



MAXIMIZE BUSINESS VALUE PODCAST - EPISODE 30 Transcript

Announcer (5s):

Welcome to the maximize business value podcast. This podcast is brought to you by mastering partners, where our mission is to equip business owners, to maximize business value so they can transition their business on their terms. Our mission was born from the lessons we've learned from over 100 business transactions, which fuels our desire to share our experiences and wisdom. So you can succeed. Now. Here's your host CEO of mastery partners, Tom <inaudible>.

Tom Bronson (36s):

Hi, this is Tom Bronson and welcome to maximize business value podcast, a podcast for business owners who are passionate about building long-term sustainable value in your business. In this episode, I am so thrilled to welcome our guests. Dan Shulman, an IP attorney with Vedder Price in Chicago. Dan and I are both members of a professional organization called a provisors. We recently met at one of our monthly meetings, and we talked last week about the importance of intellectual property and how your intellectual property impacts the value of your business. So I asked Dan to come onto the podcast today, so we could discuss just that welcome to maximize business value.

Tom Bronson (1m 27s):

Dan, how are you?

Dan Shulman (1m 28s):

I am well. And the only thing I wish as an intellectual property attorney is that I could convince the bears to be innovative with their offer.

Tom Bronson (1m 39s):

This is recorded, you know, just the day after that, that fateful night, you know, when the, when the bear, well, we won't, we won't say the bears in the room.

Dan Shulman (1m 47s):

It's a little bit like, you know, in 85, the bears recorded the Superbowl shuffle video, they lost of the dolphins.

Tom Bronson (1m 59s):

Oh my goodness. Well, you know, it was an interesting weekend for football. You know, our, our listeners know that I'm a big football fan and, and of course I always, I grew up in Washington, DC. I'm always a big fan when, when Washington beats Dallas and that happened. But unfortunately the bears last night, it looked a little bit like the Dallas team on Sunday.

Dan Shulman (2m 21s):

And so that's could patent averaging two yards a carry for, you know, four weeks in a row. I think, I think they've cornered the market and nobody would infringe at least not willfully.

Tom Bronson (2m 32s):

You know, it's, it's also important to point out today that, you know, they're the reason that I'm so casual. It's cause it's 38 degrees outside here in Dallas. And, and I understand it's a little bit warmer in Chicago today, is that right

Dan Shulman (2m 48s):

by about seven degrees. It's what we call the margin of error.

Tom Bronson (2m 51s):

So for those of you who think that it doesn't get cold in Dallas, we have moments of coldness, you know, called it is about to set in for you guys in Chicago land it'll fall out sometime in April. I think so. So tell us a little bit about Vedder Price.

Dan Shulman (3m 11s):

Yeah. Better prices of 300 lawyer firm, very focused on client and client development. We've got 200 lawyers in Chicago, which is where we're based firm was founded in the 1950s. We've got offices in LA, San Francisco, New York, Washington, DC, London, and Singapore. We're really focused on driving value to our clients in an economical business friendly way. Our biggest practice areas are labor and employment. We're probably tops in the nation, in our labor and employment, executive compensation practice. We've got a very niche-y little practice. Actually. It's not even that little, which is our global transport finance practice, which is all about buying and selling airplanes and helicopters and things.

Dan Shulman (3m 53s):

And I don't know how we got involved in it, but we're the world leader in aircraft financing. And then we've got our intellectual property practice, which is what I'm a part of focused on. And again, delivering value to our clients in really business savvy, economical ways without the overhead of the massive law firms with gold-plated ceilings in their lobbies that you know, clients hate to pay for

Tom Bronson (4m 22s):

No doubt. So, so Vedder Price is not just specific. It's not as specifically an IP firm. It's a, it's a broad based firm, but so what's your background and why did you decide to specialize in intellectual property?

Dan Shulman (4m 36s):

Well, I went to college with the idea of getting a PhD in physics and figuring out why the world and the universe is the way it is and realize I wasn't smart enough to do that. And in four out, I'll take you all the way back to fourth grade because I asked my law students, when I teach, I teach legal writing at a law school in Chicago, and I asked them the first week, what is the moment when you realize, do you want it to be a lawyer? I'm like, it don't tell me, Oh, I don't know it was around when I was 18. Like, what is the actual moment? I remember there was a time in fourth grade, we had read Alice in Wonderland. And after we read the, the book, we had a mock trial where Alice was going to be put on trial for property damage and trespassing and all this stuff.

Dan Shulman (5m 23s):

Right. That happened wondering, and I was appointed to represent Alice and a buddy of mine was testifying as the Mad Hatter. And he was going to testify about like all the damage that Alice had caused. And he was wearing a cast at the time on his arm. And he testified that Alice had broken his arm, which I knew was incorrect because I had broken his arm wrestling with him on a play date a week earlier and armed no pun intended with that knowledge. I totally eviscerated him on cross examination. I thought I want to be a trial lawyer. So this was in fourth grade. So I must've been what like 11, 10 or 11. And then I kind of fell in love with science and physics and math. And as I said, though, I fell in, love it. It didn't fall in love with me quite enough for me to make a really good living in the physics advisor.

Dan Shulman (6m 7s):

My senior year kind of took all of us at Northwestern who were graduating in the next few years, kind of took us together and said, here's what the market looks like for getting a PhD in physics. And it was clear that I could get a PhD and do postdoctoral work and probably not feed my family for the next 30 years. I said, well, I think I could go back to that fourth grade dream and be a lawyer, but I still love science. I still love physics. I still love math. There's still really important to me. And so what kind of lawyer deals with science and deals with physics and deals with how things work? And it's an IP lawyer. I'm very close to technology in my everyday world.

