

## Industrial property rights in bankruptcy

*Dr Lars Zanzig*

*Serviva GmbH*

---

The intellectual property (IP) of bankrupt companies can be of considerable value. This applies in particular to industrial property rights such as patents, utility models and trademarks, which, for example, often represent the very core of corporate value for young technology companies. If due office fees are not paid on time, there is a risk of large losses in value. However, as these intellectual property rights are far from playing an important with all companies, dealing with them is not easy even for experienced liquidators.

### Evaluation of technical property rights

The chances of utilising patent applications, patents and utility models are difficult to assess for liquidators. But even if there are already potential buyers, it is not easy to estimate an appropriate value for the IP. Potential buyers like to take advantage of bankruptcies to obtain valuable bargains at a 'bargain price'. On the other hand, experience has shown that entrepreneurs and above all the inventors themselves set the value of property rights they have created unrealistically high. This is where an assessment by independent experts comes into play.

Serviva GmbH strives to optimally take into account the interests of the creditors and the liquidator when valuing individual property rights or larger property rights portfolios. Within a few weeks, an assessment with concrete recommendations for action is drawn up, taking into account the limited

financial resources. In the case of individual property rights, this is a short, inexpensive evaluation; in the case of an obviously valuable portfolio, the order of magnitude of possible utilisation proceeds is indicated by means of a yield value method and the first selection of potential buyers of patents is revealed.

When analysing IP rights and the market environment, potential barriers are always taken into account. In individual cases, this leads to discouraging the effort of active patent utilisation. In any case, our opinion contains concrete suggestions for further action.

### Evaluation of trademark rights

Trademarks are the figurehead of a company. Customers and suppliers identify a company primarily through these industrial property rights. When evaluating trademarks, the focus is on determining the proportionate value of the trademarks in the company's sales. Successful trademarks are a worthwhile goal for competitors. Our trademark evaluation reports show the value that can be realised in the context of a sale.

### The utilisation of property rights

Haste is necessary when wanting to utilise property rights, since only the fact of bankruptcy reduces the value of the property rights. This is particularly true for trademarks, provided customers can establish a direct relationship between company names and (product) trademark names. The value of a trademark is based, above all, on the trust of the customers, which gradually gets lost with the bankruptcy the more customers learn of the bankruptcy.

On the other hand, the IP cannot be sold within a few days or weeks. Once the decision has been made that the property rights should be separated from other assets and sold, the identification and addressing of potential buyers must begin. Serviva GmbH offers a fair remuneration model for this purpose, which includes a share dependent on expenses at a greatly reduced daily rate and a success-related component. It is important that the

maximum expenses, which are financed from the bankruptcy assets, are easy to calculate and are in reasonable proportion to the expected proceeds. A period of three to nine months is planned for the entire utilisation process.

## Management of patent portfolios in bankruptcy

While smaller companies have often applied for a single invention for a patent, slightly larger technology companies have sometimes applied for patents for a whole range of inventions and technologies. If patents are filed for an invention in various countries, this is called a patent family. Several patent families (for different technologies) form a patent portfolio. For larger patent portfolios, the maintenance of property rights is a significant cost factor because of the renewal fees due in most countries. In addition, as a rule, at least some of the property rights are still in the assessment phase between application and granting, in which there are additional costs by the office and the attending patent attorney.

At the latest at the opening of bankruptcy proceedings, the liquidator must check whether in fact all property rights in all countries have to be maintained. In this case, the assistance of an external expert is advisable, since both the management's and the attending patent attorneys' neutrality can be questioned because of their own interests in the matter.

On the other hand, the complete cessation of all payments to patent offices and patent attorneys can result in considerable damage if valuable property rights are dropped frivolously. Therefore, a reasonable compromise has to be found on cost-benefit grounds. Serviva offers professional support in managing IP for liquidators, if necessary throughout the entire bankruptcy proceedings. Managing this needs great responsibility, because cost-related decisions have to be made for larger patent portfolios almost every day. In addition to the necessary exchange of letters with the patent attorneys, short, precise decision-making documents are prepared. From experience, more than half of the costs can be saved until the valuable property rights are sold, without significantly reducing the value of the portfolio.

## Summary

The intellectual property of bankrupt companies can be of considerable value. If office fees are not paid in time, there is a risk of large losses in value. Liquidators can commission specialised service providers such as Serviva GmbH with the evaluation and utilisation of industrial property rights.