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President's Message

TJ Fund, OpenEdge, General Counsel

Staying Connected in a Digital Age: Unplug

Social Media in the workplace can create legal risks and contribute to loss of communication skills. It seems these days that everyone has a Facebook, YouTube, InstaGram and Twitter account. Even additional blogs and websites are being created by personal users to platform and share their lives. Most companies have their own policies discouraging employees to engage in online activity during work hours. But, if they post to the internet away from work, it can still create issues by posting gripes regarding work, "friending" and "unfriending" co-workers and even harassment. It is each company's responsibility to review and update their policy to protect company confidential information, privacy rights and avoid potential cyberbullying and online harassment.

So how do we solve for the challenges of a digital age – both personally and organizationally – while maintaining the benefits and expectations that come along with that digital age? How can we avoid the pitfalls that modern employment law may present as social media use creates the potential for clashes between employee freedoms and employer rights and obligations? The answer may lie in understanding that we all have a need to find appropriate times to "unplug".

As in-house counsel, we can set a standard, in practice and not just in policy, on reconnecting with our colleagues on a direct personal level.

The water cooler sounds like a cliché, but it is a great way to interact on a personal level. We sometimes find it easier to email everything from the comforts of our computer chairs. We lose the personal interaction skills by emailing short phrases like, "lunch?" or "I needed that by Friday" without any formality and human touch. We tend to send email because it is quick and gives us an electronic trail of proof. This approach often robs our discussion, however, of its human element, which involves much richer and nuanced levels of communication and connection. Maybe as a goal, we should reach out, meet by the water cooler, or walk down the hall to the other person's office, and have a conversation face to face instead of through email or texting.

Another very problematic point is that it often seems easier to hide behind email when addressing tough issues. We may state things and be more bold and outspoken in the body of an email than we would be in person. Even when we think we are communicating reasonably, without the nuance portrayed by visual and verbal cues that come from human interaction, our message may come across as insulting or offensive when that is not our intent. Modern-day efficiency demands and de-centralized workplaces may require that much of our communication be in electronic form, but just by making a conscious effort to seek opportunities to engage in personal interaction where possible, we can improve the quality of life and interaction in our workplace.

Let's not forget that these issues are not unique to the workplace and do not disappear when we straighten the paper piles on our desk, push in our chair and walk out the door. First, the digital age allows work to follow us home in a virtually seamless manner. Whether single, in a relationship, a parent with children or just a member of a tight-knit friendship circle, we have a human need to create private space and time that is protected from workplace demands. This may be around the dinner table, at children's sporting events, movie outings or hitting the town with friends. The time dedicated to this personal space will vary based on personal needs and particular projects at work, but what is most important is, again, being conscious of the need and finding ways to respect it. The long-term dividends will pay out to you personally as well as your employer.

Consider making the following word list, or others that are meaningful to you, an explicit and intentional part of your personal thought and team conversation over the next couple of weeks:

- ✓ Make time
- ✓ Engage people
- ✓ Be supportive
- ✓ Share admiration
- ✓ Show gratitude
- ✓ Trust
- ✓ Celebrate
- ✓ Play

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“Top 10” Intellectual Property Tips for Corporate Counsel

By Eric Nielsen

Recent reports indicate that the intangible asset value of the S&P 500 is greater than 80 percent on average. Intellectual property litigation, on the other hand, continues to make headlines with billion dollar verdicts against infringers. In this environment, corporate counsel must be increasingly sensitive to IP matters. Below are 10 tips for spotting and managing common IP issues.



- 1. HAVE IP ASSIGNMENT AGREEMENTS EXECUTED** – The IP phrase “work made for hire” does not necessarily mean that, if a company pays someone to do work, the company owns all of the IP that arises out of the work. In fact, the “work made for hire” doctrine is much narrower. Absent written agreements, inventors and authors generally own their inventions and works of authorship. Employees, independent contractors, outside manufacturers, and the like should all execute IP assignment agreements. Among other topics, such agreements should address who created or invented the IP, and ownership of derivative works, improvements, and the like.
- 2. CONSIDER CONDUCTING A PATENT FREEDOM-TO-OPERATE SEARCH WITH RESPECT TO NEW PRODUCTS AND TECHNOLOGIES** – Avoiding patent infringement altogether, or minimizing potential patent infringement damages, is best accomplished when the patent landscape is known. On the other hand, searches can be costly and may not necessarily uncover all relevant patents. Consider searches only targeting specific competitors’ patents, particularly if the searching is to be performed in the early stages of research and development.

