

Devin Miller of Miller IP Law_The Inventive Journey Podcast

Speaker1: [00:00:04] This is the Investor Connect podcast program. I'm Hall Martin. I'm the host of the show in which we interview Angel Investors, venture capital, family offices, private equity, and many other investors for early stage and growth companies. I hope you enjoy this episode. Investor Connect is a 501 C three nonprofit dedicated to the education of investors and startups for fund raising. Please consider donating \$100 to the program to help others in their investor and entrepreneur journey. You can find the donate button on the Investor Connect org website. Hello, this is Hall Martin with Investor Connect. Today we're here with Devin Miller, founder of Miller IP Law and host of the Inventive Journey podcast. Miller IP Law provides patent, trademark copyright and other business related services to startups and small businesses. The Inventive Journey podcast focuses on the journey rather than a pitch for the services and products a startup or small business may offer. Devin Thank you for having me on your show and thank you for joining us today.

Speaker2: [00:01:09] It was a pleasure to have you on the show. You made for a great guest and excited to be here as well.

Speaker1: [00:01:14] Great. So where are you calling from today?

Speaker2: [00:01:17] So I am out of Salt Lake City or Utah, and I'm just north of Salt Lake City. So just in here in the winter and doing the wish, we had more snow, but enjoying it nonetheless.

Speaker1: [00:01:26] Right. Well, let's talk about the IP side of the world today. What do you see as the role of IP and the startup world as we live?

Speaker2: [00:01:35] Yeah. So I would say, first of all, I'd back up and maybe this answer here's a quick level set answer what is IP or intellectual property? And people may or may not be familiar with it, but intellectual property. Ip is basically an umbrella term, so it includes basically three things patents, trademarks, copyrights. So patents are for inventions, something that does something, has a functionality, software, hardware, electronics, anything in between. Trademarks are going to be for branding, basically in the name of a company name or product logo catchphrase. Something of that nature and copyrights are going to be for something is

more on the creative line. So a sculpture or a painting, a book, a podcast, a video, something along those lines. And so when you're looking at IP is really what it's where it's geared towards and why it covers startups. But all or all sides of the business is it's really geared towards protecting what is your intellectual property just like it sounds. So if you're to think of real estate property when you own something, real property, you can own a house, you can own land, you can own a car and you have something tangible. You have a title. It says, I own this. Well, it gets a bit more difficult when it's something that's less tangible, it's in your head. It's blood, sweat and tears, R&D research and development. Then you're saying, Well, how do I capture the value there? How do I actually monetize that, make it an asset of the business and make it protectable? And that's where intellectual property or IP comes in to where you're able to protect the R&D that you've done for creating a new product or protect your brand or protect the books you've created. And so depending on what your business is, there really allows you to protect that intellectual aspect of your business that may not be as tangible, but still very valuable.

Speaker1: [00:03:12] Great. How do you see it working with startups in today's world?

Speaker2: [00:03:16] Yeah. So there's a few different reasons why you would go for it specifically to start. So one is it can be purely defensive. In other words, if you're looking saying, hey, we're going to put in hundreds of thousand millions of dollars creating a brand or creating a business or even saying, we're going to put in \$10, but we're going to put in a whole bunch of blood, sweat and tears and time and effort to create a product or get a business up and going. It's a defensive posture. It allows you to block others from being able to copy you. The hardest thing with inventions is once you put it out in the public, it's kind of like the magic trick. Everybody can figure out how it's done and they can create their own. And so when you do the magic trick, once you know how it's done, you can do your own. So they allow you to protect it. So as you're putting it out in the public, as people are seeing it and seeing what you're doing and if you're gaining any sort of traction or they like the idea, then you're able to box them out or you're able to do it as a defensive posture. The other thing is a lot of times with startups as well is if you're looking for whether it's angel investors, venture capital, doing any sort of serious raids a lot of the time.