Dan Shulman (6m 47s):

I use my scientific background all the time in my job. And, and frankly, what I love about one of the things I love about IP law is in not to minimize how important it is to my clients. It's just basically about money. I couldn't be a personal injury lawyer. I couldn't be a family lawyer. I don't want to do anything that's life or death. I don't want to do anything where, you know, the lives of individuals are really affected, you know, by what I do in sort of this emotional way. And IP law seems like a really noble way of practicing law, you're helping people protect their ideas. You're helping businesses get from startup to successful. And, and that really appeals to me.

Dan Shulman (7m 27s):

It appeals to all the aspects that the fourth grade lawyer to the scientist, to the person who is probably has too much empathy to do kind of any other kind of law.

Tom Bronson (7m 39s):

I had a similar revelation in fifth grade when I played Daniel Webster in the play, the devil and Daniel Webster. And that's when I realized that I didn't want to be an attorney, but that I liked being on stage.

Dan Shulman (7m 53s):

You were going to say you liked being the devil, but

Tom Bronson (7m 58s):

Yeah. Right. Well, and my kids would probably agree with that. So, so, all right. Let's, let's kind of give a baseline definition here. What exactly is intellectual property and why is it important?

Dan Shulman (8m 10s):

Yeah, no actual property is the right to exclude others from doing something. So if you think about real property, which is a concept everybody has, when you own real property, you can build a fence around your property to keep people from coming in. Intellectual property is that fence. When you have an idea, the intellectual property laws provide a fence around that idea to prevent other people from making, using, or selling whatever it is that you've invented. So if you just think about intellectual property as that fence around your idea, much the way that you can build a fence around your property to keep people from trespassing.

Dan Shulman (8m 50s):

That's what intellectual property is. And in the business context, it's important because if you are different and your difference is driving value, right? If we all made the same, we all made commodities. The only way to be successful is to drop your price, right? Cause you couldn't compete. Otherwise you have no other difference. That's not a great business model unless you're humongous and have economies of scale. Very few

companies are big enough to do that. So you have to be different. And how do you stay different? And you've got to keep people out of your yard basically. And that's what intellectual property law enables you to do.

Tom Bronson (9m 23s):

Well, that's interesting, you know, one of the first things we do when, when we engage with a client is we go through what we call the transition readiness assessment. It's kind of a scale that we use to determine how ready a client is for that eventual transition. It's our belief that, and it's been proved out through history that every business on the planet will eventually transition. And so when we're going through this questionnaire and talking with our clients, one of the first things that I ask them is tell me about your intellectual property. And so many of them claim that they have no intellectual property.

Tom Bronson (10m 6s):

And so, but they also claim sometimes that they're innovative. And so what do you make of this disconnect between telling me that there's no intellectual property, but they're an innovative business.

Dan Shulman (10m 16s):

Yeah. It's all about where you build that fence. Right. And how you build that fence. If I'm innovative, that means I have something that you can't do or that you can't do as well as I do. And the way that I make sure that you can't do that as well as I do, because I keep it a secret. I keep it to myself. Nobody else knows it. That's a form of intellectual property because it keeps people from copying and doing what you do. And so that know-how that trade secret. That innovation is a form of intellectual property. I think when, when you asked the question to somebody, what intellectual property do you have their mind immediately goes to?

Dan Shulman (10m 56s):

Well, I haven't filed for any patents and I don't have any registrations with the trademark office. Therefore I have no intellectual property. That's absolutely not true. And in fact, most of the intellectual property across the world is in the form of unregistered

know-how and trade secrets. The most valuable intellectual property in the world I would argue is, is trade secret Coca-Cola's formula. They would never patent it because in order to patent something, you have to make it public. That, I mean, th the way, just to back up for a second, the reason why the constitution awards patents is to encourage disclosure of technologies.

Dan Shulman (11m 41s):

The constitution says that to, for, in order to progress, the useful arts and sciences, Congress can make laws that will award to inventors and authors of limited monopoly. So it's that progress of arts and sciences, which means the quid pro quo, you know, the, for getting a patent, if you publish your technology, and if it's worthy of a patent, you get that limited monopoly, right? You get that right to exclude, but you have to publish it. And the reason you publish it is so other people can learn. Same reason that scientists published journals, publish articles, so other people can learn and then build on it and even design around it, which you know is funny.

Dan Shulman (12m 21s):

I hear clients get, get very, very upset when, when their competitors design around their IP as if they were doing something nefarious and I have to explain to them, no, that's really what the system is supposed to do. When you design around something, you innovate around it, you create more innovation. So, so that disclosure is part of, part of the process. Coca Cola would never disclose their formula for a 15 or 17 year monopoly. The longer they can keep it secret. It is good as long as they keep it secret. And so I think the disconnect is folks just don't think about the things that they know that their competitors don't know that makes the drives their value and their difference.

Tom Bronson (13m 8s):

So, so trade secrets are different, I guess, from patents and trademarks and, and various things like that. But so can you protect the trade secrets even though for a, let's just use the Coke example, you know, you're right. That nobody, they don't want anybody to know the formula. I think of the Chick-fil-A recipe for how they make their chicken. They don't want anybody to know that formula

Dan Shulman (13m 33s):

KFC's 11 herbs and spices. You don't know which what those 11 herbs are. You don't know what combination. Exactly.

Tom Bronson (13m 40s):

And so is there a way to protect these trade secrets even without patenting them or trademarking them?

