Intellectual Property Checklist for Startup Companies

1. GENERAL
   • Has an IP law firm been retained?
   • Has a corporate officer been identified who will act as the law firm liaison?
   • Has the company developed an overall plan for its IP strategy?
   • What and when does the company want to exclude others from practicing? – prioritize IP rights critical to its business.
   • Has the company considered what innovations are best protected as patents, trade secrets or copyrights?
   • Is there a budget item for IP legal work?
   • Has the insurance position of the company been considered in case of a lawsuit over IP rights?

2. COPYRIGHTS
   • Are there copyrightable materials such as software code, manuals, web pages, etc.?
   • Has a copyright notice been placed on all materials?
   • Has the copyrightable subject matter been registered?
   • Has the company obtained licenses (i.e., a right to use) for copyrightable materials created by other parties or confirmed that the materials are in the public domain?

3. TRADEMARKS
   • Has a search been conducted to identify a protectable mark(s) and ensure a right to use?
   • Has a federal trademark application been filed for the mark even if not used yet?
   • Have domain names been registered?
   • Have accounts for social media (Facebook, Twitter, Instagram, etc.) been secured?

4. PATENTS
   • Will patentable inventions be developed?
   • Have inventions been identified and invention disclosure forms been completed?
   • Has a process been established to identify and evaluate inventions as they occur and to file on such inventions before any potential public disclosure or bar date?
   • Has a patentability search been conducted?
   • Has a U.S. patent application been filed?
   • Has an international (“PCT”) patent application been filed?
   • Has a search been conducted before commercial product launch?

5. TRADE SECRETS
   • Has the company confirmed that no trade secrets of others have been brought into the company without express authorization and licensure?
   • Have valuable trade secrets been identified, e.g., customer lists, design specifications, and unpatented inventions?
   • Has the source code of all software been protected via technological security measures?
   • Have means been implemented to maintain the secrecy of company trade secrets?
   • Have employees signed confidentiality agreements?
   • Has access to the company’s facilities been properly controlled?
   • Does the company have procedures for handling trade secrets disclosed by others?
   • Are trade secrets and proprietary materials properly marked?

6. CONTRACTS
   • Have the founders transferred their IP rights to the company?
   • Have employees executed an employee agreement where all newly developed IP is assigned to the company?
   • Have consultants executed a consultant agreement where all newly developed IP is assigned to the company?
   • Do any employees have existing assignment obligations to former or current (e.g., hospital, university, etc.) employers?
   • Have customers, vendors, outside consultants, etc. executed a Non-Disclosure Agreement (NDA) before any discussion on IP occurs?
   • Have rights belonging to others been secured through license-in agreements?
   • Does the company have technology and software, for example, open source software, that requires a license-out agreement?
   • Have web notices been placed at the website?
   • Does the company need a services agreement for conducting e-commerce?
   • Will software development be outsourced, and does the professional services agreement maximize the rights held by the company?