these as an employee handbook for ease of reference.

Further information on employment contracts and how they should be formulated is contained in an accompanying guide—**Managing Your Most Valuable Assets**.

If you are developing ideas collaboratively with other organisations (such as universities, research institutes or other businesses), there will be additional steps you need to take in order to agree on ownership of the assets that you bring to the table (known as 'background IP') and the assets that are created as part of your collaboration (known as 'foreground IP'). A guide on **Partnering For Commercial Advantage**, also part of this series, tells you what to look out for under such circumstances.

2. Capturing new ideas

How should I capture ideas the team has come up with?

Whilst most commonly used in large companies, a business of any size can benefit from a documented process for capturing new ideas. The approach most frequently used is to require your team member to fill in an 'invention disclosure form' for each new idea they generate.

“An invention disclosure form is a useful way to capture new ideas, especially if there is a chance they could be patentable”

Having each idea presented in a consistent and uniform way, with the important details all held in one place, allows the potential invention to be efficiently assessed, compared with other inventions that have been presented, and prioritised accordingly. It's especially useful if there is a chance the idea might be patentable, as it can form the basis for a patent agent to draft a specification.



Invention disclosure forms are intended to capture the 'essence' of a current or proposed invention, and why it is novel and inventive. Most of such form templates contain the following sections:

- ① The problem the invention solves.
- ② How the problem is currently being solved (what is the competing technology, and what is wrong with the current solution?).
- ③ The new solution: what the invention is. This should include enough detail for a skilled person to understand it. It may contain a number of figures or drawings.
- ④ What stage the invention has reached.
- ⑤ Any prior art searching that has been performed (there may well have been none at this point).
- ⑥ Who invented it (names and nationalities).
- ⑦ Who else knows about it. This covers any disclosures that have taken place and whether they have occurred under an NDA or whether they are relying purely on an implicit understanding of confidentiality.

Depending on your line of business, there may be other items of information that you would consider particularly important. The key point is that the form should contain enough information to help you evaluate any given invention or creation, and identify the next steps necessary to protect the idea and commercialise it.

Information on prior art searching and other ways to determine what competing offerings are already in existence is contained in another guide in this series, 'Knowing Your Competition'.

Is my new creative work protectable?

“If you produce a new creative work, you automatically have copyright protection in the asset”

If you have produced a new and original creative work, then you will automatically have copyright protection once it is ‘memorialised’ by recording it in some way. However, you need to give some thought as to how you will ensure you can prove that this work is your creation if it is challenged, or if something very similar appears on the market.

As soon as you produce a new piece of music, a new literary work, write code for a new ‘app’, paint a picture or take some new photographs, you will automatically have a new copyright protected piece of intellectual property, at no additional cost to you, and with no need to register it anywhere. This right applies as long as you have not copied anyone else and the work required some intellectual effort to create (which it almost certainly will have done).

If you produce something in this way that turns out to be very popular, there is a strong chance that you will be copied. Similarly, you might find yourself open to accusations that you have copied somebody else’s work. In either case, the key criteria that a court would consider is whether actual copying has taken place (did the alleged infringer have access to the other person’s work? Are there substantial similarities between the distinctive aspects of the two works?), and whether there is sufficient evidence to prove the act of origination.



Whether you are the accuser or the accused in such a situation, you will need to show that you came up with the work yourself and prove the creation date. To do this, it will be important to be able to show your workings, including early drafts of the work, if these exist. It is therefore good practice to keep all your rough sketches, drafts or plans securely, preferably in signed and dated form.

It’s worth being aware that some neighbouring countries, including China, Malaysia, Thailand and Indonesia, operate voluntary copyright registers that are officially sanctioned, as do India and the United States of America (US) (there is no equivalent in Singapore). If you need to enforce your rights, it can sometimes be helpful to record your work with them (though the mere act of registration often does not grant any additional rights as such). This is generally best done as soon as possible after the point of creation.

How do I capture know-how?

Know-how generally starts as something only known by one or two of your employees. If it stays in their heads, it cannot truly become company property or be reliably passed on to new recruits. The best solution is usually to document it as soon as you become aware that it exists.

For these purposes, it is easiest to think of know-how as being specialist information that may not be unique to yourself but is not well known. You may identify know-how when one of your employees while manufacturing your product, finds a little ‘trick’ that improves yield or performance. Once discovered, your employee will do the same thing regularly, and it will become part of their standard operating procedure.

2. Capturing new ideas

If it is important enough, you might consider trying to protect this new method in a patent, or decide it would be best regarded as a trade secret. Even if it is not important enough to justify such special treatment, you may still consider it worth adding to operating manuals or training materials, so new recruits can be made aware of it. In this way, it becomes clearly identifiable as an asset that the company owns and uses.