Speaker2: [00:04:16] And it is different for different investors. But a lot of times they're going to ask you what's proprietary about your business, what is different about it? And then the next question is, how did you protect it? Two reasons why they're doing it. They're trying to protect their downside. They're trying to say, if we're going to invest money in here, we're trying to make sure that we have something that is a risk mitigating, which can be in the form of an asset. One is that we can protect it against other people and do it can be an asset of the business. In other words, the business doesn't go well. Maybe it's not mismanaged as well. Maybe it's not as good as they don't do as good a job marketing. But we have physical, tangible assets, including the patents or the trademarks or other things that we can safeguard against our investment. So they're looking at it. One is for defensive postures. Again, two is an investment, and three, if you're looking at it as a startup, you're saying this is something that we can actually put as an asset leverage or increase our valuation such that we get a better valuation than if we don't have it or we're selling other aspects of the business.

Speaker1: [00:05:11] And so what do you think is the main trend in the IP space today? What seems to be driving things?

Speaker2: [00:05:16] Yeah. I mean, I think the driving things are one of the interesting things I would say if you're asked today is first of all, start ups and small businesses are on the rise or they have been for a while now. If you worry about inflation, where the economy is at today and that things maybe have a different aspect, but throughout most of COVID, people were actually focusing more on startups and small businesses than at any era then they had been previously. They had more money in their bank accounts. They had more time as they were locked down or otherwise not going out as much. And they were pursuing the what they want, their passion, what they wanted to do. And so as they're now doing that, they're putting in their investment, they're putting in more time and effort and money, and they're saying, okay, now I want to monetize that. I want to make it a real business. I want to be able to protect it. I don't want others to copy me. And then the question is, is how do I do all those things? How do I monetize it? How do I protect it, and how do I prepare for growing the business? And that's where IP comes in. So it's really been one where, especially with the people putting a larger focus on doing their own thing or startups and small businesses, that has become even more into focus as they're looking to to make sure they have those protections and assets in place.

Speaker1: [00:06:21] Great. And so what are the key lessons you've learned about IP with respect to startups? What's your advice to them about using it?

Speaker2: [00:06:29] Yeah. I mean, one of the trade offs for startups is you always have more things to spend money on, the money to spend. It always seems like there are always more than enough places to spend money on and never enough places to get the money from. And so you're always trying to balance the competing interest. Do I hire someone new? Do I do marketing? Do I do sales? Do we get a building? Do we do product or inventory? Do we do the legal stuff? And oftentimes I get why, but they'll push the legal down the road because it's not as it doesn't feel like it's on fire as much is not quite as critical. It's not quite as urgent. And yet when you push that too far down or too far down the line, it can create problems later on. So as an example, if you were let's say you created the world's next best iPhone blockbuster, greatest invention in the world, everybody's going to want one or want one. And then you go out and you build it. You put it on the marketplace, you just getting it. And startup, you get out there a couple of years and say, okay, I've been a couple of years out. We finally have a bit of income. We should probably go get a patent on this or we should probably protect it. The problem is, is that by that time you're too late, you miss your window, that you can file a patent.

Speaker2: [00:07:33] So one of the rules in patents is that once you put something on the public, put it out on the website offer for sale, anything of that nature you have one year from that initial date, you put down the public within which you can file a patent. So if you miss those things and you wait for too long, you're going to start creating hurdles for your business as to where you've lost a lot of the value. So one of the best things is early on is even if you can't get started today, at least get a roadmap in place, get those milestones that you know when you need to do those one or those trigger points, how much you do your saving, what is it cost going to be? So you can at least put that along as you're saying, okay, we're six months in, we should probably start thinking about a patent or Hey, we're getting ready to launch a marketing campaign and that's a lot in the brand. We should probably make sure it's protected and we have exclusivity and proprietary and we're not infringing someone else's brand out there. And so really it's one where at least get a plan in place, get the milestones of what you need to know, get the deadlines, and then you can start to fit that in with where the business is at.