Dan Shulman (13m 47s):

Yeah, well, absolutely. Right. The trade trade secret is on the opposite side of the spectrum from patents, because as I said, the patent require disclosure trade secrets require secrecy, going back to what the constitution says, which is patents exist to progress the useful arts and sciences. So if you think about kind of innovation and science and how, how that advances, the strong public policy is disclose, disclose, disclose, right? Scientists are supposed to disclose their innovations. They're supposed to publish articles, right? Is that's how science works.

Dan Shulman (14m 29s):

So there is a policy against keeping your best invention secret, right? It's it's, it, it stifles innovation in a way because it doesn't, it prevents people from learning about what you're doing and making it better, but it's still economically valuable. And so in order to protect your trade secrets and your know-how, they have to be kept secret. If you are not careful about putting reasonable procedures in place to make sure that it's kept secret the court, won't protect it for you. So a lot of trade secret cases where somebody is claimed to have misappropriated a trade secret, which could involve an employee switching to a competitor and taking that knowledge with them all the way to not having a nondisclosure agreement and just being in a brainstorming session.

Dan Shulman (15m 21s):

And you're letting things go without a non-disclosure agreement. And then you claim, well, this person took what I told them. If you didn't take the steps to protect it, the court won't protect it for you. So it's critical that when you identify those things that bring value because you know them and somebody else doesn't that you have procedures

and policies in place that makes sure that that's protected and maintained secret it's employee non-disclosure agreements. It's using the right nondisclosure agreements with your partners. It's making sure that information is isolated in a database that, you know, not everybody in the company can access. I mean, if you ask Coca-Cola how many people even know where the vault is that contains the formula.

Dan Shulman (16m 5s):

My guess it's on one hand and maybe even like one or two fingers, right? If everybody knew where that formula was, you couldn't protect it, right? You couldn't physically protect it cause you can prevent somebody from stealing it, but the court wouldn't protect it for you because you haven't shown the court that it was important enough to you by not implementing reasonable procedures to keep it secret. So, so where I think a lot of companies who rely on trade secrets fall down because they don't identify what the trade secrets are and then they don't put policies in place to make sure that they're protected and kept secret. And that's really important.

Tom Bronson (16m 39s):

So is that some of that is that, is that some of what you would call the common mistakes that companies make when it comes to protecting and failing to protect their intellectual property?

Dan Shulman (16m 52s):

Yeah, I think that's probably that's among the biggest, because most companies have no rate. Very few companies have patents in the ones that do probably don't have a lot of them cause they're expensive to get, but they almost all have know-how and, and they don't think about what they need to do to keep that know-how protected. And to make sure that if somebody steals it, the court will enforce it for them. And so that is, that is a big, that is a big failing. Sometimes it's even more fundamental than that. They don't know what their trade secrets are. You know, Bob in the manufacturing plant, it was exactly which knobs and levers to turn, to make that machine run correctly.

Dan Shulman (17m 35s):

That is a critical trade secret for the company. If that machine doesn't run correctly, you can't make product cheaply and effectively. But if Bob gets hit by a bus, Bob doesn't come to work one day and your machine is down. If Bob quits or even you lay off Bob and he wants to go work for another company, you have those protections. If you want to spin off your company and a PR buyer says, all right, where is your value in your company? You say it's in our trade secrets and say, what are they? And go and have them go talk to Bob. What, what if Bob says, wait a second, wait a second. You're selling the company.

Tom Bronson (18m 14s):

I don't want, I don't want to go talk to anybody. If you sell this company, I'm going to get fired. I know how I know how this works. He doesn't want to share it with anybody. And now it's too late to get it from him. He doesn't want to cooperate even I think his early retirement and walk away. Right? So you've got a buyer who's willing to give you value for your trade secrets. If you could only tell them what it is, right. And most companies don't have, don't have that information organized in a way that would enable them to get value for their trade secrets. You know, that's there, there's, there's a lot going on here. I want to unpack just a little bit. So, you know, in today's day and age, it's, it's way simpler or more simple, of course, to, to reverse engineer stuff.

Tom Bronson (19m 0s):

Then it would have been a hundred years ago, right? I mean, you, you can take a Coke and put it into some test tubes and put it in a lab and they can kind of, you know, re-engineer reverse engineer, the formula. You can do that with software and things like that. And if, if you don't have that patent, what's what's to prevent somebody from doing that kind of thing. And what protections can you get in the company for the trade secret if it's not registered or, or trademarked or, or patented.

Dan Shulman (19m 38s):

Yeah, Tom, it's a classic question that accompany is always asked to be mindful of. Is this something that is better protected as a trade secret? Or is it something that we should patent? If it's something that's easily reverse engineer, it makes no sense to keep it as a trade secret. Now, Coca Cola's formula is not easily reverse engineered software.

You know, you could, you could, there's probably a million ways to skin a cat in any kind of software application, right? And you don't have to copy the code in order to write something that does the same thing.

Dan Shulman (20m 18s):

So software sometimes trade secrets sometimes not. It depends on how sophisticated it is. An AI algorithm may be a trade secret because that's really hard to back out. Other software is protected by copyright and you publish the code, you registered with the copyright office and, and that's, that's published and that's copyrightable. So you always have to think about the two things is one, how hard is this going to be to reverse engineer? Because if it's easy to reverse engineer trade secrets, not going to work, it's only as good as your competitors ability to reverse engineer. And then two, would I be able to detect if somebody else were infringing? So if somebody else is using a process and they've figured out how to turn the knobs and the leverage on the machine, and I get a patent on that, how am I going to determine if somebody else is infringing, unless I'm actually in their manufacturing plant, you know, looking at it and seeing what they do.

