



# Philippine Resources

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# Should Mining Companies Think of Intellectual Property?

By Patricia A. O. Bunye

**T**he mining industry is driven by technological innovation. Improvements in methods, processes and equipment stimulate growth, expansion and sustainability of the industry. One way of maximizing the value of these innovations is through the protection, enforcement and commercialization of a company's intellectual property ("IP") rights.

Mining companies may not always be aware that they create or hold IP. Technologies and know-how used in the exploration, extraction, and processing of minerals are all covered by IP. By exploring the advantages of IP rights, mining companies

may be able to enhance their revenue streams, especially in times of economic uncertainty.

In the mining industry, IP tends to consist mostly of patents, utility models, industrial designs, trade secrets, and to a lesser extent, trademarks and copyright. Patents cover any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable, while utility models are inventions in the mechanical field without the necessity of an inventive step. Industrial designs are any compositions of lines or colors or any three-dimensional form, whether or not associated-with lines or colors that gives a special appearance to and can serve as pattern for an industrial product or handicraft.

For example, in 2014, the Department of Environment and Natural Resources

("DENR") announced a new gold and copper processing technology that no longer requires the use of mercury and cyanide. This innovation, along with other technologies that have already been and are still being developed in the Philippines, are valuable IP. Their owners are entitled to assert their right to prevent unauthorized use and registration of these inventions to the exclusion of others.

In addition, the protection of trade secrets from public disclosure has been acknowledged by the Supreme Court in the 2007 case of *Air Philippines vs. Pennswell*, where it said that "the protection of industrial secrets is inextricably linked to the advancement of our economy and fosters healthy competition in trade."

In the same case, the Court said that trade

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secrets “may consist of any formula, pattern, device, or compilation of information that: (1) is used in one’s business; and (2) gives the employer an opportunity to obtain an advantage over competitors who do not possess the information.”

Within the mining industry, certain information may be protected as trade secrets, such as, technical or commercial information or data (including geological, geochemical, geophysical or engineering information), maps, models or any other material related to exploration or production activities over the area of interest.

The DENR, however, requires that the extent of operation to be undertaken, area location, geographical coordinates/ meridional blocks of the proposed contract area and location map/sketch plan with

index map relative to major environmental features and projects and to the nearest municipalities be among the information disclosed in notices of applications for exploration permits, mineral agreements and financial or technical assistance agreements (“FTAA”), which are published, posted, and announced via radio broadcast.

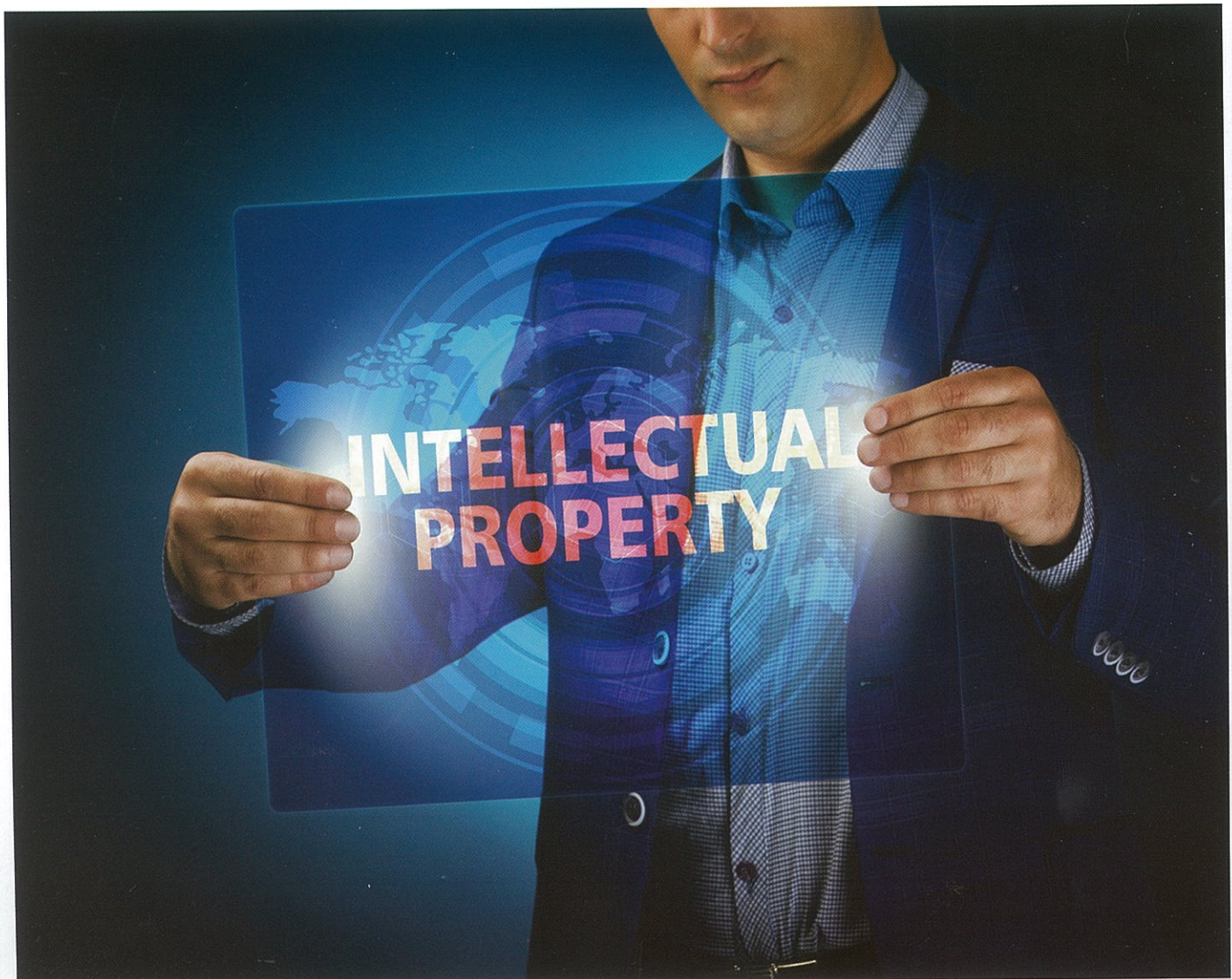
Nevertheless, sales agreements in mineral agreements and FTAA’s, and some information disclosed during negotiations of FTAA’s may be covered by confidentiality agreements so that they cannot be publicly divulged. Certain information supplied by the contractor during negotiations with the government may still be considered confidential, and may fall under the protection of trade secrets.

