

Mock IP Representation and Warranty Diligence call questions

This is an outline of potential questions that could be asked on a representation and warranties diligence call about the diligence performed by the buyer of a target company with regards to the targets IP

IP

1. Was it confirmed that all disclosed IP is free and clear of encumbrances?
2. Are all filings and fees up to date for the registered IP?
3. Please discuss whether all employees, contractors, and any other person involved in the development of IP have executed an agreement that assigns (with present assignment language) IP, created on behalf of the Target to the Target.
4. Please discuss whether all employees, contractors, and any other person having access to trade secrets and other confidential information of the Target have executed confidentiality agreements.
5. Has there been any unauthorized access, use or disclosure of any trade secret or confidential information?
6. Does the Target have all the IP necessary (by ownership or licenses) for the conduct of the business?
7. Will Target have the same IP rights immediately after closing as its IP rights immediately prior to closing?
8. Has there been any challenge to the ownership, use, validity, or enforceability of any IP or is there any basis for any such challenge?
9. Was any of the Target IP developed with resources from a governmental body or educational institution?
10. Is the Target associated with any industry standards organization, or similar organization, in a way that obligates the Target to grant, to any person, any right to Company IP?
11. Please discuss the Target's use of open source software and whether it does so in a manner that would have an adverse consequence on the IP of the Company (e.g., obligate the Company to disclose, make available, offer or deliver any portion of the source code of any Company software to any third party).
12. Does the Company comply with all the terms of the licenses related to open source software it uses (including attribution and copyright notice requirements)?
13. Has the Company source code been disclosed to any person, without a nondisclosure agreement?
14. Does the Company have a source code escrow obligation to any person?
15. Please discuss any actual or potential instances of (1) IP infringement by the Company (2) third party infringement of Company IP, or (3) any allegations of the foregoing (including cease and desist letters).
16. For IP, have you identified any red flags or are you aware of any representation made by the Company in the Agreement and Plan of Merger that is not accurate?