Dan Shulman (21m 14s):

And if I'm never going to be able to adequately detect infringement, even if it's reverse engineered, I'd probably take that chance that I'm going to keep that as a trade secret rather than just teach them what I already know. Even if it only takes them a year and a half to, to reverse engineer sometimes a year and a half head start first and market is incredibly valuable. And so, so those are the two things that you always think about, but if you can't, if you can detect infringement and it's, and it's, it's not in it's easily reversed engineered, then you probably want to consider patent protection. Assuming that whatever it is is worth the cost of getting a patent, which is not insubstantial,

Tom Bronson (21m 59s):

Right? Well, th this is complicated and, and you're building a great case for why every business owner should at least have a conversation with someone like you, who understands how to protect that property. You you've given me stuff here that, that I never knew. I, I didn't realize kind of the intent of the constitution in regards to patents, and to get the information out there to advance arts and sciences. And so that is, that is

an interesting lesson on constitutional law. So, so before we take a break, though, are there, it occurs to me that that really every company probably has some intellectual property.

Tom Bronson (22m 46s):

So, but are there companies that are too small to worry about it?

Dan Shulman (22m 51s):

No. I mean, the short answer is no. And if you think about it, and again, if we go back to this idea that intellectual property protects your difference, right? So, so that it keeps competitors away from the thing that is bringing value to you, right? Your innovation needs to drive value. If the thing that's making you different, isn't enabling you to charge higher prices or getting more people to call you, then your difference isn't being protected and isn't being adequately leveraged. And that's that, that happens when your intellectual property strategy, isn't aligned with your innovation and business development strategy. So if you think of yourself as a small company where you've got a market advantage, because of something that's different, right?

Dan Shulman (23m 39s):

It is probably more important that you protect that difference because if you don't protect that difference and you kind of, you know, you, you devolve to sort of a commodity type business because other people are doing it. Smaller companies won't survive in a commodity type situation. The, the companies that, that are great at sort of commodity have massive economies of scale, they have much better cost structure because they're buying raw materials and at such a lower price because of their volume, a small company in a commodity business will never survive. The economics won't work out. They're just not big enough to compete with the bigger companies who can survive on a much lower profit margin because they're selling so much more of it.

Dan Shulman (24m 26s):

So if you're a smaller company, intellectual property is almost more important to you because your slice of a pie is potentially more at risk. And when that pie starts to shrink, your slice becomes even smaller. And, and you've got to defend that slice of the pie.

And so I would say if you are a small company without intellectual property strategy, and again, it doesn't mean giving a lawyer like me, a six-figure budget and saying, go cut and everything. It means identifying what your innovations are and figuring out how that aligns with your business, how you can use strategic patenting to make sure that you get volume commitments from your biggest customers.

Dan Shulman (25m 11s):

You know, those are the kinds of things that you do at targeted intellectual property. That really helps a small company survive.

Tom Bronson (25m 20s):

That's a, that's a, that is a strong argument, but so for our listeners do not despair. When we come back after the break, before we end here, we're going to talk a little bit about an assessment that you can, that you can take that, that Dan has, Dan will be happy to provide to you. And it's a short questionnaire to kind of start thinking about these things. So we're talking with Dan Shulman, we'll be back after

Announcer (25m 49s):

Every business will eventually transition some intermediate to employees and managers, and some externally to third party buyers, mastery partners, equips business owners to maximize business value so they can transition their businesses on their terms. Using our four step process. We start with a snapshot of where your business is today. Then we help you understand why you want to be and design a custom strategy to get you there. Next, we help you execute that strategy with the assistance of our amazing resource network. And ultimately you'll be able to transition your business on your terms. What are you waiting for more time, more revenue, if you want to maximize your business value, it takes time.

Announcer (26m 39s):

Now is that time get started today by checking us out at www.masterypartners.com or email us at info@masterypartners.com

Tom Bronson (26m 48s):

IP attorney with a better price in Chicago. And we're talking about protecting your intellectual property and why it's important when you think about maximizing your business value. So of course, we're recording this podcast during COVID-19 the pandemic that kind of set the world on fire this year, and all things sort of changed. So what are your clients doing differently in the innovation space during the pandemic then?

Dan Shulman (27m 17s):

Yeah. You know, it's, I'm going to answer this in two ways, because one is sort of the, the pandemic influence things that they're doing. And then there's a broader kind of how IP strategy gets affected during recessions, which, which is so one is unfortunately, there's not a lot of new product introductions going up, right? Because the market is so depressed. Nobody's going to be introducing new products in a market like this. So, so that means that some of your trademark filings are down because you're not, you're not establishing new brands because you're not introducing new products. And some of your patent filings are down because there's no pressure to file a patent.

Dan Shulman (28m 0s):

You know, you have a, you have a certain period by which once the invention becomes public, your patent needs to be on file. If that trigger isn't happening, there's not really a pressure to file new patents. And plus it's expensive and folks are watching, watching their wallets. So, so patent filings and trademark filings are definitely, definitely down. What I worry about is whether innovation also is down because the two things don't necessarily have to correlate. And in fact, what I've been talking to my clients about is trying to really think strategically in Zig when your competitors are zagging and a really good example, legal terms, zagging.

Dan Shulman (28m 50s):

Yes, it's, it's a, it's, it's the metric Zig versus the, the English unit zag. So I learned that as a, as a first-year law student, I think, in a bar somewhere. So the, so, so here in the office, okay. That's kind of goes without saying even the ones that are coming back to the office, it's on a limited basis. Well, well, who that really affects in the product development world are those, those people that need to be on a pilot line or need to be

in a prototyping lab because in the bricks and mortar world, where you're actually making something that you're showing, that's the last stage of product development, you have to build a prototype, right?

