

### TIPS ON BUYING IP IN ASIA

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#### **Foreign companies looking to buy IP assets in Asia need to bear in mind a few differences, said speakers at this year's China-International IP Forum in Beijing**

Using the art of persuasion, conducting thorough due diligence and knowing what you want out of the transaction will help protect you in the long run.

“Asian clients a lot of times don't understand the non-disclosure agreement,” said Alan Adcock, a partner at Tilleke & Gibbins in Thailand. “Due diligence is a strategic part of the transaction where you can tell the seller to clean up the IP portfolio.”

Adcock suggested persuading the Asian seller to have a non-disclosure statement by explaining the protective benefits it gives in terms of warrants and breaches.

“Many times an Asian seller has to be persuaded to enter a non-disclosure statement,” said Adcock. “This is an important tool in the early part of the transaction.”

Also, identify the IP that that you wish to buy.

Unregistered IP is difficult to identify because no there is no registration certification. If unregistered IP is part of the transaction, be sure the seller is able to draft that in the non-disclosure agreement.

“The more honest and detailed the audit checklist is, the more fully you can understand the trade secret they're trying to sell to you,” said Adcock.

It is important as well to confirm the IP to make sure that the seller is offering the type of IP you need.

“Sometimes, Asian sellers are so enthusiastic about the sale that they'll put everything on the table for sale, which increases the price,” said Adcock. “Sometimes everything is not what the buyer wants.”

Confirming ownership of IP is tricky in Asia, added Adcock. Assignment agreements need to be disclosed and backed up with evidence. In most ASEAN countries, preclusions exist against certain technologies being sold.

If, while conducting due diligence, you feel that some of the IP could be infringing, include an indemnification clause. Adcock cautions, however, that it does not completely protect you against third party infringement.

Following the due diligence process, the acquirer could speak to the seller about transitional arrangements.

“Don't forget how long recordal of assignments can take in Asia,” said Adcock. “Different countries have different requirements.”