

## IP Considerations During COVID-19: IP Housekeeping

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*Holland & Knight Trade Secrets Blog*

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As businesses consider how to transition to a "new normal," a thorough review of intellectual property (IP) assets and a protocol for managing those assets should be part of the planning process. For many companies, the future may include more employees working from home, reduced onsite staff, employees practicing social distancing at work and even furloughs and staff reductions. Business partners may close their doors, sell assets or find themselves unable to fulfill contracts. This new environment will present new challenges for IP protection. A company that invests time now to inventory its existing IP assets, assess current measures for protecting them and plan for their future management will be able to respond to IP-related opportunities and challenges more effectively in the future.

Here are some steps to take now:

### IP Inventory

- Review all patent, trademark and copyright registrations and pending applications, noting applicable renewal and other deadlines.
- Document the confidential business information that gives your company a competitive advantage. Consider every aspect of your business, such as research and development, manufacturing, marketing and sales. If there is confidential technology, information or know-how involved in any part of your business operation, document it, including: 1) a description of the confidential information, 2) a list of who has access to it and how and 3) a description of all measures taken to keep it confidential. The more essential it is to your business, the more detailed the documentation should be.
- Review any royalty-bearing license agreements to ensure that you understand your payment obligations and are mindful of whether payments owed to you are being timely made.

### IP Assessment

- Consider whether existing patent, trademark and copyright registrations and applications should be maintained. If some are now less relevant to your business, consider whether to sell, license or abandon them.
- Consider whether new applications should be filed to protect technology under development or new trademarks, service marks, trade dress, etc.
- Consider whether existing technology or know-how is being (or can be) repurposed to address issues arising in light of COVID-19 and, if so, what new applications or modifications to existing applications or registrations might be warranted to protect those innovations.
- Review — and update as needed — existing IP assignment and license agreements, joint development agreements, manufacturing/supply agreements and employee agreements.
- For confidential information that you intend to keep as a trade secret, review — and update as needed — existing protection protocols for restricting access to and documenting access by need-to-know individuals (including employees, business partners, suppliers, component manufacturers, etc.) in light of anticipated changes to the work environment.

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## Risk Mitigation

- Update employee manuals and employment agreements and reinforce employee training for handling confidential company information. For additional tips on this, see "[10 Practical Tips for Employers to Safeguard Their Trade Secrets During COVID-19.](#)"
- Review and update IT infrastructure and protocols that protect your company's confidential information.

The days ahead will bring opportunities and challenges for us all. A company that has a clear understanding of the IP assets it owns and robust, up-to-date practices for protecting and managing those assets will be well-positioned to respond to those opportunities and challenges quickly and effectively.

DISCLAIMER: Please note that the situation surrounding COVID-19 is evolving and that the subject matter discussed in these publications may change on a daily basis. Please contact your responsible Holland & Knight lawyer or the authors of this alert for timely advice.



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