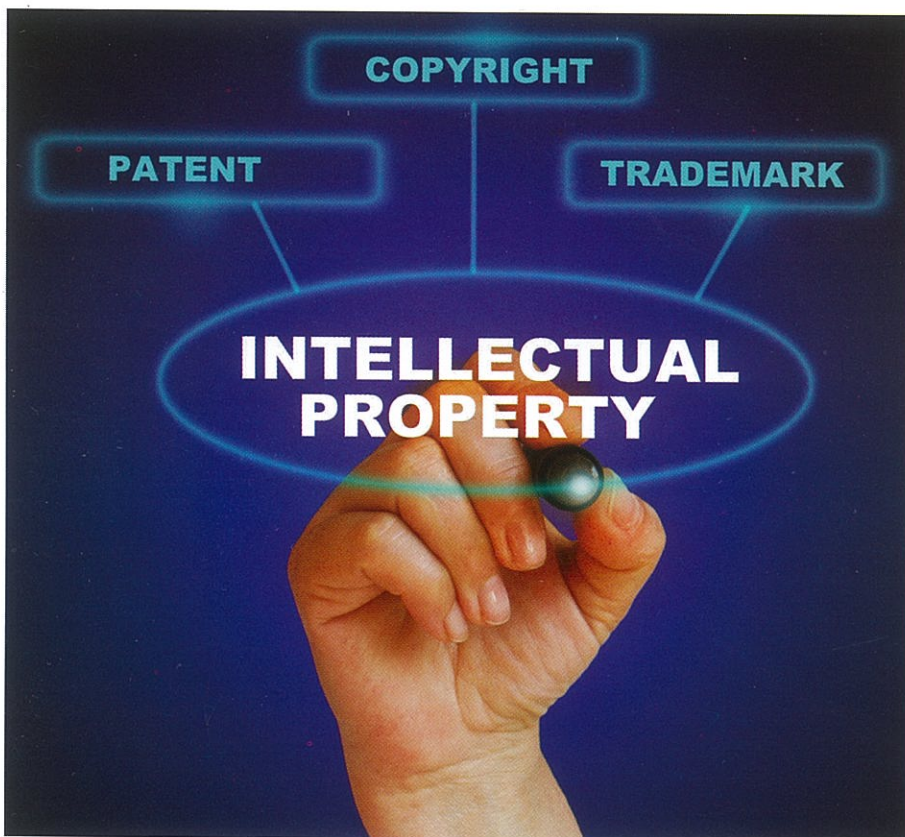
Contractors, permit holders, and lessees are also required by the DENR to make

publicly available to the science and technology community their geological, geophysical, geochemical maps and reports, as well as data generated from the contract/ mining area such as cores, assays and other related information. However, they are permitted by the DENR to delay release of these data within a reasonable period of time not exceeding three (3) years.

