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Great expectations

Managing expectations is an important element in establishing patent performance. Who are IP stakeholders and why do businesses need to care about what they think?

Some IP investors are more obvious than others. Those most frequently in the headlines, parties to large patent disputes, such as non-practicsing entities and defendants, represent a fraction of all IP owners and only two of the many audiences affected by IP rights.

For most owners, IP is more associated with risk management and cost savings than direct income streams. Such performance criteria are no less tied to ROI than damages or licensing royalties. Money saved and competitors impeded can have greater value than income earned or value generated.

Those with an interest in IP include stakeholders who may not own patents outright or be invested in businesses that own them. IP stakeholders are customers, vendors, employees and the government, among others. IP stakeholders are better informed than in the past and are more aware of rights as assets. With more audiences than ever affected by the quality and deployment of patents, management ignores stakeholders at its own risk.

Other than direct IP investors, which audiences today have a discernable stake in IP? The boxed-out list on this page is by no means definitive and readers' feedback would be appreciated.

Mindful audiences

Not all audiences mindful of IP performance are necessarily interested in licensing revenue, damages calculations or IP asset sales.

It is difficult today to separate investing in innovative companies (big tech, pharma, VCs) from investing directly in IP rights, such as patents. With companies now more IP-centric and innovation so costly to procure, maintain and monetise, an equity investment is inevitably an IP one. Audiences such as customers and vendors which benefit from freedom to operate need to rely on IP. Funds that invest in technology or science also must be informed about the quality and performance of IP and IP management.

The emerging interest in innovation rights, in my opinion, has created a unique opportunity for patent holders to evolve from being gatekeepers to information resources. A more inclusive approach to those affected by IP rights, but who may not own them, can be a business asset. And keeping stakeholders reasonably apprised about IP decision-making and performance provides an innovative enterprise with added credibility and transparency.

Investor relations means good communications between principal investors, such as financial institutions and management. However, almost all IR programmes have a significant retail component. Companies know they need to reach out to those individual shareholders and influencers who form important links in their chain of support. Financial reports such as 10Ks and 10Qs may cover a business's legal obligation, but they do not cover its moral one.

Spiderman, too

When Marvel Entertainment was acquired by Carl Icahn from Ron Perelman in 1997 it was in bankruptcy. Following the purchase, it was crucial for Marvel to keep their highly recognisable characters such as Spiderman and Hulk visible, and their loyal fan and investor base informed of what was happening. Marvel knew that if there was to be a future, stakeholders would play an important part. They were right.

Marvel eventually emerged from Chapter 11 and was sold in 2009 to Disney for more than US$4 billion. Treating small investors, employees, vendors, fans and others respectfully made a difference. After a long period in bankruptcy Marvel was still able to generate huge licensing fees on beloved characters; broad shareholder support also was maintained.

It is important for IP holders to remember that performance of their assets affects many different lives. Companies of all sizes that make an effort to explain their intangible assets to those who are affected by them are in a better position to strengthen their supply chain, attract cheaper capital and cement customer relationships. Burned stakeholders (no pun intended) have long memories.

Audiences with an interest in IP performance are as much intangible investors as NPEs; yet managements tend to regard them as invisible – and you do not get more intangible than that.

There are benefits from recognising the interests of IP stakeholders, even if most are not literally investors. Companies that go out of their way to keep them up to date with IP developments and treat them cordially are more likely to manage expectations and minimise disruptions.

IP stakeholders – a non-exhaustive list

Direct IP investors

- Technology and life science companies (investment includes R&D costs, filing & maintenance fees, legal and management costs)
- Universities
- NPEs (the good, bad and ugly)
- Financial institutions
- Pension funds
- Foundations and endowments
- M&A/private equity & VC investors
- Some law firms

Indirect IP investors

- Shareholders
- C-level executives
- Boards of directors
- Customers
- Suppliers/vendors
- Employees
- Tech/innovation/IP communities
- Current and potential licensees
- Federal and local governments
- The media

Bruce Berman advises IP holders and managers. Visit his blog, IP Insider, at www.ipinsider1.wordpress.com