ARTICLES & PRESENTATIONS

## The Use of Intellectual Property in Raising Capital

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One of the most important requirements of a business is to have sufficient capital to run and grow the business. While raising capital is difficult for any business, it is particularly hard for minority businesses who often do not have the same degree of access to Wall Street, venture capitalists, investment bankers and private investors that many majority businesses have. The use of intellectual property as a basis for raising capital can, however, allow minority business owners to better compete with their majority brethren in attracting investment dollars.

In making an investment decision, investors typically ask the following questions:

1. Is the business based on a commercially viable concept?
2. Is there effective management to implement the concept?
3. Is there a reasonable likelihood that their investment will be protected?

The first question simply seeks to determine whether there is a viable market for the product or service. A product or service that has little or no market is not likely to attract very many investors. Investors also want to be sure that management is competent to run the business in a way that will provide the greatest return on the investment.

The third question is perhaps the most important and is the one to which intellectual property can often provide the best answer in the form of one or more patents.

A patent is obtained by filing a patent application in the U.S. Patent and Trademark Office. Once the patent is granted, it can be used to prevent others from making, using or selling the patented invention for seventeen years from the issue date of the patent or twenty years from the date of filing of the patent application.

Over the years, the use of patents to protect and encourage investment has become very popular. Consider, for example, the pharmaceutical industry that relies heavily on patents to protect its research investment and provide a fair return to investors. On average, research based pharmaceutical companies spend approximately $500 million in developing a new drug for use in humans. Were it not for patent protection, generic drug companies would immediately reap the benefits of this "free" research by bringing competing generic brands to market.

While the generics do provide a benefit to the public in the form of lower prices, this benefit can only be realized after the original investments in research and development have been made. There is, of course, no economic incentive to make the investment by the research based drug companies unless it can be protected. A patent provides this protection by delaying entry of generic brands into the market until the patents have expired or been licensed. During the intervening protected period, the companies that have sponsored the high cost of research and own the patent rights have an opportunity to recoup the investment and provide a fair return to their investors.

The pharmaceutical industry is just one example of how intellectual property can be used to attract and encourage investors. The same concepts can be used by any technology-based business for virtually any patented product. Thus, intellectual property provides another entrée into the investment world which minority businesses should give very careful consideration.