

Strategic Planning for Protecting Your Intellectual Property Rights Before Seeking Investment in the US: A Playbook for Foreign Investors

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Executive Summary

Foreign investors entering the U.S. market face compressed timelines, intense competition, and exacting diligence. Intellectual property — patents, trademarks, trade secrets, and copyrights — is a core asset of a foreign investor's business in the U.S. that increases valuation of the U.S. entity. Yet, many foreign investors prioritize setting up a U.S. entity or other structures, selecting the physical location of a U.S. office or manufacturing site, or applying for work visas or handling other immigration matters over IP protection. Advance planning for IP protection is crucial for building the most effective posture, and seeking IP protection is a process that takes substantial time. For instance, it usually takes the U.S. Patent and Trademark Office (USPTO) at least 11 months to examine and issue a trademark registration, and at least 26 months to examine and issue a patent. The process of protecting foreign investors' IP rights in the U.S. should start as early as possible. The importance of starting this process early is explained in detail below, alongside a pragmatic framework to secure rights and preserve global options.

Why Early IP Protection Drives Value

Early intellectual property protection is a decisive driver of enterprise value. In the U.S. first-inventor-to-file patent system, the race to the Patent Office matters, and public disclosures can narrow or even extinguish patent rights domestically and in many foreign jurisdictions. Securing brand priority through prompt trademark filings reduces the risk of costly rebrands, channel conflicts, and cybersquatting that can stall a U.S. launch. Copyright protection attaches automatically upon fixation, but timely registration unlocks statutory damages and attorneys' fees. Further, registering trademarks and copyrights opens an avenue for receiving protection at the U.S. border. Trade secret protection is likewise process-driven: enforceability hinges on demonstrable "reasonable measures" to maintain secrecy, so if controls such as NDAs, access restrictions, and need-to-know protocols are not in place before information is shared, protection may be lost.

Patent Readiness: File Early, Share Safely

Building on this foundation, patent readiness means filing early while sharing only what is necessary. At the outset, decide what belongs in a patent versus a trade secret. For instance, this could mean patenting user-visible features, performance claims, and technology expected to be licensed, while keeping manufacturing recipes, tuning parameters, datasets, and methods that are not readily reverse-engineered as trade secrets. If non-U.S.

markets matter, preserve global options by submitting a Patent Cooperation Treaty (PCT) application within 12 months of the earliest priority date. Crucially, any investor materials should be kept non-enabling by emphasizing outcomes, performance, and business impact rather than replication steps, reserving technical detail for an NDA-protected appendix.

Trademark Readiness: Clear, File, and Hold

In parallel with a patent program, trademark readiness focuses on clearing, filing, and holding the business's brand assets. To begin with, candidate word marks and logos should be screened in the relevant classes, and essential domains and handles should be checked to avoid obvious conflicts and reduce infringement and rebranding risk. Before a business begins using a mark, it can file intent-to-use applications in the U.S. to secure a priority date, reserving brand territory for the listed goods/services and deterring squatters — giving the business room to finalize products and marketing while preserving the path to registration. As commercialization ramps up, the business can align internationally by using the Madrid Protocol, with the U.S. trademark application as the basis, to extend protection into priority foreign markets.

Copyrights: Leverage Automatic Protection Through Strategic Registration

In the U.S., copyright protects original works, such as software, manuals, and designs, automatically upon fixation. For enforcement leverage, this entails registering key works with the U.S. Copyright Office — ideally within three months of first publication or before infringement. A federal copyright claim generally cannot be filed until the work is registered (subject to narrow preregistration exceptions), so timely registration preserves access to the courts, unlocks statutory damages and attorneys' fees, and enables rapid takedowns. To establish a clean chain of title, use U.S. "work-made-for-hire" and assignment clauses with employees, contractors, and vendors, and collect creation records. Other considerations include implementing access controls publishing clear license terms, tracking open-source and third-party content to avoid license conflicts, and timing registrations with product launches and marketing to deter copying and support monetization. Globally, the business can rely on Berne Convention national treatment for automatic protection in member countries but should register key works in target jurisdictions where local registration unlocks enforcement advantages.

Trade Secrets: Program the "Reasonableness Measures"

Building on the above patent and trademark posture, effective trade secret protection requires demonstrable "reasonable measures" embedded in day-to-day operations to keep secret information valuable in a trade or business. This starts with access control and classification: for example, limiting access on a need-to-know basis, encrypting repositories, applying clear labels (confidential/highly confidential/trade secret), and logging access to sensitive folders. Importantly, the framework should be strengthened with contractual guardrails — including NDAs that clearly define protected information, prohibit residuals clauses, provide for injunctive relief, and grant audit rights for critical suppliers. Cross-border risks should also be addressed — these can involve remote teams, cloud location, travel with devices, and third-party vendors. Finally, training and process should be institutionalized through onboarding and exit checklists, periodic training, vendor security reviews, and a basic incident-response plan for leaks or data loss, ensuring secrecy is not just a policy but a practiced discipline.

Enforcing US IP Rights by Recording Your Trademarks and Copyrights With CBP

Recording U.S. trademarks and copyrights with the U.S. Customs and Border Protection (CBP) is a cost-effective way to flag infringing imports before they enter the market. Once recorded, CBP can detain, seize, and destroy merchandise bearing counterfeit or infringing marks or works. The relatively simple process for recording currently costs \$190 per trademark class and \$190 per copyright to record, with renewals at \$80 per trademark class or copyright — renewals for trademarks typically align with the USPTO renewal cycle, and for copyrights occur every 20 years. To maximize effectiveness, owners may provide CBP with product identification guides, images, lists of authorized manufacturers or importers, and countries of origin, and ensure that they keep records current. Because CBP recordation does not extend to patents, trademark and copyright recordation should be used alongside private monitoring tools.

Common Pitfalls to Avoid

Even with disciplined planning, several recurring missteps can erode IP value. The most damaging is enabling disclosure in marketing, investor decks, or conference presentations before filing, which can narrow or extinguish patent rights. Equally risky are NDAs that include “residuals” clauses or rely on vague definitions of confidential information, undermining trade secret protection and complicating enforcement. Misaligned brand strategy across U.S. and target foreign markets — whether through inconsistent trademarks, classes, transliterations, or delayed filings — invites conflicts and costly rebrands. With copyrights, failing to secure clean ownership and register key works promptly — such as software and marketing assets — can forfeit statutory damages and fee recovery, while poor open-source and third-party content hygiene introduces license conflicts and infringement risk. Finally, missing documentation of “reasonable measures” for protecting trade secrets, such as access logs, training records, and incident procedures, weakens trade secret claims.

Conclusion

For inbound investors to the U.S., the essentials for securing IP value are clear: filing enabling patents early, locking trademark priority, programming trade secret controls, and registering copyrights strategically. Investors with a disciplined, pre-investment IP program project control and credibility, adding value while reducing execution risk at closing and preserving global options.

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