Victor Krichker and Paul Blizzard coauthored an article in the Canadian Lawyer InHouse "IP reps and warranties in M&A"

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In the knowledge economy, intellectual property rights such as patents, trademarks, copyrights, trade secrets and industrial designs are important company assets. Consequently, IP rights are receiving increased focus from purchasers in M&A transactions. This increased focus is evident in both the due diligence phase of the transaction and the negotiation of the purchase agreement. The main part of the purchase agreement that deals with allocation of IP-related risks associated with the business or company being sold is the section dealing with the seller's IP representations and warranties. The seller's IP representations are often extensive and are frequently paired with a corresponding disclosure schedule that itemizes the seller's IP portfolios and material IP agreements.

The seller's IP representations and warranties typically fall into several main groups, as follows:

- Warranties that the IP portfolio and material IP agreement information listed in the disclosure schedule is accurate and complete (and could include a validity warranty);
- Warranties that the seller owns or has the right to use all IP rights required to carry on the business being sold; and
- Warranties that the conduct of the business being sold does not infringe upon any third-party IP rights (this warranty is often knowledge qualified).

The purchaser and its IP lawyers devote a lot of time and attention to drafting and/or negotiating the seller's IP warranties to have the seller assume the IP-related risks associated with the transaction. However, it is typically more difficult for the purchaser's IP lawyers to negotiate the remedies for breach of the IP warranties.

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