



Intellectual Property – A business asset

EURid Web Awards – November 2022

Ingrid Baele
Deloitte Risk Advisory

Intellectual Property

A business asset



IP Strategy



Types of IP



Value creation – IP business models



Strategic importance of IP



Trade Secrets



Graphical User Interfaces

Why?

- Why IP?
 - To generate value/revenue
→ Creating value
- Why an IP Strategy?
 - To have a plan upfront how to create that value
 - Aligned with the business strategy to facilitate execution



IP Strategy



Aspects influencing the IP strategy of a company

Types of IP



- **Patents**
 - Protection for technical features, such as manufacturing or processes using the software

- **Utility Models**
 - Like patents but less strict requirements; only available in limited number of jurisdictions

- **Trade Secrets – a complement to patents**
 - Protection for technical features that cannot be patented or should not become public

- **Designs**
 - Protection for appearance, aesthetic creations, graphical user interfaces, ...

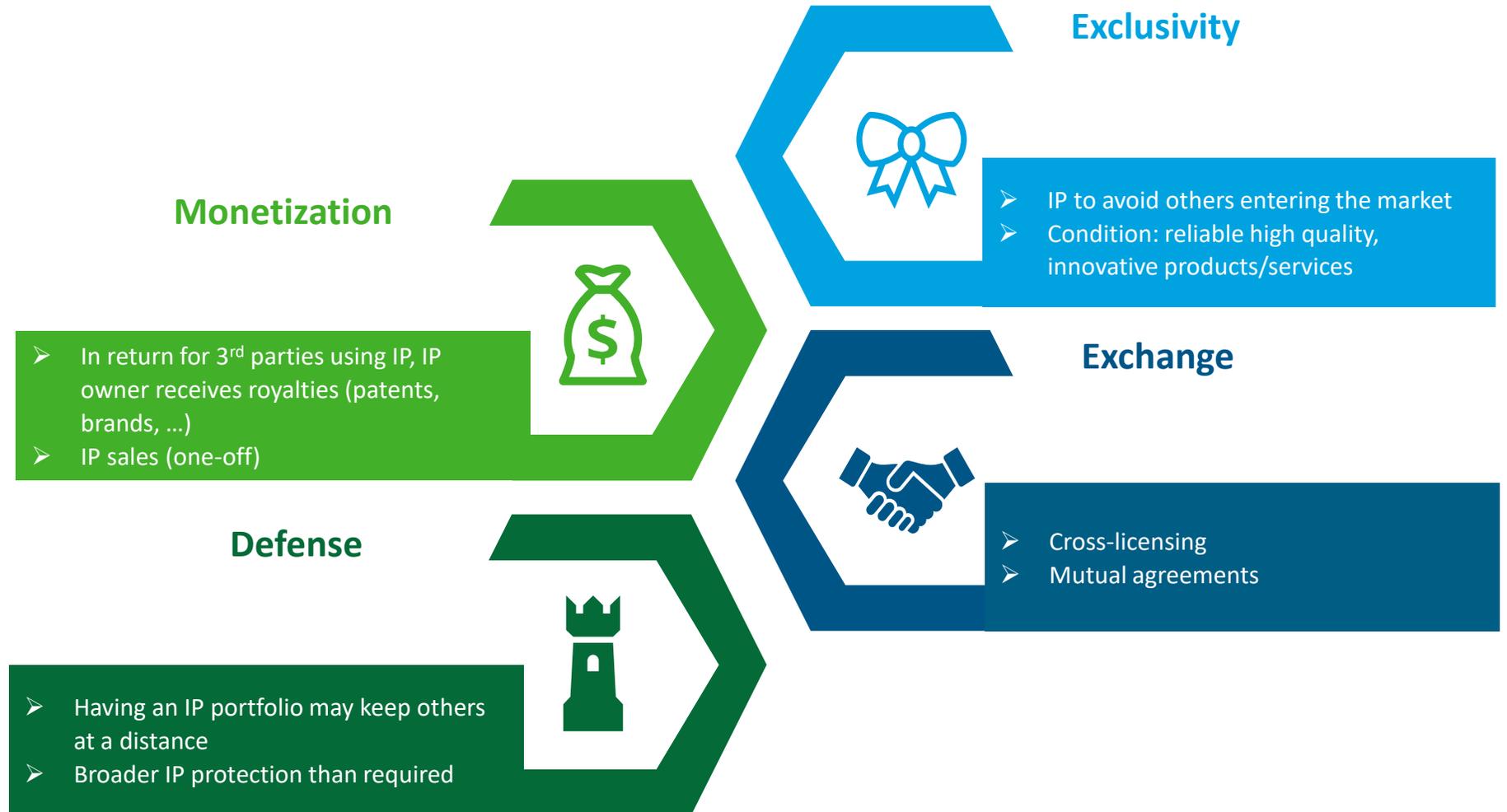
- **Trademarks and Domain Names**
 - Protection for signs, logos, company names, slogans and symbols, ...
 - URL's

