Column
IP Investor

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Businesses are attempting to figure out just who or what is an IP investor and whether they all are equally deserving of ROI, as we know it

Intellectual property rights are finally being recognised as business assets. We have all heard that the estimated market value of intangibles in companies that comprise the S&P 500 exceeds 75% and that IP rights play a highly significant role in the success of almost every business, including those less obviously dependent on innovation and technology. Given companies' commitment to R&D, capturing value associated with innovation is a high priority (sample 2007 R&D spending for innovative companies: US$8.03 billion for Microsoft; US$10.61 billion for Pfizer; and US$7.17 billion for Daimler-Chrysler AG).

Explosive technology growth in the 1980s, coupled with record patent infringement awards and high defence costs, have fuelled interest in IP rights. But investing in IP conjures a shadowy image of outsiders speculating on grants of exclusivity some feel they have no right to. It also challenges us to look at what is expedient for shareholders and society, and what are ethical business practices. Today, there are many kinds of IP investors with a wide range of expectations. They all require some form of ROI, but they differ radically on how they achieve it and the footprint that they leave behind.

Catalysts for change?

Non-practising owners who speculate on IP rights and assert them against risk adverse operating companies – however they may be regarded – have been a catalyst for change. But what are the most efficient ways for companies to invent, secure rights and turn the rights into productive assets? IP investors come in many shapes and sizes, and even those that create pain can serve a purpose. The right IP rights, especially the right patents, increasingly have been seen as valuable resources, even if they cannot be readily captured and valued like real estate and other tangibles.

Not everyone agrees that using patents for direct return and measuring their performance in terms of licensing revenue generated facilitates innovation or long-term business objectives. The framers of the US Constitution had unusually high respect for the rights or innovators, such as inventors and authors. While they could not foresee the complex financial engineering that would take place starting in the 20th century, they did anticipate the impact that rights could have on a broad range of businesses and how that could affect America's competitiveness.

The jury is still out on whether the returns on direct IP investing justify the investment. How should we measure return on an IP investment (ROIP)? R&D, legal costs and filing fees do not come cheap. Which IP owners are better off licensing their best patents to others, even competitors, while they still can, rather than using them for freedom to sell products? These are difficult calls, and, unfortunately, ones that senior managements are loath to make. Company executives tend to play a passive role in IP decision making, sometimes to the detriment of shareholders. IP is abstract, context-dependent and ever-changing. CEOs are trained in business schools to manage resources such as products and people, and tangibles such as real estate, that can be identified on balance sheets and scrutinised by shareholders. They are at a loss when it comes to dealing with intangibles like IP. But with the advent of senior IP executives such as Marshall Phelps at Microsoft and Joe Beyers at HP, effectively CIPOs or Chief IP Officers, the picture is improving.

Direct IP Investors (Source: Corporate Deal Maker and Brody Berman Associates)

Investor	**Founded**	**Capital** (USD millions)
Intellectual Ventures	2000	1000+
Acacia Technologies	2001	400
Rembrandt Group	2003	150
Ocean Tomo Capital Fund	2005	200
Altitude Capital Partners	2005	250
Deutsche Bank Patent Fund	2006	210
Paradox Capital	2006	280
Coller Capital	2006	200
IP-Com (Fortress)	2006	???

Few rights are assets

C-level execs and Wall Street consistently fail to realise that only a handful of patent rights are financial assets. For a patent to be an asset, strategic or otherwise, a galaxy of stars and planets must align. In a high-tech company with some 10,000 patents, fewer than 5%, by most estimates, and as little as 2%, have discernable value. Perhaps 45% of the rights are necessary for future uses and for bargaining leverage (cross-licensing or counter-assertion, should it be necessary) and future uses, while the remaining 50% or so have no value and are typically allowed to lapse. Two out of every three patents lapse because of failure to pay fees. It is not that the owners lack the funds to pay the renewals, or forget to. At a point it makes little sense to do so.

Pharmaceutical company patent portfolios are much smaller than those in the high-tech industries. Typically, a formulation will be covered by a single patent or a few patents, eliminating the need for a lot of patent filing or cross-licences. Also, validity is less of an issue for most bio-pharma patents. Finally, it is relatively easy for small companies or individuals to invent, file, secure and even buy high-tech patents. It is a different matter in the pharma industry, where access to tools and significant capital is required. Whatever the industry or context, IP investing is a full-contact sport that requires deep pockets, calm nerves and reserves of patience.

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