Protecting patents and intellectual property in conflict zones

Recent events in Ukraine have underscored that geopolitical boundaries in the 21st century remain disturbingly fluid. I spent significant time working in Ukraine as a consultant in connection with its accession to the World Trade Organization in 2008.

The second step to protecting trademarks in potential or actual conflict zones is to examine countries in which the company has avoided registration to determine their continuing viability. Even if there is no market reason for registering a mark, there may be a defensive reason for doing so such as pre-empting the development of a strong local counterfeit market or establishing the groundwork for future development. Most countries do not require actual use of a mark for registration as some "warehousing" of registrations may be possible.

The third step is to examine existing translations and transliterations of identified critical marks. If Crimea becomes part of Russia, Ukrainian language marks may have little market value and even less legal protection. Cyrillic language marks in Ukraine may suffer the same fate.

For U.S. companies who have resisted the inherent complexities of registering non-English versions of their marks, it is time to reconsider the issue. The U.S. has a relatively generous translation policy when it comes to determining likely confusion. Many countries with non-Latin alphabet national languages are less generous.

While patent protection is difficult even in the best of times, protecting a patented product through trademarks is a "backdoor" protection technique worth consideration. Developing and registering marks used expressly in connection with patented products, provides a basis for protection under trademark laws that may be easier to achieve in the unsettled legal environment of a conflict zone.

Finally, research, development and distribution agreements should be evaluated to assure the ability to permit rapid cessation or reconfigurations of activities in the event a conflict erupts. As events in Ukraine and elsewhere have demonstrated, local conflicts can rapidly escalate into game-changing events that require a nimble conflict policy. And maybe a crystal ball.