# INTEGRATING INTELLECTUAL PROPERTY DUE DILIGENCE INTO MERGERS AND ACQUISITIONS: A STRATEGIC FRAMEWORK FOR RISK MITIGATION AND VALUE REALIZATION

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## ABSTRACT

In mergers and acquisitions (M&A), intellectual property (IP) assets often constitute a significant portion of a target company's value. Properly valuing these assets is critical in understanding the strategic and financial implications of the transaction. This paper provides a concise guide to the key principles, methods, and considerations involved in IP valuation during M&A proceedings. M&A deals consist of various stages, from strategic development to post-merger integration, with due diligence (including IP due diligence) being a crucial part. Due Diligence is a detailed investigation into the target company's legal, financial, operational, and regulatory standing is conducted to identify risks and validate information. Strong IP assets of a company provide a strategic advantage to the party/parties. There are primarily 3 different kinds of IP that are involved in M&A deal; which are discussed further in this article. In developing economies such as India IP sector is growing extensively as the companies and individuals are now more aware of the real value of their IP. The government has also introduced several schemes under its campaigns like **Make in India and Start-Up India** to promote start-up culture in India. The new entities registering their IP's have also contributed to the rapid growth in the numbers of IP filings in the country. This collaborative effort of the government and private entities is marking a new era of IP revolution in the country. In the context of India's dynamic and rapidly growing IP environment, supported by proactive government policies and a flourishing start-up ecosystem, such diligence becomes even more vital.

**Keywords**: Financial Implications; Target Company; Deals; Due Diligence; Developing Economies

## Introduction

Mergers and acquisitions are an important growth strategy for companies in today's blistering business environment, especially for those companies which are looking to diversify their product offerings, expand their market presence, or acquire innovative technologies. In these transactions, IP often plays a vital role, particularly when the target company's core value lies in its proprietary technologies, trade secrets or brands. In M&A transactions it is a strategic necessity, especially in India's rapidly evolving business landscape; Conducting IP due diligence is not solely a procedural formality. IP assets can significantly influence the strategic direction and valuation of a merger or acquisition. Properly assessing and managing IP assets can lead to successful integration and maximization of value.

## India's IP Ecosystem and Growth Pattern

In the financial year 2024–25, patent filings in India rose by nearly 20%, reaching a record high of 1,10,372 applications, while trademark filings saw a 16% increase, totaling 5,52,409 applications[1]. As India moved from 81st to 39th position in Global Innovation Index in 2024, Indian startups now make India 3rd largest startup ecosystem in the world. India's IP framework involves Patents Act, 1970[2]; Trademarks Act, 1999; Copyright Act 1957[3]; Design Act, 2000[4]; Geographical Indications Act, 1999[5] and Plant Variety Act, 2001[6]. Largest proportion of trademark filings in India came from sectors such as **Health (21.9%), Agriculture (15.3%),** and **Clothing (12.8%).** Country's industrial design filings are predominantly driven by sectors like Textiles and Accessories, Machinery and Tools, and Cosmetics and Health. A major catalyst behind the country's rapid increase in IP filings since 2016 has been the implementation of the National Intellectual Property Rights Policy. India's start-up ecosystem is another important driver of the country's emerging IP activity. Government initiatives like **Make in India, Start-Up India, the Atal Innovation Mission[7] and Digital India have played a crucial role in motivating the business to register their IPs.**

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[1] Ashwin Jhulka and Biswan Kaur, "A Burgeoning IP Landscape" *World Intellectual Property Review*, May 12, 2025, available at https://www.worldipreview.com/trademark/a-burgeoning-ip-landscape (last visited on June 26, 2025)

[2] The Patents Act, 2000 (Act 39 of 1970).

[3] The Copyright Act, 1957 (Act 14 of 1957).

[4] The Designs Act, 2000 (Act 16 of 2000).

[5] The Geographical Indication of Good, 1999 (Act 48 of 1999)

[6] The Protection of Plant Variety and Farmers Right Act, 2001 (Act 53 of 2001)

[7] Press information Bureau, "India's Growing Influence in Global Innovation: A Look at WIPO 2024's Intellectual Property Report" (November, 2024)

## Types of IP Available in M&A Deals

In M&A transactions there are various types of IP which are considered. Types of IP Transaction includes; the company's own assets which we call company IP, includes a) Registered IP such as: trademarks and copyrights, b) Technology: it is comprised of intangible form of Intellectual property such as trade secrets, industrial designs and other. c) Seller owned IP. It is further divided into two categories 1) it needs to be transferred into the company's IP as part of the sale. This could be other forms of intellectual property or technology IP; usually referred to this as Transferred IP. 2) Seller own IP which the seller would retain because the seller needs it to continue its business after the sale is carved out, this is usually referred as shared or retained IP. And it is typically licensed to the company or buyer, either on a transitional or a perpetual basis. Once we have identified these forms of IPs we can then take the 3 IPs and add them up to create the basis for the sufficient rep, which is a representation stating the all 3 IPs constitute all the intellectual property that company needs to operate the business.

## Understanding IP Ownerships

1) **Home grown IP**: It is created by the consultants or employees of an entity, it is necessary to have proper documentation to show that IP rights vest in favor of the entity.
2) **Joint Ownership**: Certain intellectual property laws in India contain specific provisions addressing the concept of joint ownership, wherein the rights to a particular IP are held by multiple proprietors. For instance, the Trade Marks Act, 1999[8] permits joint registration of a trademark by more than one person, provided it is used collectively in relation to the same business.
3) **Government or University funded IP**: "Start up India", launched by the Government of India to encourage the growth of start-ups in India announced the "Scheme for Facilitating Startups Intellectual Property Protection", to support and foster innovation and protection of IP used in start- ups in India. The Indian Government obtains ownership in the IP or a percentage stake, developed by the start-ups that sign up for the scheme.

## Challenges in IP Due diligence

Unclear or undocumented IP ownership can lead to post-acquisition disputes, as employees or

[8] Trade Marks Act, 1999 (Act 47 of 1999)

external collaborators may later assert rights over certain IP assets. Licensing agreements already existing with third parties can further perplex transactions, requiring buyers to obtain consent or renegotiate terms to ensure continued use of the licensed IP. Additionally, certain types of IP, such as proprietary technologies or pharmaceuticals; may require regulatory approvals before they can be legally transferred, and failure to comply with these requirements can cause significant delays or even jeopardize the success of the merger or acquisition.

## Conclusion

Integrating IP due diligence into M&A deal structures is not only a strategic move but a critical necessity in today's knowledge-driven and innovation-focused business ecosystem. As intangible assets increasingly define corporate value, the success of M&A transactions hinges on the accurate assessment and management of intellectual property. A thorough and strategic IP due diligence process helps identify ownership issues, assess the strength and scope of protections, evaluate existing licensing arrangements, and anticipate regulatory hurdles. By aligning IP due diligence with broader transaction objectives, buyers can mitigate risk, ensure smooth integration, and unlock long-term value, thereby turning intellectual property into a powerful driver of competitive advantage in post-deal operations.