Dan Shulman (29m 33s):

You have to get on a pilot line and see, can you build this? Can you, how does the tooling work if you're not getting into your plan, right, because of restrictions, if you're not getting into the prototyping lab, because of restrictions, you've got product development, people who might 10 to 15% of their time doing that kind of work. If you're keeping them on the payroll, what are they doing with that 10, 15% of their time when they're not physically doing things right? Because they're working from home. My recommendation for companies who, and I hope people are keeping their product development, people employed. I mean, they're keeping as many people employed as they can.

Dan Shulman (30m 13s):

If you've got people in product development who are, who are otherwise have time on their hands, let's say it's a perfect opportunity to do pure white space innovation. And in a lot of companies, there's this tension for product development and innovation, which is, I don't want to support an innovation that, that the customer hasn't expressed an interest that they'll buy, which means that pure kind of white space, real paradigm busting new products that don't exist. So you don't have a customer commitment for them. Don't always get support from the business because it's expensive to start a new product, 75% of new products fail.

Dan Shulman (30m 56s):

And so when you're really going to try and zig, when the market is zagging, you're really taking quite a risk, right? And so what happens is innovators yet discouraged and don't really pursue pure innovation for innovation sake. Well, this is the perfect time to let them do it. They've probably all got those ideas in their head that they've been holding onto for the last few years because they thought, you know, my manager will never support me working on this totally new project that we don't have a customer

commitment for. Right. Well, why not get everybody together? And I've been supporting doing this and do what we call an innovation mining session.

Dan Shulman (31m 36s):

Have people bring those innovations to a group, and there's a whole lot of prep work that you do in advance to make sure that you can properly score and categorize and prioritize innovations. But let's all talk about all these new innovations that people are working on. And maybe you come out of the pandemic with one or two things are just like nobody had thought of that could be absolute game changers for your industry. And, and when you get back online, when we're all back to work, you know, God-willing soon you're going to be ahead of your competitors that are just worried about treading water, because you'll have new products past the kind of early vetting stage, ready to go into development.

Dan Shulman (32m 17s):

That's going to be a huge advantage for a company. And so I've had a couple of clients that have really latched on to that. And we've started to do the work to do those innovation mining sessions, or I think there's no downside, really, because as I said, those, those innovators are kind of sitting on their hands for that 10 to 15% of the time when they're not doing the things they would normally be doing. So utilize them. They're the smartest people in your organization, right? They're the most creative. And that's what I would encourage more companies to do to really think strategically about how can I, how can I turn the lemons into lemonade?

Tom Bronson (32m 51s):

Yeah. That's a, that's a new term that I hadn't heard before, which is actually surprising. I give a, give a talk on creating a culture of innovation. I've, I've delivered that dozens of times over the last five or six years, but, but this term, innovative mining session or innovation mining session, I own a software company for many years. And we used to do at least on an annual basis, usually twice a year, what we call blue sky. And it's think of all the ideas that we could do. Right. So tell me a little bit more about this innovation mining session, because that sounds very exciting.

Dan Shulman (33m 29s):

Yeah. So, so as I said, you know, you, you, everybody's got these ideas and they're probably not publicizing them. Right. So, so what you do is there there's several steps. One is the prep work. Okay. So, so whoever's going to lead the mining session. It could be me, it could be somebody in product development. There are people that specialize in, you know, new product development who can do it, but I've done it in the past for, for companies that I worked for. You talk to strategic thinker, there's at the company, the heads of marketing heads of business development, presidents of the business unit, finance sales.

Dan Shulman (34m 13s):

And you start by figuring out what are the key criteria to product launch success, scalability, manufacturability, cost, time to market, you know, all of these different factors that go into whether or not you're going to advance a product, you know, through the process. And you know, all of that in advance and those become basically your criteria. You do that, all that prep work in advance. You have, if it were in person, you'd bring people into a room these days, we're doing it over zoom with breakout sessions and you tell people, bring your ideas and you present them. You might go and break out rooms. Now, where are the idea? You might categorize the ideas based on, you know, particular type of product or service, whatever it is, however you want to do it.

Dan Shulman (34m 55s):

Yeah. Breakout rooms where people talk about, try to improve on it. You know, you brainstorm on it, move around the breakout rooms and everybody's involved probably takes about a half a day or a day to do this. You come out of that with a bunch of ideas that are prioritized. You score them based on the pre-work that you did. And you identify, you know, your top two, three, four, or five things that are really promising. Ideally you hand that off to somebody like me to an IP lawyer who does the search and says, okay, there's you have freedom to practice. Cause you don't want to, you don't want to advance a product that other people have patents on and that you can't make, right?

Dan Shulman (35m 38s):

So you need to do the clearance work on those. And then you might also at the same time, do a patentability. Can I get my own patents on this? I mean, if this is really groundbreaking, I'm going to want that fence that I talked about. And once you, you combine sort of the business score with the legal right to practice and protectability, and you identify those things, you are ready to hit the ground running when the pandemic is over. And there's things you can do even before, you know, the pandemic is over in terms of product design and CAD and all that stuff. But, but you've put yourself in a position then to succeed. And, and these are things that you can do that businesses often do twice a year, just to kind of flush out the stuff that folks have in their lab notebooks that they're afraid to tell their manager about.

Dan Shulman (36m 27s):

Cause they won't get support for it. And, and you talk about building a culture of innovation. And, and I spent a dozen years as a chief IP counsel for \$14 billion consumer packaged goods company. One of the things I learned there was how important it is to make the innovators feel empowered, to innovate, which seems obvious. But, but there are so many ways that, that, that you stifle a culture of innovation by keeping your innovators from doing things that are innovative and, and managers telling product development people, we don't have a customer commitment for that. So stop working on it is a sure way to create a morale and stop your innovators from thinking creatively.

