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**EXECUTIVE SERIES:
INTELLECTUAL PROPERTY**



Beyond the Billable Hour: IP Litigation Funding

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Agenda

- Overview of IP Litigation Funding
- What To Look For in an IP Case?
- Funding Process Step-by-Step
- Practical Tips
- Ethical & Professional Responsibility
- Practice Aspects of Funding



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Overview: The Parties Involved

The Funder

Provides capital to support costly IP litigation in exchange for a financial return tied to case outcomes.

Patent Owner (Claim Holder)

Holds valuable intellectual property but may lack resources to enforce rights without external funding.

Defendant

The party challenged in litigation, often a larger entity with significant resources, creating financial pressure on patent owners.

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Overview of IP Litigation Funding

Third-Party Funders' Role

Involves third-party funders financing IP enforcement costs, making litigation accessible for those lacking resources.

Challenges for Patent Owners

Patent owners often lack available resources to pursue expensive litigation, creating a barrier to enforcing their rights.

Relief from Financial Burden

Funding relieves financial burden on clients while advancing claims, allowing them to focus on their case.

Funders' Investment Criteria

Funders seek viable cases with potential for strong returns, carefully evaluating the merits and risks before investing.

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What To Look For In An IP Case?

01

Robust Patent & Trade Secret

Cases with multiple patents, broad families, or strong trade secrets signal better legal footing and are more appealing to funders.

02

Strong Damages & Evidence

Solid damages calculations, backed by evidence, show clear financial recovery potential and strengthen the case.

03

Experienced Legal Team

Experienced attorneys with a strategic plan increase confidence in potential success and attract funder support.

04

Rational Claim Holder

Funders prefer claim holders who make sensible financial decisions and approach settlement talks practically.

05

Clear Narrative of IP Value

A well-told narrative explaining infringement and IP value helps funders see how the story can succeed in court.

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Litigation Funding Process: Step-by-Step

Client Diligence

Client initiates preliminary review of the IP case, gathering key facts, evidence, and financial information to assess basic merits.

Law Firm Diligence

Law firm conducts due diligence including invalidity and infringement analysis or misappropriation assessment, damages potential, and narrative strength.

Submission to Funder

Law firm compiles and submits comprehensive due diligence materials to the funder for an initial evaluation and interest determination.

Third-Party Review

Funder engages independent third-party legal counsel to perform rigorous due diligence and validate case strengths and risks against the law firm's provided due diligence materials

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Practical Tips for Working with Funders

- Be open and straightforward about both the strengths and the vulnerabilities of the case.
- Are you willing to have skin in the game?
- Treat the client's diligence as a supplement— independent analysis is essential for credibility with the funder.
- Come ready with a plan/strategy.

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Practical Tips: Know Your Funder

- Funders come in many different shapes and sizes.
 - Risk appetites, preferred case profiles, and investment goals.
 - Patent cases, Trade Secret cases, narratives?
- Some are drawn to early-stage matters; others prefer cases that are closer to resolution and carry less uncertainty.
- Understanding what each funder cares about—how they think about timing, exposure, and outcomes— lets us tailor how we communicate with them.

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Ethical and Professional Responsibility



- Attorney's primary duty is to the client, not the funder (ABA Model Rule 1.7(a)).
- Maintain client confidentiality and privilege throughout funding arrangements (ABA Model Rule 1.6).
- Avoid conflicts of interest between client's interests and funder's financial goals (ABA Model Rule 1.7(b)).
- Ensure funder involvement does not compromise attorney independence or case strategy (ABA Model Rule 5.4(c)).
- Preserve the attorney-client relationship and professional judgment at all times (ABA Model Rule 1.8(f)).

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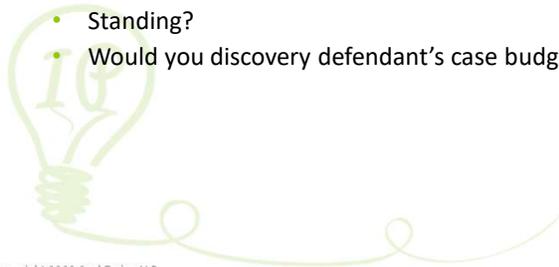
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Practice Aspects of Funding

Disclosure/Fairness

- Should *funding* be disclosed?
 - Relevance? Control?
- Should the *funder* be disclosed?
- Should the *funding agreement* be disclosed?
 - Standing?
 - Would you discovery defendant's case budget?



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Thank You

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