“Identify know-how as it is produced and document it in an operating manual or employee induction materials”

The difficulty with know-how is spotting it. If you are not looking out for know-how, or if your staff do not realise what it is, then it is unlikely to be captured or written down. The risk is that if the employee who discovered it leaves, the know-how leaves with him/her (and he/she might take it to a competitor who will then benefit from it).



Why do I need to keep my ideas secret?

Your plans, ideas and thoughts should be kept secret until they have been fully assessed. If there is the possibility of obtaining a patent or registered design, you'll need to maintain secrecy *ideally* at least until an application has

been filed. If you decide not to file for protection, you'll probably want to keep it secret anyway!

“Invention disclosures should be kept secure, labelled as secret and only shared with authorised recipients”

From the moment your company has a potentially innovative idea, it is imperative that the idea or concept be treated as a secret. This secrecy must be maintained at least until the idea has been fully assessed and you have decided whether it is valuable (and if you like the idea, then for much longer).

It is especially important to protect any idea that is potentially patentable or could be covered by a registered design. If it enters the public domain before your application is filed, in Singapore it will no longer be regarded as novel, and you will not be able to protect it.



Also, you do not want your suppliers, customers, or most of all your competitors to find out what you have discovered, at least not until you have the opportunity to bring it successfully to market. Otherwise, your ‘first mover advantage’ will be lost.

To minimise disclosure risk, the idea itself, including any technical drawings, experimental results, patent/trade mark searches that you have performed, and any other analysis you have done, should all be treated as a trade secret.

How do I keep my new ideas secret?

“Limit access, label everything, and be very clear about what anyone who needs to see sensitive information is allowed to do with it”

There are three practical steps you should take to keep your information confidential and ensure that you have some protection under the laws regarding breach of confidence and unauthorised computer access, should any ‘leak’ occur.

1.

The first step is to restrict access to the information. Trade secrets should not be widely known even within your organisation, should only be disclosed on a ‘need-to-know’ basis, and not based on the grade of the employee. As with formulae, recipes and the like, invention disclosures and their supporting materials should not be kept on intranets, shared company drives or other locations accessible to all the organisation. You should consider using encryption for electronic data, and keep paper copies under lock and key.

2.

The second step is to label the information as secret. Ensure that any documentation detailing the trade secret is labelled ‘Secret’ or ‘Strictly Confidential’ so that any recipient is in no doubt that you consider it to be sensitive and confidential.

3.

Lastly, you should agree with recipients what they are authorised to do with the information. This should ideally be in writing; if the party is external to your business, it is most often accomplished by the signing of a non-disclosure agreement.

In all cases, it is important to state the purpose for which the information can be used (and what it cannot be used for). More details on the use of non-disclosure agreements are contained in the accompanying guide in this series—**Managing Your Most Valuable Assets**.

How do I get my company onto the same page?

“Find ways to incentivise your team to deliver a flow of new ideas, and they won’t usually disappoint”

Knowledge Management (KM) is an important tool for staff at all levels of an organisation. Making sure good ideas get properly recorded, heard internally and are not leaked to the outside world is a cultural as well as a procedural issue.

Smart use of corporate know-how and IP can deliver substantial benefits in improved organisational performance. Whilst particularly critical for R&D-intensive enterprises, many businesses can create new IP at almost any time—and if they are not careful, they can lose it just as quickly.

Your whole team needs to be motivated to help your business grow by observing the right procedures to protect your competitive advantage. However, your staff will also need to be trained. While it may be clear to a member of your technical team that a particular feature is highly sensitive, it may be less obvious to your sales force when they are trying to close deals!

2. Capturing new ideas

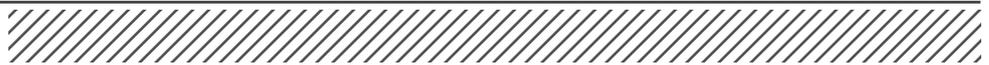


There are several techniques successful companies adopt to manage this process.

1. There are several techniques successful companies adopt to manage this process. One is to hold regular reviews of the new product development or R&D pipeline, which helps the teams responsible to understand what is being taken forward and why some ideas may be receiving less priority (so as not to be demotivated when nothing seems to be happening).
2. Another is to brief at a whole company level, providing feedback on new IP that has been discovered or developed and which is helping the business achieve its objectives.
3. A third method is to build a specific incentive programme around business improvement suggestions and contributions. As well as rewarding best practice, this provides regular opportunities to remind the whole team that innovation matters—and that successfully innovating involves keeping secrets confidential until the right time. Chapter 4 of this guide provides information on ways to do this.



SUMMARY



It is important not only to keep your new ideas secret, but to document them internally so that they can be tracked, managed and assessed. The following list summarises the main points to bear in mind.

Capture new technical ideas on an invention disclosure form

Keep your workings and proof of creation date for creative works

Be continually on the lookout for the new know-how and document it

Keep your new creations and inventions confidential



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