Speaker1: [00:08:31] Right. What do you think startups miss most about the IP process? What did they find that they didn't expect?

Speaker2: [00:08:40] Yeah. So one is the deadlines. A lot of times people don't and maybe just harping on that just a bit more and then I'll give you another one is that when you're doing it within intellectual property, it's really within the law in general. But intellectual property is certainly not an exception. The person that doesn't first is usually in the best position. In other words, if you file a patent first, if you get the trademark first, if you do the copyright first, 99% of the time you're in the better position than whoever doesn't have it. So one of the things to make sure is that, you know, your deadlines and your timelines, and that's oftentimes what startups and small businesses will miss if they're getting forward. And so harping on that one a bit. The other one is, is a lot of times they think, well, we're not doing anything unique, we're not doing anything different. We're just kind of going out and copying other what others or people out there are, putting our own spin on it. And so they won't think about what is what is proprietary about them. And so oftentimes, hey, they are doing something different. That's why you're on the marketplace. If you're copying exactly the same as what others are doing, you don't have any competitive advantage.

Speaker2: [00:09:40] And that doesn't always have to be inventions that can be. You're much better at branding, you're much better marketing, you're much better at sales, you're better at creating viral content you're better at or you have some small variations through products already out there that make a big competitive advantage. And oftentimes you don't really think about that. The other thing that kind of builds onto that, as oftentimes as you're going through your business, you don't really ever step back to say or think about what is different or what is protectable about your business and give an example of patents. Again, people oftentimes if everything if you work on something long enough, it becomes obvious to you here, obvious to you. In other words, you're thinking, oh, yeah, this is pretty obvious anybody would have thought of. It is probably already out there when really in reality you've spent a lot of time and effort developing something that's different, unique, that's proprietary. And yet because you've been with it so long, you don't really think about it. And so those are a few kind of things that edge your kind of can be hold ups or can be catches as well as the businesses, especially startups and small businesses should be thinking about.

Speaker1: [00:10:39] So you help startups with their intellectual property matters. What's the common myth about your job or field of expertise?

Speaker2: [00:10:46] Yeah. I mean I think it's probably one where it's it's YouTube is wrecked a lot of service based businesses or it's created that extra hurdle in the sense that and I'd probably put the Internet at large they're not just blaming YouTube. Everybody thinks they're an expert. Right. Especially when it's something that is not physical, tangible. So if you have to go get a surgery, you're probably going to go into the doctor and ask them to do the surgery because you don't want to cut yourself open. You have to have your car fixed. You're probably going to say, okay, now it's getting into, well, maybe I can do it. Maybe I'll go watch a YouTube video and then half the time you mess it up, worsening, taken in mechanic and they said this is going to cost you twice as much, but because people are now can watch YouTube videos, they can read it online. Everybody is an expert. And because everybody's an expert, they think that they can do it on their own. And sometimes that's the case. And sometimes a YouTube video is great. A lot of times, especially in the service space business and including the legal and intellectual property, you get into it and it gives you a false sense of confidence. In other words, you think that you know more than you do, and so you'll draft up a patent or a trademark or a copyright, or you inform your own business or do anything of those nature.

Speaker2: [00:11:52] And you won't understand the things you're missing out on. You won't understand the things are overlooking or that are hampering your business. So you have that false sense of security. And the best analogies I can give is if you're going to go out and you're want to have a shelter over your head. So you're saying, okay, I'm out in the wilderness, I don't have any shelter. I need to have something that keeps the rain off in the snow off of me. What do I do? Well, some if you had a tent, even if you had no instructions, you had no no idea how to set up a tent, given a little bit of time and effort, you can probably get some sort of structure over your head to keep the rain and snow off. You are not going to be comfortable, not going to be great. But that's kind of if you're going to do it all on your own without any guidance. Now, let's say you said, well, I can go read some DIY video or Grease and DIY books, watch the YouTube videos, and I can do it now. I can go build my own house and you can go build your own house.