Dan Shulman (37m 12s):

So if you're going to do that, offset that by once a quarter, once every, you know, once, twice a year, having these innovation mining sessions, so that at least the innovators feel empowered to innovate. That is one of the easiest and most effective ways of creating that culture of innovation. And right now with morale being what it is you want to do everything you can to, to foster a culture of innovation, because that's, what's going to bring people together out of the pandemic. It's being innovative, where people are already being innovative in the ways that they run their business. And that, yeah, don't let that opportunity go to waste.

Tom Bronson (37m 50s):

And not only that, you know, I love it. When in this podcast we kind of get glimpses into what a lot of times people perceive. This is what the bigger companies are doing, but those are kind of the best practices that small businesses should be able to do as well. You know, maybe it's not as big of a process as it would be at a, at a bigger company, but small businesses should be doing this kind of this kind of an innovation mining session, you know, a couple of times a year, because you never know what you're going to uncover with your people. And that was a great outline. It, you know, I would encourage you to go back and listen to those steps again, to our listeners at the end and kind of create your own model for being able to do this.

Tom Bronson (38m 33s):

But don't forget if you're going to come out with something that is, that is very innovative. You ought to be in touch with someone, certainly like them to, to make sure that it's not already protected in some way. So Dan, that is

Dan Shulman (38m 51s):

Shameless self plug. I do have innovation mining proposals that I can send to clients that outline, you know, some of the baseline costs, of course, you know, there are different ways to build for it on hourly basis on a fixed fee basis. And as with everything in life, everything's negotiable to a, to D depending on what the business wants. You know, my, my, my view as a lawyer, and this comes from being somebody who was the client for a long time, because I was in house is I'm not in it to make money for myself at the expense of my clients. If it's not a win-win, I don't want to do it. And so, so if people want to reach out to me to discuss an innovation mining proposal that outlines all of these steps and what it takes to the timing and potential costs, I'm happy to share that with anybody who wants to reach out to me.

Tom Bronson (39m 33s):

Awesome. That is great. We'll give you our contact information in a bit, you know, and that's a, that is a common theme that I find among provisors members is that they're really more interested in and, and taking care of their clients than they are in taking care of their business. And I love that it's kind of a servant leadership mentality. Dan, what

lessons have you learned as an IP attorney that you wish that you had learned earlier in your career?

Dan Shulman (40m 8s):

All right. The next one that I learned that's, I mean, that's sort of a flippant answer, you know, you find meaning in everything in life, right. And I don't know if everything happens for a reason or not. I'm not sure that I'm that fatalistic, but when things happen, you have to find meaning in them. And, and, you know, I took a path from being in private practice for my first seven years. You know, when, when my kids were very young and, and I wanted to wanting to make sure that I didn't shortchange them because I always wanted to be a dad much more than I want it to be a lawyer. I went in house and had that lifestyle that was really conducive to me, coaching little league and going on tour, travel soccer tournaments, and, you know, being around for my kids and being home to make dinner for them, you know, and all that kind of stuff.

Dan Shulman (40m 60s):

And I learned a ton as an in-house lawyer that I would have never learned being in private practice. And I'm immensely grateful for those, for those lessons. And, and in terms of being in-house. I mean, some of the things that I learned were I didn't have all the answers and I thought I did. I mean, it sort of, you know, one of the things that, that I struggle with in life, it probably not. Unlike a lot of lawyers is tend to sort of be a know it all, and think you have all the answers, you know, frequently, frequently wrong, but never in doubt, you know, you really have to build, you learn humility through life and it makes you a better person. It makes you better lawyer for one thing.

Dan Shulman (41m 41s):

But, you know, when I came into my in-house job, they didn't have any chief IP counsel and everything was kind of a train wreck in terms of IP. And I rocked a lot of boats and probably pissed off a lot of people by telling them that all the things that they were doing for years, that they didn't know what they were doing wrong, they were doing wrong. And I had to learn to be a lot more diplomatic as my time went on. But what I learned was that nothing in genders trust better than having good results and being right more than you're wrong. And if you deliver for people, you'll learn their trust.

Dan Shulman (42m 21s):

If you don't lie to them, if you're honest about what you can do and what you can't do. And if you're right more, every nobody's going to be right all the time. But if you're right a lot more than you're wrong, people will trust you. And, and the only way to be right, more often than you're wrong is to learn when you're wrong. And I'm reminded of one of the many Groucho Marx quotes that I sort of built my life around, which is try to learn from my mistakes because you'll never live long enough to make them all yourself. Right. And, and, you know, I really try to learn from, from every, from every mistake. And that's why I say, and it's only partially flipping then the next lesson, the next lesson I learned will be the one that I wish I had learned earlier, but there's going to be a next lesson.

Dan Shulman (43m 10s):

And I hope there is because I'm not done learning.

Tom Bronson (43m 14s):

Yeah. That's awesome. Yeah. I think the quote actually was Eleanor Roosevelt. And I think she said learn from other's mistakes because you'll never live long enough to make all of them yourself.

