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## How a Savvy IP Strategy Helps Startups Focus on Growth

Cutting-edge inventions require robust patent protection and, when those patents are infringed, aggressive defense. But for growth-stage companies, setting aside millions for legal costs is all but impossible.

By *Michael A. Nicolas*

Growth-stage companies bringing a new product to market often face a cruel reality. The more valuable their invention or innovation, the more likely that competitors—typically either bigger established players or foreign manufacturers—will create knockoffs, undercutting them at every turn.

Cutting-edge inventions require robust patent protection and, when those patents are infringed, aggressive defense. This is part of the business model for industrial giants in innovative fields like pharma and technology, who can afford to hire top-notch legal teams to defend valuable IP during and after product development. But for growth-stage companies, setting aside millions for legal costs is all but impossible.

Those companies raise funding on the assumption that early rounds will be directed at R&D, production, hiring and other core operations. And the cost pressure



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doesn't subside after a product hits the market: Companies need capital to fulfill orders, expand distribution, ramp up marketing and expand their teams.

And in today's world, any company manufacturing a product generating robust sales can count on another eventuality: someone will copy it and begin selling it, usually at a lower price, often in

violation of the inventor's patents. But halting those unfair practices means hiring outside attorneys and dedicating a large portion of the company's precious cash to the subsequent legal fight. Major litigation can set the company's progress back months, or may be so costly that the company is forced to allow IP theft and hope it can win in the competitive marketplace.

My firm, Longford Capital, was recently approached by a company facing this conundrum. The company's executives were confident that their product had huge market value and the potential to make existing technology obsolete. Within months of beginning production, however, overseas suppliers began surreptitiously selling the company's design to competitors.

Changes needed to be made, but those changes left even fewer resources to spend battling infringers. Diverting millions toward legal fees would have been all but impossible without outside assistance.

After our team of experienced litigators and business experts examined the case, we agreed to provide funding for the legal campaign, which enabled the company to hire top-notch legal talent.

Longford won't see a dollar until the case reaches a conclusion. If the case is successful, we share in the proceeds. If the case is not successful, we absorb the cost. Our confidence in this case, as with all IP campaigns we fund, derives largely from the strength of the company's patent portfolio.

The company's product did not rely on a single patent, but instead had multiple patents covering various parts and processes. We knew that if any one patent was rejected

in court, others would likely hold up. The company had put themselves in a position to win; they just needed our financial support to carry out their plan.

Accessing capital is one of the biggest challenges for any growth-stage company, particularly when success relies on a single product. These businesses are considered too risky to get funding from a big bank, and recruiting new investors dilutes existing shareholders and is often extremely expensive. Securing capital through a partnership with a litigation finance firm allows companies to avoid many of the pitfalls associated with other funding options.

Because we fund only the most meritorious legal claims, we enable companies to lay the groundwork for stronger IP protection as they grow. Companies that have demonstrated a willingness to vigorously defend their patents, and have had those IP protections affirmed in court, are less likely to be targeted by patent thieves in the future. And IP gains a great deal of value once it survives a legal challenge, driving up licensing value and raising investor confidence.

The use of litigation finance is increasing rapidly among in-house counsel across industries in the United States. About a third of corporate lawyers say they used

litigation funding last year, a four-fold increase from 2013. Almost half of these attorneys say they will consider using it in the next two years.

When the cost of not litigating is so high, this is not surprising. A successful infringement campaign does much more than just protect patents. It can create a crucial boost to revenue and public confidence, putting a growth-stage company in a position to take off, and begin work on its next innovations.

**Michael A. Nicolas** is a co-founder and managing director of Longford Capital, responsible for Longford's portfolio management, including underwriting, investment selection, and overseeing the due diligence process. He has more than 15 years of experience representing a wide array of corporate clients involved in complex litigation throughout the United States.