Another area governed by IP law is technology transfer agreements. Local mining companies often license existing technology from international firms, then adapt or modify the same according to the needs and requirements of local conditions or use. Much like a company’s other tangible property, IP becomes valuable assets only when properly identified, protected and commercialized. A company that has

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programs in connection with new products, processes or equipment.

The IP Code also prohibits a licensor from taking any of the licensee's inventions or improvements to the licensed technology for free. Developing an increased consciousness and more proactive policies to manage and protect its IP assets will benefit a mining company in the long run.

These policies can be formulated and implemented with the guidance of experienced IP practitioners with expertise in the mining and resources industry.

Companies should take advantage of the way the Philippine IP system encourages and strengthens innovation in the development of new and emerging mining technologies. In a highly-competitive industry where marginal modifications may result in exponential gains, it is important to protect the exclusivity and confidentiality of one's intellectual property. ■

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designed a labor-saving, cost-efficient, or sustainable improvement to an existing mining technology should consider availing IP protection as a safeguard from exploitation by competitors.

IP can also bring additional profit when the technology or know-how is licensed, sold or assigned. It becomes an asset of the company giving the same more value. At the same time, apart from the additional revenue stream, companies that license their technology will cultivate a reputation for being research and development leaders within the industry, and boost their profiles locally and internationally.

For companies that are licensees of foreign technology, an awareness of the degree of use or modification permitted by the IP owners may prevent costly and frustrating litigation. The same awareness also extends to the possibility that the use of certain methods, processes, or machinery may in fact constitute infringement of a competitor's IP, a problem which may be addressed through a systematic audit of a company's IP.

An IP audit is a systematic review which identifies a company's IP assets for protection, enforcement and commercialization.

Among others, its purpose is to uncover hidden or under-utilized IP assets and to enable business planners to devise informed strategies that will maintain and improve the company's market position.

A thorough IP audit will also review a company's IP-related contracts, policies, and procedures for compliance with legal and industry standards. The IP Code contains provisions that favor licensees in technology transfer agreements.

Under the IP Code, licensees cannot be prohibited from adapting imported technology to local conditions, or from introducing innovation to the licensed product, so long as the licensor's quality standards are not impaired.

Licensors also cannot restrict the research and development activities of the licensee designed to absorb and adapt the transferred technology to local conditions or to initiate research and development



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# Forward-looking Diwata plans for the next three years

By: **Maria Paula Tolentino**

**O**n Saturday, January 30 2016, at Flor's Garden, Antipolo, the ladies of Diwata regrouped to prepare for the next three years of the organization.

The objective of the meeting was to create a clear and compelling 3 year strategic plan that will engage and motivate members, stakeholders, and communities. The meeting also identified the specific goals, funding and resources targets, while defining the organizational capability requirements and future organizational structure of the group.

During the discussion, Diwata saw the opportunity in the following areas: (1) partnering with organizations with CSR targetted to helping IPs, (2) creation of programs/training modules specific to IP women, (3) continue to spearhead women's issues (4) plant and grow Diwata regionally and (5) the establishment and maintenance of the frequency of educational forums.

The only organization of its kind catering to the resources and extractive industries, the group is composed of members with strong professional profiles. Spearheaded by Ambassador Delia Domingo Albert, each Diwata member is strategically positioned with the ability to leverage connections

inside and outside their professional network. Each Diwata brings their role and area of expertise to the group with the core values of Diplomacy, Integrity, Wisdom, Allegiance, Teamwork and Accountability essential to help the group navigate through their programs and advocacies.

With a growing online presence, Diwata can be reached via their website and social media accounts:

Website - <http://www.diwata.org/>

Facebook - <https://www.facebook.com/DiwataResourceDev/>

Twitter - @DiwataResrcDevt ■



**[Bottom L-R: Trisha Bunye, Yody Marzo, Annie Dee, Cynthia Hernandez, Roma Hamilton, Bing Carrion, Monette Villa, Midge De Leon, facilitator Michael Milbier, Leo Dominguez, Lita Lee. Middle L-R: Joy Dompok, Lilet Abuel, Joan Adaci-Cattiling, Rodalee Ofiaza, Dindi Samsuya, Jen Raposas, Ann Cabusora, Mai Romano. Top L-R: Tata Corpuz, Paula Tolentino, Ging Laudencia, Malyn Molina, Septtie Jacot.]**