

IPBC 2008TM

450 delegates and speakers, drawn from all corners of the world, came to the first-ever IP Business Congress in June. For two days at the Hotel Krasnapolsky in Amsterdam, they focused on the role of the chief intellectual property officer and how companies that embrace the position can enhance their bottom line and obtain other more intangible benefits. To cap the event off, there was a spectacular example of IP monetisation in action



Lift-off for the IPBC

For two days in June, Amsterdam became the IP capital of the world as *IAM* and Ocean Tomo joined forces to present the first-ever IP Business Congress

By **Joff Wild**

The IP Business Congress, featuring the *IAM* CIPO Summit and the Ocean Tomo European IP Auction, was held in Amsterdam on 25th and 26th June. The event attracted a full house of 450 delegates and for two days focused on the ways in which the role of the chief intellectual property officer (CIPO) can help rights owners maximise the value of their intellectual property.

A variety of plenary speakers – drawn from industry, the law, government, finance and patent offices – talked through a variety of issues. But essentially they all came back to one central theme: the CIPO role is becoming increasingly important in helping companies make their IP rights sweat – both in direct financial terms and in more intangible ways, such as more tightly focused R&D, ability to respond to the emergence of disruptive technology, ensuring that IP management strategies keep pace with regulatory developments and checking that deals done with third parties align with business goals. On the afternoon of 26th June, Ocean Tomo provided a very effective demonstration of one way in which IP can be turned into cash.

During the day and a half of the CIPO Summit, plenary sessions explored the attributes a CIPO should possess; examined some of the current regulatory issues facing CIPOs; heard five CIPOs talk through their roles and how these have developed and are likely to develop moving forwards; and heard speakers from Europe, the US, Japan, China and India predict what the IP landscape might look like in their respective jurisdictions in five years' time. On 25th June, the keynote address was given by USPTO Director Jon Dudas. The afternoon of

25th June was dedicated to a series of break-out sessions. These explored 12 specific topics of interest to CIPOs, from IP finance, monetisation and valuation, through open source and open innovation, to brand management, intellectual asset management and patent analytics.

Some of the key points to emerge from the two days were as follows:

- You do not have to be called a CIPO to be a CIPO. In fact, the job title is largely irrelevant as long as the principles behind the role are adhered to. These include the fact that the person in charge of IP in a company should not be confined to a legal role, but instead should have a remit which brings him or her into contact with all parts of a company's operation. In some businesses – though not many – the CIPO is actually the CEO. Microsoft's IP chief Marshall Phelps observed that before his retirement Bill Gates performed the CIPO role at the company.
- CIPOs do not have to be lawyers because the role is not primarily a legal one. Instead, it is very much focused on integrating all aspects of IP to develop a strategy that encompasses all parts of the company's operation. The CIPO position is designed to ensure that everyone inside the business understands what it is seeking to achieve with its rights and the CIPO should be accountable for whether the strategy is being successfully implemented. Two of the CIPO speakers in the plenaries, Joe Beyers at Hewlett Packard and Bill Elkington of Rockwell Collins, are not lawyers.
- For the CIPO role or its equivalent to succeed, it has to be something that is mandated from the very top of an organisation. It also has to be seen as a

- 1 Vincent Pluvillage (centre) of Intellectual Ventures makes his point
- 2 IP strategist Duncan Bucknell (second from right) and Peter Cicala (far left), Head of IP at Shire Pharmaceuticals, talk with delegates



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The making of a millionaire

Mikko Väänänen works in the astronomy department of Helsinki University. He is also the managing partner of Finnish patent agency Suinno Oy. And as of around 4:00 pm on 26th June he was a US-dollar millionaire.

Väänänen was one of the inventors who had placed their rights in the Ocean Tomo auction which concluded the IP Business Congress on the afternoon of 26th June. He was sitting in the main hall of the Krasnapolsky Hotel as lots started to go under the hammer. Dressed all in white, and tracked by Dutch TV crews that were also following the event, Väänänen waited patiently until his lot – number 32, a patent related to presenting an unobtrusive advertisement to a device – came under the hammer. Then he started

to get excited. Especially when first the reserve price and then the estimated value of the patent were exceeded.

Bids started at Euros 400,000; the estimate was beaten when the Euros 500,000 mark was hit; but thanks to some skilful coaxing by auctioneer Charlie Ross, competition between three bidders ensured that the sum kept on going higher. In the end, it was someone who did not want to be identified, sitting on the other end of a telephone, who won the day. Väänänen's patent was secured for Euros 975,000, or just over \$1.5 million. The Finn could not keep the smile off his face and was just about able to restrain himself from leaping into the air to proclaim his delight. "I am personally exhilarated at having been able to complete this sale," he said afterwards.