Speaker2: [00:12:38] It may be better than a ten, maybe a little bit more comfortable, maybe a little bit more durable. Or you can go and you can hire someone that actually has the experience. How do I do electrical? How do I do heating and air conditioning? How do I make a sturdy foundation? How do I get shingles and roofing and all those things? And that's where you're going to say much analogous to that is when you're looking for an attorney doing intellectual property. If you're a startup and small business and all that you can afford is to do it, to do the tent, do it or do that over, you know, get something overhead, do it. It's better than nothing. You have some shelter, but don't get confused with the tent over your head being the same thing as the house that's built that has all the finishes and the polish because it is two different work products. And so I think a lot of times the Internet has made everybody an expert or at least make everybody think they're an expert. But there are a lot of things that you're unaware of or that you haven't considered until you get there and unless you have the experience to do so.

Speaker1: [00:13:32] Right. And so what online source of information do you find most helpful in your work?

Speaker2: [00:13:37] Well, my work is probably two different things. I mean, if I'm going to do for my work, it is intellectual property. I'm going to go to what's called MPP. It's a guideline, is a very thick rule, has all the rules for how to do patents and trademarks. The guidelines you can go to that. It's going to be really boring reading. Most people are going to want to go through it. I've gone done it enough with enough experience that I already I have or most of the things that they're already pretty well aware of and understood. And you can go to the USPTO, U.S. Patent Trademark Office. They have some material there. There's a lot of case law out there. There's patent watchdog websites for attorneys. Now, that's for attorneys. Now, if I were to say, if I was a starter for a small business, I wouldn't go to any of those because they're going to be one very boring. They're going to be hard to understand and they're going to be overwhelming. If I were to start somewhere, I would probably go to YouTube. I would probably go to the Internet.

Speaker2: [00:14:25] I would start to, I think now on the opposite of what I just said, I don't think that you should go into these things blind and you should just go and say, Attorney, tell me what to do and how much it's going to cost me. I think you should go and read or go watching YouTube videos, which are great. Go find a good law firm or two, and a lot of good law firms will

have quite a bit of educational material. We have a ton, we have videos, we have logs, we have a podcast, we have everything else. We're just striving to help educate the audience but find some of those materials, whether it's a law firm website, whether it's some blogs for startups and small businesses, whether it's YouTube, start out there, get that education and get that at least an initial understanding before you go talk to an attorney so you can have a foundation or basis to ask questions and understand things. And then I'd probably say, you go talk with an attorney, then you can get the guidance that you really need.

Speaker1: [00:15:11] Right? Well, you see a lot of businesses and business models. If you could start a business tomorrow, what would that business be?

Speaker2: [00:15:18] I'm one of those people that have five ideas before the days before I get into work, another ten while I'm at work and another 20 before my head hits the pillow. And so I have more ideas than I'll ever be able to pursue. And as a complete aside, if people do like LinkedIn and they are on there, I would usually once or twice a week I'll throw out my what I call great idea, terrible idea. And I'll just basically it's an idea I had. I don't ever really intend to pursue it, but it's fun to kind of throw it out there, see if people like it, give their feedback and their ideas, and it's kind of a fun way to engage on there. So you go to hashtag great idea, terrible or great, terrible idea and you can find all of my ideas. You're welcome to any of them because I'm never going to pursue them. You know, if I were to I talked to my wife about this all the time. If I wasn't an attorney, what would I do? I could see doing anything from. I think a food truck sounds like fun. I would always want to go do that. I love trees and especially fruit trees. I would if I could make a go of it, I would do an orchard. So we have a few fruit trees, we have bees that we get honey from. So I'd probably get into something like that if it was more on the technical side.