Dan Shulman (43m 24s):

Joe Marks didn't maybe grow up to me either. She stole it from Groucho Marx or graduate's stolen from her. And, you know, I, I can't vouch for, for either one,

Tom Bronson (43m 33s):

No doubt. Yeah. I've, I've definitely, you can fact check us both on this, but I did learn a new phrase here that, that applies to me frequently wrong, but never in doubt. I love that I'm going to, I'm going to use that

Dan Shulman (43m 47s):

When I was a very young lawyer, I had a much more experienced lawyer say to me, and this was life changing career changing for me because I was like that. And he said to me, I wish I was as sure about anything as you are about everything. And, and I was only

probably, I was just fresh out of law school, very wet behind the ears. And I thought, wow, I, I don't want to be that kind of guy. And that was, you know, you, you learn from your, from the people that have done it before, you know, and that was, that was, that was transformative for me to hear somebody.

Tom Bronson (44m 21s):

Yeah, that's a, that is one of those great lessons that apparently you took to heart. So tell me the typical profile of one of your clients.

Dan Shulman (44m 34s):

The only profile that they have is innovation is important to them. I have startups that have negative revenue. I have clients that have 15 to 50 billion in revenue. I have clients with five employees and clients with 150,000 employees. I have clients in software and tech, and I have clients that make plastic bottles and bags. The, the, the common theme is they need to get value for their innovation in order for their business to survive. And if that's the case, I can probably help you.

Tom Bronson (45m 8s):

Perfect. That, that clears it right up. And it's really kind of interesting that a lot of companies kind of get in that, you know, the older they get, they get in that mindset that, well, we're not really innovative. We make this or that. You know, you're a good example of bottles and bags. There are all kinds of innovations going on in packaging, right? And, and so if you're, if you are stuck in the, the thought process that, that you're not an innovative company, then, then you really need to go. And I think my, my talk on it, creating a culture of innovation is available on our YouTube channel. Go take a watch, take a look at that and, and realize that every company on the planet can be innovative.

Tom Bronson (45m 52s):

And if innovation is important, that's a great, competent nominator that, that you have for, for your clients. So tell us what sets you apart from other IP attorneys?

Dan Shulman (46m 1s):

Yeah. Well, the big thing is I alluded to was I was the client for a long time. So I learned how to protect innovation and find value from innovation, with a shrinking budget down to zero, you know, living in fear, the CFO was going to come running into my office, complaining about the legal bills, which happened frequently. So I don't have the freedom that most outside counsel think they have write me a blank check, and I'm going to protect all your IP. And that really meant building a culture of innovation. It meant empowering innovators. It meant reforming how the sales department does their contracting to make sure that they're not giving away innovation.

Dan Shulman (46m 46s):

It means, you know, create doing assessments of where you are from an IP standpoint, doing things that don't cost a lot of money. Like as I talked about having a system to document your trade secrets. And one of the things that I do with my clients now, and with, with some prospective clients, is it really kind of leverage everything that I've learned about building an IP program, because that's really what I did, you know, coming into a company that didn't really have an IP program and building one from scratch and keep doing it as the private equity company would bring in more companies and I'd have to do this all over and over and over again. And I've created an IP questionnaire, which is like two to three pages, which just helps clients plain English, you know? Cause cause you send it the, at the outset, if you ask a company, what intellectual property do you have?

Dan Shulman (47m 30s):

We get none. It's not really helpful. So you have to ask the questions in plain English and, and they put a questionnaire that if a client fills that out, I can talk to them. And I've been offering this to clients. You have free 30 minute assessment. You send me back your questionnaire and I can help you figure out what you need to do and what you can do better. And it's, it's a laundry list of things that are low hanging fruit. You can do this better. You already have a commercial lawyer looking at your sales contracts. Why don't you have an IP lawyer looking at, and I'm going to give you an example. This is just something that I've been working on this week, had a client who had a purchaser, send them a 35 page master purchase agreement for all these different kinds of products.

Dan Shulman (48m 19s):

And these are products that are going into bigger products that the purchaser was selling. And you know, it's a typical one-sided sales contract, even though it's 35 pages, but that's sort of how these master purchase agreements go. You would not believe on basically every other page. There was something that impacted intellectual property. There was, there was, you know, requirements to grant licenses to your technology to enable them to go out and second source. But the licenses were so broad that they would enable you. They would enable themselves to put another company in business and transfer all of your know-how to them because they wanted all the rights, all of your background, intellectual property, you know, just because they were buying products from you, they, they wanted to suggest modifications to products and then own all of the intellectual property that goes into those modifications.

Dan Shulman (49m 7s):

Even if they're things that you would do all the time, because you know how to, as I said, turn the levers and turn the knobs on the machines. Right. But they wanted to own all of that. Right.

Tom Bronson (49m 20s):

Wow.

Dan Shulman (49m 21s):

And, and, and you're shocked, Tom, but, but I can tell you that this is pretty much par for the course with big purchasers, with leverage. I dealt with this when I was in house with companies like Coca Cola and McDonald's and Starbucks and Walmart and Procter and gamble and Clorox, right. That was always the starting point for them. Where were these massive master purchase agreements that sort of had hidden in them really dangerous IP clauses. And if you didn't have an IP lawyer looking at them and they weren't always in the section that said intellectual property, you know, they were all over the place and that's a sure-fire way to destroy your value of your company.

Dan Shulman (50m 5s):

And, and a sure-fire way to, as I said, kill morale, because as your innovators will look at what your competitors do with your intellectual property and go, how do we give that away? If you ever tried to sell the company in, in somebody does due diligence or reads that contract and go, you don't have anything anymore.

Tom Bronson (50m 27s):

They will. If you're selling to a bigger buyer, they will read those comments.