- **Copyright**
 - Protection for original expression of algorithms, formulas, ...

How to create value – IP business models



Turning a cost centre into a value creation activity



How to create value – IP business models



Turning a cost centre into a value creation activity

Monetization

Revenue

Defense

Freedom



Exclusivity

Extra margin

Exchange

Savings

Strategic importance of IP

Covid-19 vaccines are subject to several litigations

October 2020: patent pledge by Moderna until the end of the pandemic

After the pandemic, licenses, but

- mRNA vaccines are highly complex
- Not only patents, but also data, know how and trade secrets
- Patent pledge → useful?

March 2022: Moderna abandoned its pledge and launched a new commitment

- Never to enforce its covid-19-related patents in 92 middle-and-low-income countries
- Shifting patent pledge by excluding wealthier countries (such as US and DE)

CureVac filed suit against BioNTech in Germany (1st law suit outside US)

Moderna sued Pfizer and BioNTech in the US and Germany

And more ...



Strategic importance of IP

- May 2018: Apple Inc v Samsung Electronics Co
 - Samsung must pay Apple M\$533 in damages for infringing three Apple design patents covering ornamental features of smartphone devices
 - Face
 - Bezel
 - Graphical user interface (GUI)
-
- Cost of IP in products includes licenses needed to make the product
 - Cumulative royalties can be substantial part of product price:
 - Cellular network → Standard Essential Patents
 - Operating system, camera → commercially necessary patents
 - User interface patents → universe to choose from
 - Design



