



Date: July 23, 2012
To: U.S. Intellectual Property Enforcement Coordinator
From: David R. Jarczyk, President & Chief Economist, ktMINE
Subject: Comment on Notice: Development of the Joint Strategic Plan on Intellectual Property Enforcement (Document ID OMB-2012-0004-0002)

To Whom It May Concern:

The U.S. Intellectual Property Enforcement Coordinator requested public comments regarding the development of the joint strategic plan on intellectual property enforcement. In its capacity as a global intellectual property business intelligence company, and as a U.S. small business with significant interests in the protection of intellectual property, ktMINE humbly submits the following comments related to Document ID OMB-2012-0004-0002. Any questions or comments should be forward to David R. Jarczyk - President & Chief Economist of ktMINE – at david.jarczyk@ktMINE.com or (773) 401-8962.

The remainder of this document provides a Strategy Recommendation by introducing the need for greater intellectual property information transparency, along with the submission of a recommendation to practically meet this need.

Strategy Recommendation

Issue

A challenge to any successful enforcement effort is access to accurate, current and actionable intelligence. The protection and enforcement of intellectual property rights offer no exception to this challenge. Knowing which intellectual property events comply with rules and regulations versus those that cause concern is a significant challenge to a successful enforcement campaign. To ensure effective enforcement, any agency needs answers to the following questions:

1. Who owns intellectual property and who is granted the right to use the intellectual property?
2. What form is the intellectual property (e.g., patents, trademarks, trade secrets)?
3. When can the intellectual property be used and when does any afforded protection expire?
4. Where is the intellectual property owned, maintained, utilized, exploited and shared?
5. How is this intellectual property protected, commercialized and enforced?
6. Who is the beneficiary of the exploited intellectual property (e.g., persons, entities, governments)?

There are two categories of intellectual property information: 1) that published in the public domain and 2) that withheld from the public due to confidentiality or other protection concerns.

Significant amounts of intellectual property information is available in the public domain; however, it is fragmented and scattered through various websites, government databases, private databases, and other global sources. Under this current organization, or lack thereof, it becomes a seemingly insurmountable



challenge to access actionable intelligence without the use of sophisticated software and tools, not to mention a little luck, to ensure all relevant information is captured.

In addition to unorganized information in the public domain, an even greater amount of useful intellectual property information exists in the private files of companies. This information is created through the development, protection, commercialization and enforcement of intellectual property in the general course of business and is kept from the public due to confidentiality or other protection concerns.

In order to ensure effective intellectual property enforcement, there is a need for greater intellectual property information organization and transparency.

Recommendation

An effective, practical strategy to improve intellectual property enforcement would result from a two-step process.

Step 1: Organize Intellectual Property Information

Finding relevant, comprehensive, and actionable information can be costly, risky and futile without the aid of structured data and search tools. At ktMINE, our mission is to organize the world's intellectual property information. The path to accomplish our mission begins with organizing information available in the public domain using sophisticated software and analytics. Next, we partner with government agencies, regulators and companies to promote the release of unpublished information for review and analysis.

Our ultimate vision is global support for international regulatory and law enforcement collaboration for the creation of a global intellectual property reporting system which includes information in the public domain as well as currently unpublished information that should be made public (see Step 2 below). A single, global reporting system promotes greater information transparency which leads to effective enforcement.

Step 2: Improve Intellectual Property Reporting

While we are actively organizing intellectual property information in the public domain, many information remains out of the hands of the public. Currently, there are minimal regulations requiring the publication of intellectual property related information.

A practical solution to this lack of information is to create regulations which require the reporting of intellectual property events which can then be organized and used to provide transparency. By some estimates, intellectual property represents as much as 80% of a company's value. Given this fact, it is time to require companies to file intellectual property events in one, practical form.

The table below presents one example of an *Intellectual Property Report* that can be used as a starting point for greater information transparency. The *Intellectual Property Report* can be included in a company's annual report. The U.S. Securities and Exchange Commission, Internal Revenue Service or a similar agency would be necessary to implement and monitor compliance.



Intellectual Property Report	
Event	Description
1. Afforded IP Protection	Various global agencies afford protection for certain intellectual property classes, such as patents, trademarks and copyrights. An inventory of all afforded protection, including type of protection and jurisdiction, should be included in this section.
2. IP Merger & Acquisition	In the general course of business, companies buy and sell intellectual property. The details of these transactions should be reported in this section, with specific attention paid to the actual intellectual property purchased/sold, the terms of the sale, the parties to the transaction and the value of the intellectual property purchased/sold.
3. IP Migration & Movement	To take advantage of transfer pricing tax regimes or other laws and regulations, companies migrate and move intellectual property intercompany and across borders. Any movement of intellectual property should be reported in this section with specific attention paid to the actual intellectual property moved, the reason for the movement, the cost of the movement, and the benefits of the movement.
4. IP Licensing	The commercialization of intellectual property includes the out-licensing of rights to third parties as well as in-licensing third party intellectual property. The actual license agreements should be published within this section.
5. IP Infringement	The ownership of intellectual property has the risk of infringement by third parties. An inventory of any actual or alleged infringement, the risk involved, the cost of enforcement, and other material issues should be reported in this section.

Of course, there are always limitations to practical suggestions. Companies registered with the U.S. Securities and Exchange Commission should be required to file an Intellectual Property Report through the introduction of a filing requirement. Ultimately, there will be some added costs to this reporting requirement; however, this information should be readily available to management thereby minimizing additional cost of compliance.

Another limitation to this recommendation is that small-businesses and private companies generally do not submit audited reports to agencies. A cost-benefit analysis should be conducted to determine if regulation calling for greater transparency outweighs any additional costs related to increased filing



requirements. Should the benefits of regulation exceed the cost of compliance, it will be necessary to determine a regulatory body to implement and monitor reporting (e.g., Internal Revenue Service).

Optional Questions

How can international regulatory and law enforcement collaboration and information sharing be enhanced to address cross-border intellectual property infringement?

International regulatory and law enforcement should support a global intellectual property reporting system, such as the *Intellectual Property Report*. A standardized system will promote transparency of information which will lead to effective enforcement. The introduction of the *Intellectual Property Report* is a first step to gathering and organizing global intellectual property information.

What legal or operational changes might be made, or collaborative steps undertaken between federal agencies and the private sector, to streamline or improve the efficacy of enforcement efforts directed at protecting intellectual property rights?

Federal agencies and the private sector can improve the efficacy of intellectual property enforcement by supporting and agreeing to a global intellectual property reporting system, such as the *Intellectual Property Report*.

ABOUT ktMINE

ktMINE is an intellectual property (IP) information services firm focused on delivering IP protection and competitive advantage to IP owners and stakeholders across the globe. We achieve this by designing solutions based on three core standards: Comprehensiveness, Usability and Knowledge Transfer. By focusing on these standards, ktMINE is able to deliver solutions that provide relevant and actionable information for any type of IP analysis.

ktMINE utilizes its expertise and technology to mine data from the global public domain in order to provide Royalty Rate & Market Intelligence, Licensing Deal Intelligence and IP Business Intelligence through its many solutions. ktMINE offers hands-on research solutions such as the Royalty Rate Finder™ database, and also collaborates with global organizations, corporations, and government agencies to provide customized research services tailored to fulfill their IP information needs.

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