

You might not believe in patents, but your investor will

It's a tool for protecting future growth but, compared with raising capital, hiring people and product development, the patent process can be overlooked or perceived by UK startups as a box-ticking exercise to appease investors.

However, given the value investors increasingly place on a company's intellectual property, it's a key consideration to be embedded into the business plan.

A company's IP should be at the heart of its business. Advice on patenting and protecting that IP can make a considerable difference to a company's success, especially if it's given at an early stage while the company is still raising funding and developing its innovation.

It's important to note that the patent process can be long and if a company gets it wrong early on, there's little that can be done to mitigate it further down the line. Think of it like an oil painting – once those brush strokes have begun to dry, it can be very hard to change the resulting artwork. It's vital, therefore, to encourage and educate startups of the value of their IP to the business to set them on the right course from the beginning.

For some leaders, IP is the foundation of a startup and demonstrating the importance of a company's IP is part and parcel of the funding process. Other firms will treat IP protection as an afterthought or apply for a patent simply to

attract investment rather than as an integral part of their business planning that the founders have genuinely bought into and understood.

But, when you consider that many investors believe between 80-90% of a company's value lies in its IP, it's clearly time for a change of mindset around IP.

Common challenges

Filing a patent application isn't always necessarily straightforward. Timing is important, for one thing. Quite often, the need to find investment partners to work with in the early stages can lead a founder to file a patent too soon to satisfy IP due diligence, despite things not being quite ready.

Conversely, there's a lack of understanding of the importance of trade secrets when it comes to long-term IP protection. Essentially, rather than rushing an application, businesses should instead keep their powder dry – and their options open – until they're ready to file. Where the innovation is delivered using software that embodies trade secrets, tech companies may choose to rely on the inherent security of their software and control the access to the source code. A competitor might learn *what* the company was doing, but they wouldn't necessarily know *how*.

Another common challenge is the question of patent eligibility for software. There's a widely held misconception that software isn't patentable, for example. But, while the UK patent office is still struggling with some aspects of the patent eligibility of digital innovation, this isn't the case.

There are, undeniably, technical challenges around getting protection in certain instances but, with the support of an experienced advisor, a company will be able to identify what protection is available and how best to navigate the legal hurdles. We also need to be mindful that US patent law is different and ensure we take an international perspective.

More than a necessary evil

In America, it's quite common for startups to build their companies around IP, demonstrating to investors that it's consistent with what they say they're going to do with their funding and that it will provide a degree of exclusivity to add significant value. This is an approach UK startups can learn from. There may seemingly be financial and legal challenges involved in protecting the company's IP, but it's worth remembering that the benefits outweigh these.

Funding a startup tends to start with founders seeking 'friends and family'

money until, eventually, they must approach professional investors who'll likely employ an IP lawyer to conduct IP due diligence. It's at this point that the IP position can start to unravel and it may be too late to recover the situation.

Ultimately, IP is where a company's value lies. Rather than leaving it by the wayside and later panicking, founders should instead invest more time and money in protecting their IP from the start or at the very least look at the options available to them.

A question of perception

The truth is that I've been at *startup networking* events in the past but made to feel unwelcome by some attendees wary of 'service providers', despite a wealth of personal experience in working closely with entrepreneurs and investors and being an Angel investor myself.

Ultimately, when up to 90% of a company's value is in its IP, an investor will be strongly interested in ensuring IP protection is in place to protect their investment - but founders can't always see this initially, perhaps because of stereotypical views of lawyers and fear of costs. My advice is to do the necessary research to ensure your IP objectives align with any investor and your exit strategy, to avoid any mismatches in expectations.

A patent attorney should be working as an essential resource for identifying and protecting a company's IP from the get-go so that company can raise money and achieve a decent exit valuation in the longer term. It's all about achieving commercial success and growing the business. This is a journey for founders that a commercially-minded patent attorney can and should support by working together as a team with a shared mission.

The government pays for innovation advisers and makes funds available for companies to protect their IP at a very early stage, but most founders probably won't be aware of these. Encouraging people to invest in IP isn't a particularly high-profile government policy, so there's an educational barrier we must break down as an entrepreneurial ecosystem.

As we've seen, early-stage companies in particular must be aware of the value of their IP and the importance of protecting it. Patents shouldn't be seen as a necessary evil or a hoop to jump through. They should instead form part of a startup's business planning, with an IP strategy put in place from the very beginning. After all, IP matters to investors, so it should matter to founders too.

Peter Finnie is patent attorney and partner at full-service IP law firm *Potter Clarkson*.

