



involved, assessment of the strength of the patent and the scope of its claims.

Patents protecting unused technology are a prime example of unutilized assets.

Failure to license such unused intellectual property and produce an income stream may be waste of corporate assets, which may expose officers and directors to liability.

Novel technology represents a valuable asset. A patent excluding others from practicing this innovation increases significantly the value of the underlying technology. Thus, failure to aggressively

patent the results of corporate R&D, like failure to insure valuable plant and equipment, may be deemed mismanagement.

Most U.S. companies face a dilemma of whether or not to obtain foreign patents or trademarks, in addition to their U.S. rights, and in which countries to seek such protection. Fear



securities issuer is a violation of §10(b) of the Securities Exchange Act of 1934. So is presentation of values for IP assets that are based on invalid data or techniques.

Other caveats:

- The courts often hold that failure to determine actual value, as opposed to book value, of a corporation engaged in a merger is a breach of care. IP assets are a major factor contributing to the discrepancy between actual and book value.
- Officers and directors may also be liable to corporate creditors for losses suffered as a result of mismanagement. If the corporation is in reorganization or liquidation, such an action may be brought by the corporation's trustees or receivers.
- A director of a holding company may be liable to that company for the diminished value of its shares resulting from his waste of a subsidiary's IP assets, even though he might also be liable to the subsidiary for the same acts.

While management of the IP portfolio may be delegated, such delegation must comply with certain requirements to satisfy the duty of care. A director may

not delegate to non-directors the responsibility for activities that are outside the ordinary course of business. Fully wihermore, the director should, despite any delegation, remain informed about the general goings-on of the delegated functions and use of resources. He is chargeable with knowledge that he would have possessed had he diligently discharged his functions.