Medical Design & OUTSOURCING

Positioning medtech IP for funding and exits

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

By Jim Hammerand, *Medical Design & Outsourcing*

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.

What sort of IP do buyers like to see?
Buyers are looking for strategic IP portfolios including patents that not only clearly cover core technologies, but also build a strong patent fence around those core technologies and later improvements. A strong patent portfolio can help keep competitors out of a market. For early-stage companies, patents are often the only way to value the technology before FDA approval. A well-constructed IP portfolio, including trade secrets and trademarks, adds credibility and signals innovation, competitive advantage and potential revenue.

IP is a key driver in M&A because it can shorten time to market and strengthen negotiating positions. For smaller medtech companies, a robust IP portfolio makes them more attractive targets and can significantly increase deal valuation.

How does an early stage company ensure its IP portfolio is strong enough to satisfy an acquiring company?
Early-stage companies should adopt a strategic and proactive approach to IP. This includes filing patents early and often, focusing on white space around their core technologies to secure broad claims, and when possible, white space within the competitor's patent portfolio in order to block the competitor and create leverage. Collaborations with research institutions can enhance innovation and expand the IP portfolio. Buyers want to see a forward-thinking IP strategy that not only protects current products but also supports long-term growth. The U.S. is often the largest market for medtech innovations, so U.S. patents are expected. Patents in key foreign markets like Europe, China and Japan may also be desired.

Do companies need to patent manufacturing processes as well as medical technology?
Yes, patent protection should cover not only the device itself but also key components, disposables, methods of use, therapeutic applications, combination therapies, and manufacturing processes. Comprehensive patent coverage increases valuation and strengthens the medtech company's competitive position. If no patent application is filed, manufacturing processes are often considered trade secrets and must be protected to avoid disclosure.

Do device startups need trademarks and copyrights?
Absolutely. A strategic IP portfolio goes beyond patents. Trademarks protect brand identity, and copyrights can cover software or marketing materials. Together, these IP tools enhance differentiation, support investor confidence and increase the company's attractiveness in an acquisition or funding scenario.

What sort of protections should they have in place when using third-party vendors or products in their device design and manufacturing process
Startups must ensure that IP developed with third parties is clearly owned by the startup. This requires strong contracts, including NDAs, IP assignment agreements, and clear terms around confidentiality and ownership. Without these protections, companies risk losing rights to their own technology, something that can kill a deal or disqualify them from investment.

What should a company show the buyer if it has successfully withstood an IP challenge in the past? Is this a strength or weakness when negotiating?
Successfully defending against an IP challenge is a strength — if handled properly. It shows that the company's IP is strong, enforceable and defensible, which can increase buyer confidence. Documenting the outcome and demonstrating how it validates the company's IP position can serve as a positive indicator during negotiations. The more challenging case is where an IP challenge is ongoing or still on appeal.

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David J. Dykeman, who serves as co-chair of Greenberg Traurig's global Life Sciences & Medical Technology Group and as co-managing shareholder of the firm's Boston office, is a registered patent attorney with nearly 30 years of experience in patent and IP law. He focuses on securing worldwide IP protection and related business strategy for medtech clients, with particular experience in medical devices, robotics, life sciences and digital health.

Roman Fayerberg is a registered patent attorney with broad experience helping clients to strategically protect and leverage their innovations globally. He works with clients to develop and manage worldwide patent portfolios and counsels clients in regard to freedom to operate, patent landscape, and patent infringement and validity matters. Fayerberg has represented clients ranging from startups to global companies in a variety of technical areas, including medical devices, robotics, diagnostic and imaging systems, microfluidic devices, and biotechnology.

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