

Are You Protecting All of Your Company's IP?

Article By:

Todd A. Ostomel

Running a start-up requires addressing big challenges with limited resources. Protecting the company's intellectual property (IP) is one of the most important. Does your company have a system in place to encourage communication between the employees who generate patentable inventions and trade secrets, and those tasked with protecting them?

A company benefits when the employees are incentivized to disclose potentially valuable ideas within the company to those enabled to realize their value. The incentives for disclosing will be tailored to each company. They may include providing career advancement and financial incentives to employees who generate and sufficiently document IP contributions. For example, an employee's evaluation may be related to the quality or quantity of their written IP disclosures. A financial incentive may also or alternatively be used to compensate employees if the company decides that the disclosure is valuable. For example, an employee may be compensated if the company files a patent application or memorializes a comprehensive trade secret record based on their disclosure. A company may also choose to compensate employees if their patent application matures into an issued patent or is licensed or enforced.

IP disclosure programs can use disclosure templates to facilitate the communication of IP within the company, so that the process of reporting does not distract the employees from their other responsibilities and, importantly, generating more IP. The completed disclosure template provides documented evidence of the dates of creation of the IP and serves as an information resource for those responsible for IP protection. Disclosure templates are generally limited to two pages, with headers directing employees to (1) summarize the idea briefly; (2) discuss the problem solved or the value the idea adds to the company; (3) list all prior solutions to the problem of which the employee is already aware; (4) state if the idea is generally known within the relevant field, publically know, anywhere, or will be published, offered for sale, or otherwise disclosed; (5) describe any unexpected results associated with the idea; (6) identify contributors; and (7) record the dates of conception and experimentation.

With the above information, a company or its outside counsel can quickly assess whether a disclosed idea is likely to be a patentable invention, or might better be kept as a trade secret, and if any statutory bars apply. The completed disclosure enables the company to determine if the idea is novel, if a patentability analysis is required, and if a patent filing is worthwhile. Similarly, even if the idea is not novel, it may still qualify as a trade secret. And, absent any action by the company after receipt of the disclosure, the written disclosure serves as a *de facto* trade secret record so long as it remains

confidential and protected as a secret. Companies may choose to revisit the disclosure once additional milestones are met, *e.g.*, more data is acquired, before taking further action. Best practices recommend periodically auditing these disclosures to confirm whether updates or revisions are warranted.

Incentives for internally disclosing inventions and trade secrets, from the bench to the board room, will benefit companies scaling in size and stratifying IP generation and protection responsibilities. By encouraging and enabling facile communication from the bottom up, a company gets a consistent stream of actionable information that helps it best protect its IP. Review your company policies today and ensure they are up-to-date so you are not leaving any valuable IP unprotected.

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