Cumulative sales at the Ocean Tomo auction, including buyer's premium, totalled Euros 8,085,000 (US\$12,674,000), with an average sale price per lot of Euros 278,793. Further transactions were anticipated to close subsequent to the live sale. Successful sellers included large multinational corporations, venture-backed companies and individual inventors. Twenty-nine of the 60 offered lots were sold on the floor for a 48% transaction success rate, and based on immediate post-auction interest, this is expected to exceed 60%. The highest price achieved was Euros 1.54 million for a lot that featured patents related to digital media. It was offered by US company DataNac LLC and the price achieved exceeded the estimate by Euros 100,000.

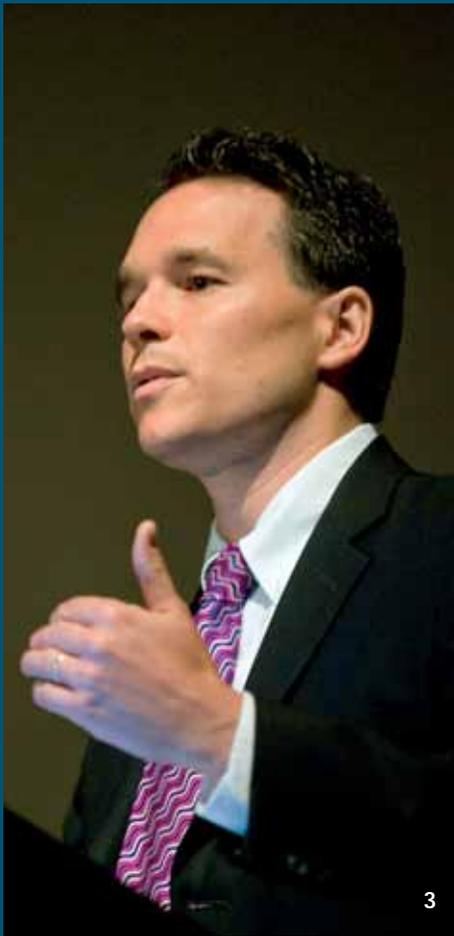
long-term project. CIPOs cannot produce meaningful results over the course of a couple of quarters or even a year. Ruud Peters of Philips explained that CIPOs should never make inflated promises as they will only come back to haunt them. CIPOs need to work with senior management to produce a job spec that everyone understands and agrees with. Never take a CIPO job without knowing and agreeing to exactly what is expected of you. If you go in blind, the chances are you will crash and burn.

- Companies in Europe and, perhaps more surprisingly (at least to many Europeans) the US, remain woefully uninformed about intellectual property. The only time that most of them come across it is when they find themselves in the middle of expensive litigation. By contrast, Ian Harvey, the chairman of the UK's Intellectual Property Institute, observed that in China companies are very focused on IP rights. "In China," he stated, "senior executives know that they do not know about IP and want to do something about it. In Europe, the worry is that they do not know they do not know."
- IP rights in the West are under attack as they never have been in the past. Bruce Lehman, the former Director of the USPTO under President Clinton, warned that if current trends continue, in five years' time the US patent landscape will be a considerably more difficult one for patent owners to navigate. If the Patent Reform Act were to pass in its current form, that would certainly mean a reduction in patent rights. Others observed that this is already having an impact on patent values

in the US and Europe, and will make the job of the CIPO more important – and more difficult – moving forwards.

- Other issues on the regulatory front include the growing importance of the intersection between antitrust/competition law and IP. This was noted by both David Kappos, head of IP law at IBM, and Horacio Gutierrez, the head of IP licensing at Microsoft. How to deal with the growing backlog of patent applications at major patent offices was also raised as a major concern. The message from Jon Dudas and Ciarán McGinley, Controller of the EPO, was that everyone – including rights owners – has a part to play in fighting the backlog because if things continue as they are, it will cause serious difficulties in the future. Expect to see higher standards for patentability and do not be surprised if fees are raised at the front end of the application process.
- The IP community is fragmenting, especially in the patent area – with different industries having very different patenting agendas. Some companies that have grown to a considerable size on the back of strong IP protection are now having second thoughts. This could be dangerous as it will encourage the politically motivated anti-patent lobby in the West to get bolder and it will also ensure even more coverage of the anti-patent message in the mainstream media.
- CIPOs and the IP community in general still have a lot of work to do to educate senior executives, let alone the political class and the general public. The IP community has to stop talking to itself

