By Jim Hammerand
Managing Editor

Positioning medtech IP for funding and exits

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Despite global volatility, there's still opportunity for medtech startups with strong intellectual property protection.

Greenberg Traurig attorneys David Dykeman and Roman Fayerberg are scheduled to present at DeviceTalks Boston on April 30.

Their panel, "Positioning IP for Funding & Exits," will include Aerin Medical Chief Legal Officer Irina Ridley and Bluwave Capital Partner Jonathan Black, who is also CEO of Wellsense and was previously CEO of DuraMedic, Liberty Medical and Omnis Health.

Ahead of DeviceTalks Boston, Dykeman and Fayerberg jointly answered questions from *Medical Design & Outsourcing* about medtech M&A and intellectual property (IP) considerations for medical device startups.

How would you characterize the market for medtech M&A and IPOs right now, and do you anticipate a shift in the near future?

"The U.S. economy and the stock market are volatile with uncertainty right now, which makes IPOs more difficult. While these uncertainties can also impact M&A deals, the medtech giants have large piles of cash and are willing to pay a premium for new technology that has regulatory approval, strong intellectual property protection, and growing markets. The billion-dollar-plus M&A deals of 2024 and 2025 meet these criteria.

Many analysts are predicting a medtech M&A boom in the second half of 2025. Larger medtech companies continue to acquire smaller companies with innovative technologies, both to grow revenue and to streamline product development. Robotic surgery remains a hot space as well as interventional cardiology, orthopedics and pain management.

To position themselves as attractive targets, medtech companies should de-risk their commercial, regulatory and intellectual property strategies. Buyers are conducting deeper due diligence, and companies that understand their competitive landscape and highlight potential synergies will be best positioned to attract premium valuations."

What are the biggest IP pitfalls that could hurt a company when it's time to exit?

"One of the most damaging IP pitfalls is failing to secure IP protection for the company's technology. Most startups file one or more patent applications early, but then do not dedicate the necessary resources to protect the changes in their products, including filing additional patent applications covering incremental improvements. Public disclosure of an invention before filing a patent application — whether through a publication, presentation, website, or conversation with a customer or investor — can jeopardize patent rights, especially outside the U.S., where absolute novelty is required. Companies must be vigilant about confidentiality to preserve their IP value.

Another major risk is trade secret misappropriation. The financial losses from IP theft are staggering in medtech, often hundreds of billions of dollars annually. A company that fails to protect its trade secrets could face enormous legal costs and lose its competitive edge, major red flags for potential acquirers or investors."

What sort of protection should startups have when talking with potential buyers?

"Startups should never disclose confidential or proprietary information without a signed nondisclosure agreement (NDA). Even after execution of an NDA, startups should avoid revealing trade secrets or critical technical details until later in the due diligence process. Protecting IP through patent filings before any discussions also ensures that the company retains its rights regardless of how talks progress. Thus, it is important to update the patent portfolio before starting the due diligence process.

How much access to give a potential buyer in the 'kicking-the-tires' phase often depends on how much leverage the buyer has, but generally startups should start by revealing public information such as published articles, patents and patent applications and reveal additional information as talks progress and the buyer becomes more serious."

Greenberg Traurig patent attorney and Global Life Sciences & Medical Technology Group Co-chair **David Dykeman**

Greenberg Traurig patent attorney **Roman Fayerberg**