Strategic importance of IP



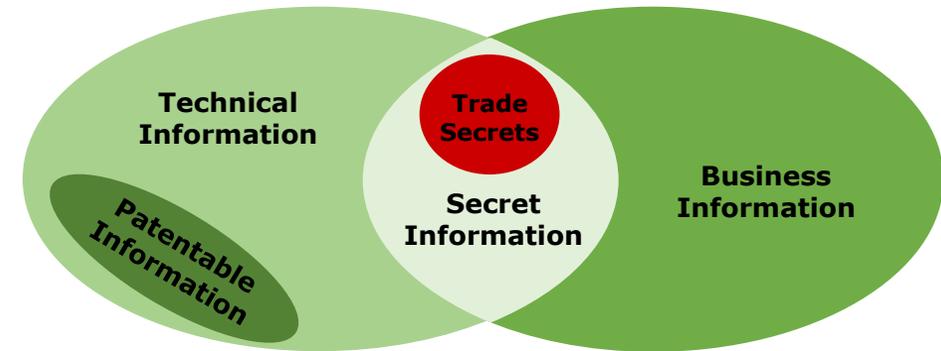
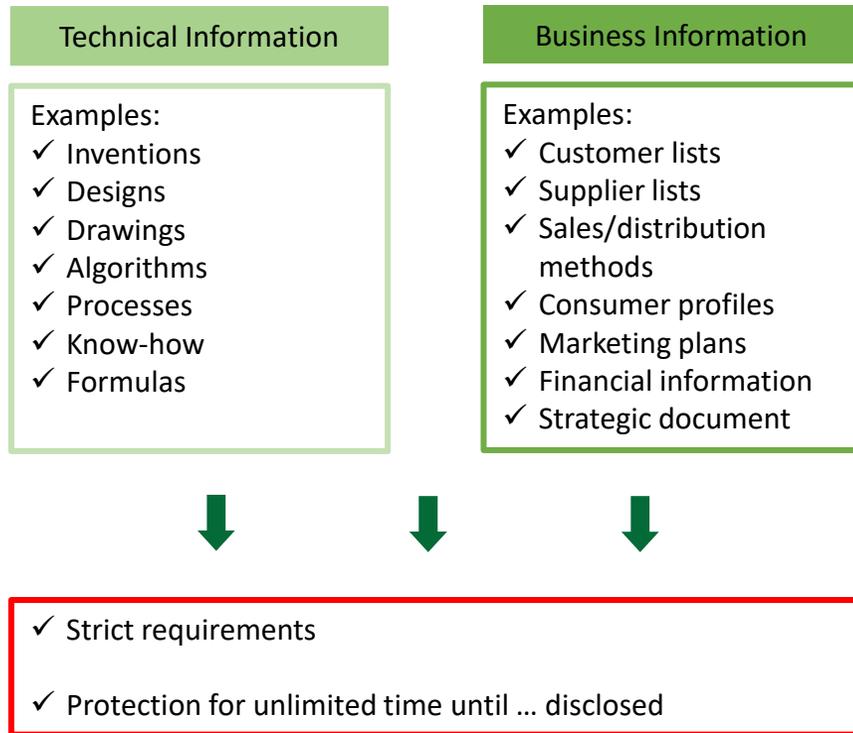
TM's & Designs
Brand reputation
Quality label



Trade Secrets - A complement to patents and more ...



Qualifying for Trade Secret protection



TOP SECRET



Graphical User Interfaces (GUI)

A Graphical User Interface (GUI) is a type of user interface that allows a user to interact with a computer program and/or with an electronic device.

GUI protection discourages others' exact copying and protects the brand and "look and feel" of your products.

How to protect this visual element?

It is part of Design protection but is not available in all countries

- In countries where available, not necessarily treated in the same way, e.g.
 - Connection between physical product and GUI required: yes/no
 - Animations through a sequence of drawings: yes/no
 - Description required: yes/no
 - Requirements re text, pattern and color can differ

Define a GUI design filing strategy at national, regional and global level!

Protectable items

- ✓ Icons
- ✓ Drop-down menus
- ✓ Pointers
- ✓ Pointing devices
- ✓ Buttons
- ✓ Scroll bars
- ✓ Windows
- ✓ Transitional animations
- ✓ Dialog boxes
- ✓ Sequences
- ✓ Animated screen displays
- ✓ ...



Applications

- ✓ Computer operating systems
- ✓ Mobile applications on smart phones, tablets, laptops and computers
- ✓ Television screen menus
- ✓ Domotica
- ✓ Medical devices
- ✓ ...



Examples of protection

EU – Registered Community Design

- ✓ Novelty and individual character
- ✓ Max. protection of 25 years
- ✓ Certificate

EU – Unregistered Community Design

- ✓ Max protection of 3 years since date of first public disclosure

EU – Copyright

- ✓ Originality
- ✓ Personal intellectual creation containing imprint of its author's personality

US – Design Patent

- ✓ Patent law enables the design patent protection of graphical user interfaces
- ✓ Novelty examination

Take-aways

- Think about IP strategy when starting innovation, considering all 5 aspects that may influence the IP strategy (slide 4)
- Involve the stakeholders in the company that are needed to successfully execute the IP strategy
- Consider all types of IP
 - To optimize protection
 - To keep costs under control

Contact:

Ingrid Baele

Director IP Advisory

Deloitte Consulting & Advisory, Zaventem, Belgium

ibaele@deloitte.com

+32 476 09 27 69



About Deloitte

- Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.
- Deloitte provides audit, tax and legal, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte has in the region of 312,000 professionals, all committed to becoming the standard of excellence.
- This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.