Speaker2: [00:16:19] One of the ideas that I'll probably never pursue, but I always thought it was a cool idea, was to basically do Uber for customer service. In other words, one of the pain points a lot of people have is this businesses is I need to have customer service, but I don't have enough to hire a full time person, especially if I'm a startup or a small business, then it's hard to. You can do the chat bots, which nobody likes to use a chat bots, and they're usually frustrating. You can try new epic shoes online, but it doesn't really answer anybody or you have to figure out who's going to man the phones for when a customer calls and has a question. My idea was

always, why don't you take kind of the Uber approach where you do a crowdsourcing, where people can log on that have their have experience. So let's say you really love the iPhone. You know everything about the iPhone and you can do a great job of customer service just because you're an Apple Apple fan. Then you can sign in for if is a customer service request comes in, you can do an initial troubleshooting, answer the questions with the customers because you already know a ton about the product and it makes it so you can almost crowdsource the customer service. So I don't know if we'll ever pursue it, but if I get to go off and start a completely new career, I could see going again doing that.

Speaker1: [00:17:25] Now, that's a great idea. I can see that coming in the near future as well, potentially from this podcast or your LinkedIn post. So that sounds like a great one in the last few minutes that we have here today. What else should we cover that we haven't?

Speaker2: [00:17:38] Yeah. So I mean, we pretty well at least kind of as initial entrance in or dipping your toe in the water, covered it quite a bit. And so I shift gears. Maybe one other thing that people should be considering if you haven't already, is when you're starting a business, you need to get a loan or you need to get a business form in place that can be an LLC, an SE Corp, C Corp, non profit, whatever the business is. And the main reason being is that that gives you probably the initial and best level of protection for your personal assets. So if you start a business and you don't have those in place, you're going to now if somebody comes along and you get sued, whether it's an employee or you have a trademark infringement or patent infringement or you have an accident or you have a product defect, any reason they come after you, you don't have any of those in place. You've now just put your home on the line life savings, your retirement, your cars and any other assets you own they can come after and get worth. Whereas if you get that LLC, SE Corp, C Corp or Business in place, it gives you that layer of protection where yes, they can come back to the business, they can come after you personally. And so if I start well before you do any of the other stuff that we talked about, intellectual property, other guidance I would give is get a business or something form that in place. Llc's are simple, they're usually straightforward. There's a lot of different services that offer them that you can at least get something in place and get that going. So that'd probably be the one other piece of advice if I were getting going counseling. But some way to get going is to make sure you get that in place as well.

Speaker1: [00:19:04] That's great advice. So how best listeners get back in touch with you?

Speaker2: [00:19:08] So I'll give them three different ways to contact me, depending on how they want to reach out to me. If they want to schedule a one on one meeting consultation, we do free strategy meetings where you can grab 15, 20 minutes of time, chat through what you're doing, see if we can help answer any questions. So if they go to strategy meeting that leads right to my calendar, then grab some time with me to chat. Second one is if they just want to go to the website, learn more about intellectual property. We have a ton of material. We have a podcast, the inventive journey, we have videos, we have content, all of which they can definitely check out, go to log with Miller and that'll shoot them to our website. The last one is I'm not as active on a lot of socials. As I mentioned, I am on LinkedIn and love to throw out ideas and engage there so they can go to meet Miller dot com and that goes right to my profile. So free ones want to do a one on one consultation strategy meeting. Find out more about the law firm meet Miller or sorry law with Miller dot com and if they want to connect up with me on LinkedIn go to meet Miller.

Speaker1: [00:20:07] Well, that's great. We'll put that in the show notes. Want to thank you for joining us today and hope to have you back for a follow up soon.

Speaker2: [00:20:13] Hey, it was my pleasure to come on and appreciate you having me.

Speaker1: [00:20:17] Investor Connect helps investors interested in startup funding. In this podcast series Experience, investors share their experience and advice. You can learn more at investor connect dot org multi. Martin is the director of Investor Connect, which is a 500 1c3 nonprofit dedicated to the education of investors for early stage funding. All opinions expressed by hall and podcast guests are solely their own opinions and do not reflect the opinion of Investor Connect. This podcast is for informational purposes only and should not be relied upon as a basis for investment decisions.