Dan Shulman (50m 30s):

So just doing that assessment, and then, you know, identifying there may be things that you can strategically, Pat, there may be trademarks that you haven't read this through, that you probably should do better and protecting, there's always ways you can protect your trade secrets better. And so, so that's what really differentiates me is I have that toolbox of knowledge from being in-house things that most outside counsel have never had to deal with. And because by the time you call them, you're already resigned to writing them a big check. And that's not, that's certainly not my style. I'd love for somebody to write me a big check, but, but that's not ultimately the rate solution for, for all of my clients.

Tom Bronson (51m 11s):

Right. Right. Well, and that's, you know, you make a great point here that as I tell our clients all the time, never, ever, ever, ever sign an agreement without having an attorney look at it. And now you've given another reason why you might want to, you may have a great business attorney, but you ought to ask him, do they have an intellectual property practice because we want to make sure that we're protecting that as well and, and, and offering the free 30 minute assessment. All right. Listeners, viewers, you know, you got a free 30 minutes with, with the expert, the Magneti on, on IP here. And so I would, I would take advantage of that.

Tom Bronson (51m 53s):

I hate that we're running out of time, but one last business question here, as you know, and our listeners know this podcast is all about maximizing business value. So what is

the one most important thing that you recommend you recommend a business owners do to build long-term sustainable value in their business,

Dan Shulman (52m 17s):

Empower your innovators to innovate, right? I mean, it's, if you do that and you build that culture of innovation, you will get value for your innovation. And if you're not getting value for your innovation, it is really expensive to innovate. If you're not getting value for it, I'm sure there's a lot of other things to build sustainable business, but you know, I'm an IP lawyer. So it's sort of like, you know, to, to the hammer, every problem looks like a nail, but what I'm going to tell you that from my perspective, getting value for your innovation, and that means building that culture of innovation. And in Tom, I love that you've given that that speech I've given it to, from the IP lawyers perspective, how to build that culture of innovation it's critical.

Dan Shulman (53m 0s):

And if you do that, you'll find value.

Tom Bronson (53m 7s):

You will probably not be surprised that we make a very big deal in that presentation about encouraging folks though, you know, the, the, the goose, right? You know, how, how geese fly and encourage one another with their honking and encouragement to, to empower the innovators, to go and do their work. That is a golden nugget right there. Of course, everybody who listens and watches this podcast on a regular basis knows that. I always ask a bonus question and I'm very excited to get the answer to this. So Dan, what personality trait has gotten you into the most trouble through the years? I think we've heard a couple of things that you've mentioned earlier, but what's the one that you would say has gotten you into the most trouble.

Dan Shulman (53m 53s):

Yeah, well, certainly the one I alluded to, which is, you're never as smart as you think you are. And you know, I, my family, my parents, certainly my ex-wife will tell you that not my current wife cause I'm a changed man, but I will tell you that, that, you know, being a stubborn condescending, no at all, is not an attractive quality. And, and you know, you,

you, as you go through life and you get to be, you know, you're the same size fish, but the pond gets bigger. You better learn modesty, you better learn humility.

Dan Shulman (54m 33s):

You can't learn anything until you admit that you don't know something. And, and so humility is an essential quality to being a lifelong learner. And I, I am a strong believer in lifelong learning in every area. And, and so I am, I still fall into, you know, being competitive, wanting to be, you know, the smart ally, you know, wanting to have the quickest wit and the best comeback. And, but, you know, I really, really try to be as humble as I can. And that doesn't mean, you know, being shamefaced and thing, you don't know anything, you know, that's, that's an extreme that, you know, you have to have confidence, you have to be secure, but you gotta be humble.

Dan Shulman (55m 28s):

And, and, you know, that's, that's an area where I think it's probably is probably a common affliction for lawyers. And I try, I try on a daily basis to, to reign that part of me in

Tom Bronson (55m 40s):

Yeah. And lawyers and business owners, you know, have that reflection for sure. So, so I am so glad that you learned your lesson early. You know, I think it may have also been Groucho Marx or, or somebody that said youth is wasted on the young. I wish you all the knowledge that we have at this age, you know, and we were full of piss and vinegar when we were 24 years old. Right. So, so how can our viewers and listeners get in touch with you, Dan?

Dan Shulman (56m 10s):

Yeah. The best way is email. So you could go to email me at D showman, D S H U L M a n@vedderprice.com. If you go to Vetter price.com, you'll find my bio there. You'll learn all about our IP group. Other things, a better price does really a fantastic economical firm. I've always believed that kind of the midsize firm is the best value. I always thought that when I was a client and I think we really embody those principles, so go to better price.com, email me directly. My, my bio is up there. The way to contact me is up there.

You know, Tom, you know how to reach me if your clients reach out to you, I'm sure you'll, you'll put me in contact with them, but you know, smoke signals, Semaphore, you know, you know, tomato cans on the end of a rope, whatever works.

Tom Bronson (57m 3s):

Perfect. Perfect. Well, thank you, Dan. This has been an amazing conversation and, and I've learned a lot today. Thank you for being our guests. You can find Dan Schulman at Vedder price, V E D D E R price.com. You can find him on LinkedIn and as always, you can reach out to me and I will be happy to make a warm introduction. I would encourage you to take advantage of filling out that very short human language questionnaire, sending it back and taking a free 30 minute consultation with then you will be so glad that you did.

Tom Bronson (57m 44s):

This is the maximize business value podcast, where we give practical advice to the business owners on how to build long-term sustainable value in your business. Be sure to tune in each week and follow us wherever you found this podcast. Be sure to comment. We love comments and we respond to all of them. So until next time, I'm Tom Bronson reminding you to protect your intellectual property while you maximize business value.

Announcer (58m 16s):

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Tom Bronson (58m 55s):

<inaudible> that was perfect. I wouldn't make any changes on that.