- 3 Jon Dudas, Director of the USPTO, delivers the keynote address
- 4 Ciarán McGinley, Head of the Controlling Office at the EPO
- 5 President of the International Intellectual Property Institute, Bruce Lehman
- 6 David Kappos, Global Head of IP Law at IBM



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The view from the breakouts – by Nigel Page

The inaugural Intellectual Property Business Congress saw a high level of interest in issues surrounding the valuation, financing and monetisation of IP. No surprise, given the intensifying focus on companies' bottom lines in the ongoing credit crunch, that this should have been the case. And the packed breakout sessions bore witness to just how seriously these issues are being taken today.

The question of IP valuation was examined in depth during a breakout moderated by Vincent Pluvinage, head of strategic acquisitions and private equity at Intellectual Ventures. Preoccupying the minds of all three speakers (Alan Caldwell of Intangible Business, Ferdy de Smeth of Brand Finance and Alexander Wurzer of Patev) was the problem raised by the uncertainty of this asset class – and how best to address this uncertainty during the valuation process. Various encouraging developments were noted, the combination of which is expected to inject greater certainty into the whole area. Because IP markets are growing all the time, there are an increasing number of data points against which asset valuations can be benchmarked. Greater legal protection of these assets helps to bolster confidence and shore up the value of intangible assets. And portfolio hedging is increasingly being used as a means of eliminating risk.

The impact of two accounting standards (SFAS 141 and IFRS 3) was discussed,

particularly insofar as they are limited to valuations in the context of business acquisitions. But, recognition within the accounting profession of IP's real and lasting value is now starting to make itself felt. Looking ahead, this bodes well, especially in terms of valuation standards extending beyond the confines of M&A.

However, these are still early days in some ways. IP valuation accounting standards need better enforcement and they need to be extended in scope. And IP is still being undervalued, notwithstanding the steady reduction in goodwill estimates attaching to transactions. Speakers and audience agreed that the goal must be to have regular, standardised valuations of companies' IP appearing on their balance sheets. But, as ever, this will take time to achieve. Efforts are being made to move in this direction (including the Foley & Lardner/Intangible Business initiative to develop a standard for brand valuation and Patev's development of a valuation standard for patents) and similar projects need to get underway as soon as possible. Once a more credible, regulated and recognised IP valuation process takes shape, much greater momentum will be generated.

Moderated by Bruce Berman of Brody Berman, the session on IP financing saw an interesting cross-section of views from the three speakers – Roya Ghafele of Haas Business School/UC Berkeley, Mike Herman

from Royalty Pharma and Peter Holden, head of the IP investment group at Collier Capital. There was plenty of discussion about the impact of the sub-prime crisis on IP financing – the good news being that these deals have not been hit too hard, largely because of the relatively conservative valuations that have been attached to IP assets until now. The audience was also reminded of the breadth of deals that fall into the IP finance net. All too often, there is an assumption that securitisation is the principal vehicle; however, this is a broad church, encompassing venture, collateralisation, IP aggregation and licensing, along with IP auctions and assertion-related deals. The experience of Collier Capital in this field made for interesting listening. Peter Holden explained how his IP investment group, which now handles between five and 10 deals a year, has seen a steady growth in the perceived importance of IP as a tradable asset. Because the priority is to generate returns for Collier Capital's investors, the emphasis is on early entry and flexibility in terms of deal structures. But although activity is increasing and the scope of deals widening all the time, challenges remain. It can be hard to identify high-quality IP portfolios, negotiations tend to be lengthy and intensive, access to claims charts and proof of patents is sometimes difficult to

and begin to engage with the wider world. The consequences of not doing so could be far-reaching and extremely negative.

- The good news, however, is that IP is demonstrably a positive force, both inside individual enterprises and for the world in general. This means that the CIPO role will grow in importance over the coming years.
- A major challenge will be finding the new generation of CIPOs, as so few universities and business schools take an integrated approach to IP – seeing it instead as nothing more than a legal issue. In the same way, engineers and scientists can go through their entire academic training without ever coming across IP. This has to change. The Centre for Intellectual Property – a joint project in Gothenburg, Sweden, run out of the University of Gothenburg and the Chalmers University of Technology – is one of the few shining lights in this area. Many more are needed.
- You can make serious money from the right kind of IP. Ocean Tomo raised Euros

8 million from its auction, which is over US\$12 million. And auctions are only one way of putting rights into the market. Even in a downturn, people are prepared to pay serious amounts of cash for rights that underpin real potential. This is yet another argument for companies to create and invest in the CIPO position.

