



From jewel box to lock-box

If intellectual properties are seen as the jewels of the knowledge economy, should IP managers behave like jewellers?

Everyone thinks of changing the world but no one thinks of changing himself - Leo Tolstoy

Chicago, Illinois, 14th September 2004: While the economy in which we live defines much of our behaviour, we should not forget that by our behaviour we also define the economy. This phenomenon - for some a struggle - is ongoing in all walks of life including the intellectual property community. We speak frequently of the vast sea change in life that is being wrought by the knowledge economy. Yet many of us in the community cling, with unchanging permanence, to a philosophy about intellectual property that isolates IP from the economy at large. When we speak of patents as “company jewels”, we are positioning ourselves as jewellers, and what is a jeweller? One who handles and appraises small, rare minerals or metals and traffics them between the wealthy and elite among us. A jeweller is one who is entrusted with great wealth for its owners or buyers, who holds it in secret and in isolation from the wider world.

In the history of Europe there was a time when the “jewel economy” defined its civilisation. It was called the Dark Ages. As economies go, it was largely local and largely self-contained. Relationships between rulers and the ruled required the exchange of goods and services on a direct and reciprocal basis. It was the economic behaviour we define as feudalism. Money, as we understand it today and as it was understood in the Roman era, was an obsolete concept. The need to exchange value was largely limited to the need to settle disputes among the petty nobility either through the purchase of mercenaries or simple bribery. In an era without banks or currency, jewels were the perfect medium of economic transfer among those few who actually needed it. In an era when law was defined by the sword, it fell to jewellers, unarmed and few in number, to serve as intermediaries between the powerful and the lawless.

There were a few essential rules to be a successful medieval jeweller. First, it required

the mutual trust of nobility naturally inclined to suspicion and treachery (especially of other nobles). Second, it required a certain lack of power, professionally speaking, to preclude an actual seizing of the jewels in transit, as would be expected if a noble himself were an intermediary. Third, it required a degree of isolation from the community at large, to prevent the creation of relationships that could absorb an ambitious jeweller in search of his own kingdom. Finally, it required an intimate knowledge of jewels themselves to discern the diamonds from the rhinestones.

The jewel economy was highly successful and effectively defined the behaviours of the powerful for nearly a thousand years of European history. As for patents, there is a nearly irresistible urge to see them as the jewels of modern corporate nobility. Like jewels, patents are relatively rare. Held and controlled in its entirety, a patent seems more valuable than when it is parsed and divided. As any jeweller will tell you, a single unflawed 20 carat diamond is far more valuable than the 20 one carat diamonds into which it can be divided. And such diamond-like patents are powerful incentives to mercenaries and knights willing to fight in the service of contemporary corporate lords. Today we call them patent attorneys.

Successful as it was, the jewel economy was eventually replaced in Europe. What replaced it was a merchant economy in which a division of labour, a diversification of goods and a growth of a pluralist marketplace displaced and diminished the affairs of the petty nobility. Instead of jewellery, money became the medium of exchange. Because money is infinitely divisible without loss in value, even the poor had an opportunity to participate in the wider economy if only in smaller measure. Such are the economies that revolutionise human behaviour. From merchants and money come the merchant banks and from merchant banks the capital upon which economic progress and future wealth is predicated. Instead of the jewel-box it is the bank lock-box that defines the flow of wealth. In the last 500 years it is the progress of the merchant economy, as redefined and reborn in the succession of economic epochs, each populated by the unique goods and services that build upon on the accumulation of useful knowledge, that defines the progress of global civilization.

Now we come to that era of progress where knowledge itself is the essential kernel of economic value. How the behaviour of intellectual property managers will impact the knowledge economy is not speculation but fact. There are many among us that still see the jeweller’s craft as the definition of the intellectual property trade. If an increasing share of future wealth condenses into the jewels that patents seem to represent, how we will avoid descent into a Dark Age economy where the wealth of property is the discretion of a noble few? Can markets matter when they exchange a diminishing share of the global wealth? Such are the behaviours that devolve economies.

So here is the puzzle for you intellectual property managers - the few and isolated among the global community - shall you remain jewellers to the princes or become merchants to the masses? If patents remain in the jewel box it is unsure whether cash will end up in the lock-box. The path from jeweller to merchant is not easy but it is by such changes in behaviour that economies are made anew.

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