3. FILE PATENT APPLICATIONS BEFORE PUBLIC DISCLOSURES – It is true that the U.S. allows a one-year grace period from the time of public disclosure within which to file a patent application. However, that grace period generally does not apply outside of the U.S., and the U.S. recently switched from a “first-to-invent” to a “first-inventor-to-file” system, further emphasizing the importance of filing patent applications early and often. In this regard, it may be helpful to launch new products and technologies at the same time(s) each year (instead of piecemeal) so as to more systematically evaluate whether to file patent applications.

- 4. KEEP PATENTS AND TRADEMARK REGISTRATIONS ALIVE** – Outside counsel may exclude patent maintenance fees, trademark registration renewals, and the like from the scope of its representation. In such instances, corporate counsel can work with an IP management company or must internally monitor deadlines so as to not inadvertently allow patents and trademark registrations to lapse. While methodical docketing and record keeping can be time consuming, it will pay off in spades.
- 5. DEVELOP A CULTURE AMONG MARKETING PERSONNEL TO RESPECT COPYRIGHTS AND TRADEMARK RIGHTS OF OTHERS, AND USE PROPER IP MARKINGS** – Whether to intentionally cut corners or just due to a lack of proper training, marketing personnel often use media, text, trademarks, slogans, and the like without regard to the rights of others, sometimes resulting in costly redesigns, rebranding and infringement damages. In other situations, marketing personnel may

not use proper IP markings, which can impact the damages recoverable in the event of infringement by another. The old adage of “an ounce of prevention is worth a pound of cure” certainly applies here. Oftentimes, outside counsel will provide training for corporate counsel and marketing personnel at no charge.

- 6. DON’T IGNORE CEASE AND DESIST LETTERS** – So-called “trolls” making baseless IP infringement allegations with no intent to pursue litigation may give rise to an inclination to ignore a cease and desist letter. While calling the accuser’s bluff may be an appropriate strategy in some instances, it should not be assumed that allegations of IP infringement are without merit, and in some cases quick action can lead to a faster, more favorable resolution than a delayed response.
- 7. COMMUNICATE REGULARLY WITH OUTSIDE COUNSEL** – This may seem counterintuitive with pressure to keep outside counsel fees to a minimum, yet communication does not necessarily imply more work. Static IP protection and enforcement strategies can quickly diverge from a dynamic business, leading to dramatic inefficiencies. Having outside counsel provide regular written status reports can be an efficient way to keep apprised of IP efforts to be sure they are aligned with business objectives.
- 8. BE CAREFUL WITH TRADE SECRETS AND CONFIDENTIAL INFORMATION** – Because trade secrets lose their value when they are no longer secret (whether or not due to misappropriation), efforts that are reasonable under the circumstances to maintain secrecy should be taken. Be cautious in hiring employees who may (intentionally or inadvertently) bring confidential information from competitors with them. Do not assume that

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And to tie into some of the points above, the Mountain West Chapter will host its annual **Save Summer & Serve** event on **July 18th**. The event will benefit The Christmas Box House and the Boys and

Girls Youth Homes. Unplug and join us with your loved ones for a **Salt Lake Bees** baseball game!

And a special thank you to our Sponsors, Thorpe North Western, Modere and Snell & Wilmer.

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because a confidentiality agreement is mutual, it is okay to sign, and watch out for non-standard marking requirements, destruction obligations, and termination provisions.

9. IMPLEMENT A SOCIAL MEDIA POLICY – Like social media itself, the legal issues that can arise through improper use of it are ubiquitous. A well-crafted and well-implemented social media policy can help to mitigate the issues.

10. KNOW YOUR LIMITS – Many IP tasks can be handled by corporate counsel, particularly by counsel who has had prior IP experience. But avoid the temptation to go it alone on what may appear to be straightforward IP issues. Correcting a mistake is often more costly than doing it right in the first instance. Consider working with outside counsel to develop standards, with alternates and fallbacks, to be able to handle IP tasks more autonomously.

Beyond the alternates and fallbacks, consult with outside counsel.

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