IP Due Diligence in M&A

This playbook describes the steps to conduct intellectual property due diligence during mergers and acquisitions. It outlines how to assess IP portfolios and mitigate associated risks.

Step 1: **Preparation**

Establish a due diligence team with legal, technical, and business expertise. Ensure understanding of the target's industry and market position. Compile a list of the target company's known IP assets.

Step 2: **Documentation**

Request and review all relevant IP-related documents, including patents, trademarks, copyrights, trade secrets, and licensing agreements.

Step 3: **IP Analysis**

Analyze the validity, enforceability, and scope of the IP assets. Assess any existing or potential IP litigation or disputes.

Step 4: **Risk Assessment**

Identify any risks, such as gaps in IP coverage, potential infringement issues, or third-party claims, and plan for their mitigation.

Step 5: **Valuation**

Determine the value of the IP portfolio. This involves considering market value, replacement cost, and the income approach.

Step 6: **Strategy**

Develop a strategic plan for the IP post-transaction, including alignment with business goals, integration into existing portfolios, and future IP management.

Step 7: **Negotiations**

Support the negotiation process by leveraging the IP due diligence findings, to correct valuations and secure warranties or indemnities.

Step 8: **Final Report**

Prepare a final IP due diligence report summarizing findings, risks, mitigation plans, valuation, and strategic recommendations.

General Notes

Expertise

The due diligence team should include experts with background in intellectual property law, as well as professionals who understand the technology and the business environment of the target company.

Confidentiality

Ensure all due diligence processes honor confidentiality agreements and the exchange of sensitive information is secure and lawful.

Ongoing Monitoring

Due diligence is an ongoing process, requiring continuous monitoring of the IP landscape, even after the M&A deal is closed.