

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The overall composition is clean and modern, with the text centered in the white space.

Creative Upstarts and Startups: How IP Creates Opportunities and Opens Doors

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Introduction

- ▶ My Bio
- ▶ Cobro Ventures (www.cobroventures.com)
 - ▶ Bublup (www.bublup.com)
 - ▶ Bridges Fitness and Yoga (www.bridgesfitness.com)
- ▶ Different measures of success
 - ▶ Acquisition or IPO
 - ▶ Profitability
- ▶ Self-Funded



3 Key Points

- ▶ Brand identity in the health & fitness industry
- ▶ Value of patents to tech startups
- ▶ Personal experience in acquiring IP protection; thoughts on improving the process

Success as a Gym / Health Club: It's All About the Brand

- ▶ \$25B industry
- ▶ Crowded marketplace, but countless opportunities remain
- ▶ Need a strong brand and identity
- ▶ Are you big box? Boutique? Hard-core? High-end?
- ▶ Example: CrossFit
 - ▶ \$1000 trainer certification
 - ▶ “Boxes” pay annual licensing fees
 - ▶ Aggressive enforcement
- ▶ Bridges Fitness and Yoga: work in progress

The Patent Inquisition

- ▶ Patent due diligence is a major component of tech acquisitions
- ▶ Value to the acquirer:
 - ▶ Patents as assets
 - ▶ Best valued as bundles
 - ▶ Like diamond studs on corresponding technology
 - ▶ Open continuations
 - ▶ Patents as reassurance
 - ▶ USPTO has already conducted some due diligence on the technology
 - ▶ Distinguishable from the competition
 - ▶ Patents as weapons
 - ▶ Offensive
 - ▶ Defensive
 - ▶ Bargaining chips
- ▶ The tech startup may not *need* patents for itself, but patents can provide exceptional value in an acquisition

Patents & Trademarks Gotta Catch 'Em All

- ▶ Especially for startups, trademarks are a lot easier to catch than patents
- ▶ Very positive experience with trademark application process and prosecution
 - ▶ Easy to file - 10 mins + \$300
 - ▶ First action in 3-4 mos
 - ▶ All electronic communication
 - ▶ Examining attorneys seem willing to help reach notice of allowance
- ▶ Criticism: the user interface is clunky; easy to make mistakes
- ▶ Hardest part is coming up with a good brand in the first place
- ▶ Bottom line: trademark registration is equally accessible to startups as it is to big corporations

Patents & Trademarks Gotta Catch 'Em All cont.

- ▶ Patents more complicated (naturally)
- ▶ Biggest challenge = time to get a notice of allowance
- ▶ Can't wait 18+ mos for a first action
- ▶ Need validation and to start building bundles
- ▶ Track 1 prioritized examination = worthwhile investment

Patents & Trademarks Gotta Catch 'Em All cont.

- ▶ Still many challenges in getting early allowance
 - ▶ Process is more adversarial than it should be
 - ▶ Misconception that all patent filings are part of big corporate machine
 - ▶ To a big corporation, *relative value* of any one application (among thousands) is much less than the *relative value* of an application to a startup
 - ▶ Upon receiving a final rejection:
 - ▶ Big corporation - "We'll just file an RCE"
 - ▶ Startup -



Need to Break the Cycle

- ▶ Broad claims → 1st rejection → minor amendment → final rejection → RCE
- ▶ Afraid to describe what we really want to protect because of estoppel
- ▶ Startup more likely to accept reasonably narrow claims right away
- ▶ More executive involvement
- ▶ Want to protect specific technologies, not broad concepts
- ▶ Applicants and USPTO could benefit from a process where:
 - ▶ applicants explain in plain terms what they want to protect,
 - ▶ examiners explain in plain terms what they found in their prior art searches,
 - ▶ both sides explore how to capture the invention in claims

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