In short, there was an awful lot to talk through. And not only during plenaries and breakouts, but also at coffee and lunch breaks, and at the reception on the evening of 25th June hosted by Philips. Speakers did not present and then leave – they stayed to talk and exchange opinions. This allowed delegates to pick the brains of some of the world's foremost IP decision-makers and thought-leaders.

There will be another IP Business Congress next year. If you were not in Amsterdam, you really should make a point of joining us in 2009. If you were in Amsterdam, many, many thanks for your wonderful input; and see you next time at a venue to be announced soon.

- 7 Joe Beyers, VP of Intellectual Property Licensing, Hewlett-Packard
- 8 WIPO Director, Joëlle Rogé
- 9 Pravin Anand, Managing Partner of Anand And Anand

More details about the IP Business Congress can be found at www.ipbusinesscongress.com

obtain, and in some cases sellers continue to exist in a state of self-denial, expecting to keep control of the rights to their patents post-disposal, as well as having unrealistic pricing expectations. Dealing with uncertainty risk is another key issue – one that is addressed through the adoption of a portfolio approach (which provides a smoother aggregate return profile).

Roya Ghafele made a call to arms in her presentation, focusing on the financial gap for innovation that is a fact of life in most developing countries. Suggesting that one way of addressing this problem would be the securitisation of IP from these countries, she urged the audience to consider the benefits of creating a much-needed liquidity event through such a route. A reassessment of non-AAA rated IP in securitisation deals is needed, she said. Now, such assets are considered off-limits – but with the right financial mechanisms in place, lower-rated IP assets would be viable.

The IP monetisation session, chaired by Bowman Heiden from CIP Gothenburg, was equally well attended. In his presentation, Sam Knight, IP licensing specialist at QinetiQ, outlined the various strategies – defensive, assertive and proactive – used to monetise IP at his company (QinetiQ currently has around 4,000 live patents). As any professional in his position will be well aware, a range of factors make this a challenging job. Legal issues have to be dealt with on a

daily basis, business issues (coordinating and prioritising monetisation activities, securing board-level support and tracking collaboration agreements) are a fact of life and finance issues require careful management (timing sales to get peak value, negotiating with more than one buyer and meeting due-diligence costs). The key to success, he noted, is putting the right IP management infrastructure in place – embracing systems, people and databases with enough flexibility to handle all eventualities.

Stephen Socolof from New Venture Partners explained how his firm is currently investing (out of its US\$300 million fund) in spin-outs from corporate labs. With most corporates continuing to up their R&D spend, there is increasing pressure to generate returns on the substantial investments that are being made (R&D spend in the US last year reached US\$250 billion, one-third of the global total). Spin-outs are increasingly being seen as an effective means of generating incremental returns, especially so where the spin-out under consideration does not fit with the overall corporate model. There are other advantages – if technologists in labs see other possible channels for their work, this acts as a spur to innovation. Challenges in this area include the fact that these assets tend to be immature, from a venture perspective (there is often no strategic plan, no management team etc). And although IP is usually core to such opportunities, it can

