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Using Intellectual Property Assets in a Downturn

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Many may assume that in a downturn—when a focus may naturally be on cutting costs within organizations—companies are less likely to engage in (potentially) costly litigation. Studies show, however, that this is not necessarily the case. Careful analysis of the value proposition of using the time in a downturn to take steps to maintain and protect IP rights also shows that conventional wisdom is not necessarily to be believed.

Patent litigation and prosecution, in particular, are areas where in-house legal departments can look to use IP resources to generate value for their company. For instance, taking a strong approach against infringers is a way to generate value and perhaps even market share in a downturn. If viewed and handled appropriately, protecting IP assets through a longer-term investment mechanism like patent prosecution (filing for patents) and going after infringers in litigation can be a way to not only maintain company value today, but to position a company to take advantage of growth opportunities when the economy returns to normal.

Studies show that this is a common approach in a downturn. Compared to other spending, patent litigation, based on a well-founded claim, typically has a relative high return on investment at times like this. To be successful, outside counsel MUST be positioned to help maximize the return on investment for legal spend. Such outside counsel, like Butzel Long, who are able help brainstorm and work within legal-spend requirements are a vital component of leveraging IP assets in a downturn.

So, how does your company react to such an opportunity?

> **Audit**: Before undertaking such a protection strategy, companies must identify and evaluate their internal patent and other IP assets. A far too-frequent occurrence in times of economic struggle is companies surviving before a downturn and not making it through the other side when

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all they needed to do was better leverage their IP assets. Such an analysis will allow for both the identification of gaps within a company's portfolio, as well as the identification of key IP assets and the risks (economic, professional, career, or otherwise) associated with a failure to protect them.

Acquire: A downturn can be a time to buy the IP assets of others. It is, as they say, a buyer's market. It can also be a time to expand IP portfolios organically, through patent prosecution.

License: Once a company has an understanding of its IP assets, licensing that technology (primarily to non-competitors) may be worthwhile, allowing the IP owner to earn a more passive income from another company's authorized use of that particular asset.

Identify: Identifying infringers is an important part of leveraging value from an IP asset during a downturn. The evaluation should be both internal and external, to understand the technical infringement and the potential legal basis for bringing an infringement claim.

Protect: The last step is to develop and pursue a plan to protect your company's IP assets. This plan should consider financial implications, business and market strategy, and other aspects of the business operations.

The result of a robust IP protection strategy that includes these (among other) elements can be the lynchpin to the survival of a company. It can also make the difference between a company barely returning to business as usual and the company achieving dynamic growth coming out of this current downturn.

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