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5 TIPS TO BETTER MANAGE YOUR R&D

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Investing in research and development (“R&D”) must enable your organization to control its innovations and enhance its competitive edge, thereby allowing the development and marketing of avant-garde and often exclusive products. To distinguish yourself from your competitors and to promote continuous growth, here are five critical factors to consider to protect your R&D and to maintain control over your innovations as well as their related intellectual property (“IP”) rights, such as trade secrets, patents and copyrights.

CONFIDENTIALITY

Take all necessary measures to maintain strict confidentiality of all activities relating to your R&D, both within your organization and in your relations with your commercial partners. You must limit access to your laboratories, and ultimately to your production sites, solely to individuals with a need to know the information being used. It is important to develop confidentiality agreements that must be signed by any person who may come into contact with confidential material related to R&D, in employment or consulting agreements, or in any other type of agreement, as discussed below.

ORGANIZATION OF RESEARCH

In order to ensure an optimal outcome, you should adopt efficient methods for the collection of R&D results, including using laboratory notebooks (which may be electronic), establishing committees responsible for reviewing and assessing R&D components and organizing multidisciplinary meetings to ensure that your objectives are met.

AGREEMENTS

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R&D projects generate innovations that often have great potential, and IP rights are often distributed between several actors. You will often be called upon to collaborate with a provider, consultant and, at times, even with a competitor. The division of the ownership of IP rights may sometimes be complex. Agreements will form the basis of R&D's legal organization to protect your interests, while limiting the risk associated to conflicts of interest, and preserving your ability to freely exploit the results of your efforts. In order to implement "best practices" on a managerial level, you need to make sure that the agreements related to R&D (research contracts with third parties, collaborative research contracts, employment or consulting contracts) contain provisions or clauses establishing or confirming your IP rights and your ownership rights or, at the very least, your rights to use IP and R&D.

DEFINING THE IP COMPONENTS RELEVANT TO R&D

You must determine whether you will be filing patent applications, making some results of your R&D public, or choosing to protect the proprietary nature of the R&D results through "trade secrets". This issue is a difficult one and should be taken seriously. Therefore, you will have to assess the patentability of your innovations and ensure that IP components (such as know-how, copyrights and trademarks) are put to their best use. You must also determine if you might be at risk of infringing your competitors' IP rights. To avoid such a situation, you need to develop strategies and policies. A committee to review and assess R&D components could adequately fulfil this important and strategic task.

PARTNERSHIPS

Finally, to make trade-related aspects of innovations based on R&D profitable, you need to assess the opportunity to participate in technology development agreements resulting from your R&D activities, as is often the case in the information technologies ("IT") sector. These agreements come in different formats to suit your needs: licences for commercialization ("out-licensing"); licences to obtain access to technical components ("in-licensing"); distribution contracts or agreements for the resale of a product through value-added resellers ("VAR"); co-marketing agreements; etc.