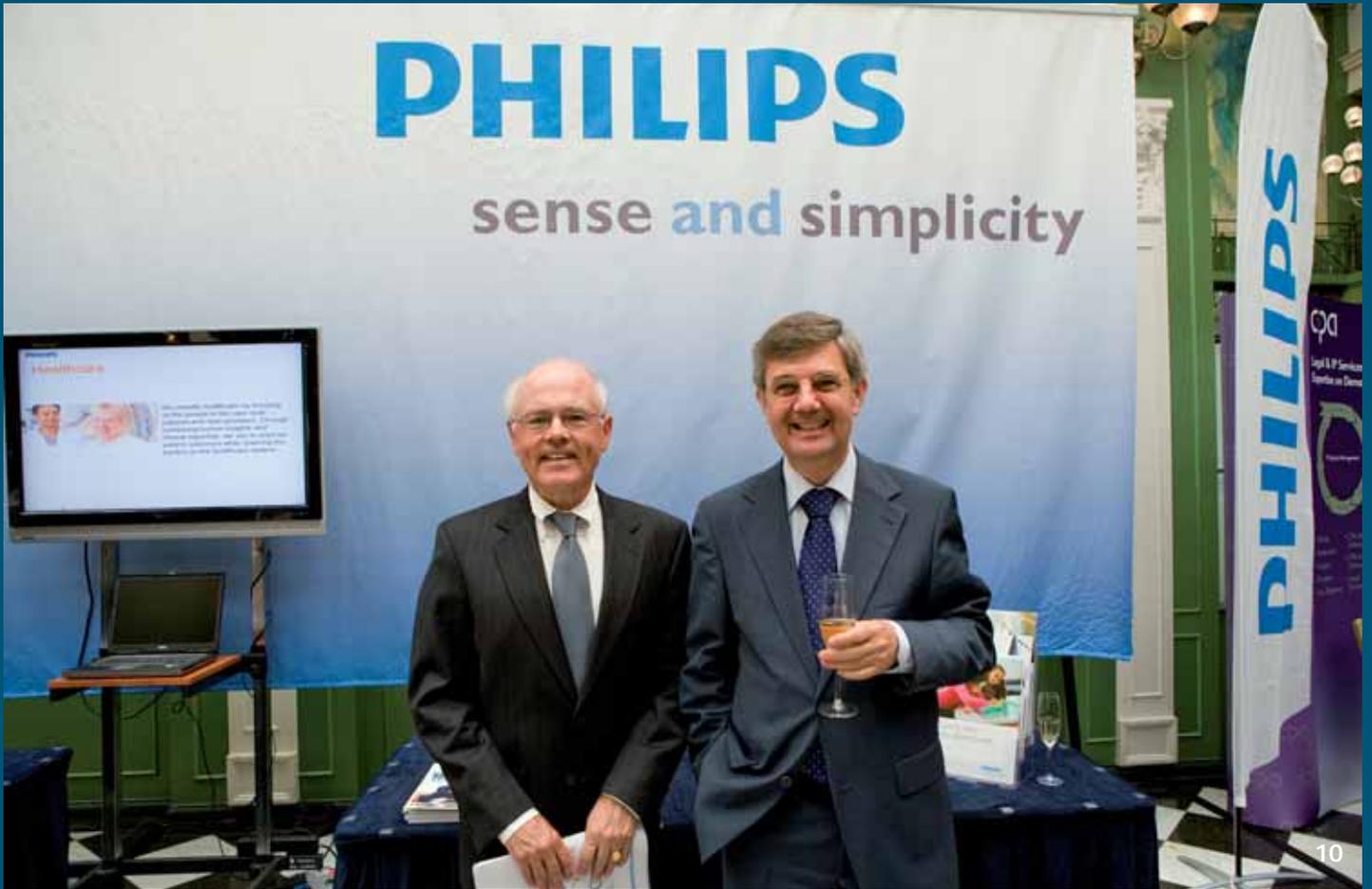
be hard to shift it out to the spin-out.

Dan McCurdy needed little introduction. Now chairman of PatentFreedom LLC, he called for IP executives to get more business-savvy – and for board members to develop more IP awareness. At present, he pointed out, too many IP executives continue to have a very narrow view of the IP for which they are responsible. He also turned his attention to the patent troll issue, an area of discussion which – unsurprisingly – generated heated debate from audience members once the floor was thrown open to questions. Looking ahead to the next three years, McCurdy predicted that companies will be attaching far greater importance to cost reduction and improved distribution where their IP monetisation activities are concerned.

All in all, these sessions covered a broad waterfront of activity – highlighting just how much activity is going on, and how much more sophistication has entered the marketplace in recent years. Coming up, the IAFS Annual Meeting, entitled “Reputational Perils: The intangible value of safe, secure and ethical supply chains”, should provide some interesting angles on more front-line issues arising from this important area. Further details of the IAFS event, which will be held from 6th to 9th September in the New York State Finger Lakes Region, can be found at www.iafinance.org/events.html.

Nigel Page is Finance Editor of IAM







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- 10 Ruud Peters (right), CEO of Philips IP & Standards, and Marshall Phelps (left), VP for IP Policy and Practices at Microsoft
- 11 Cocktail reception, hosted by Philips
- 12 CEO of Japan Technology Group, Taro Yaguchi (left), and former deputy commissioner of the Japan Patent Office, Shinjiro Ono (right), with a colleague
- 13 Delegates enjoying the cocktail reception
- 14 Speaker Dr Lulin Gao (right), Former Commissioner of the Chinese State Intellectual Property Office, chats with delegate
- 15 Coffee break
- 16 Speakers (from left) Bill Elkington of Rockwell Collins, Ron Laurie of Inflexion Point and Rob Sterne from Sterne Kessler Goldstein Fox
- 17 The Ocean Tomo auction in full swing

