



IP

## Leveraging IP: Recent Trends

Creating robust intellectual properties is only one half of the struggle whereas the other half is to do with exploiting them as a business tool to be wealth generators. In a market dominated by IP, strategies keep surfacing for their effective use. Ultimately, these strategies and trends are only as good as the results they achieve, for a seemingly 'smart' strategy may well end up taking the company to the cleaners.

The purpose of this article is to highlight the recent and emerging trends of 'current' supply in the innovation space as enabling indicators of opportunities and choices available to entrepreneurs for achieving commercial success from their intellectual assets. Creating robust intellectual properties (IPs) is only one half of the struggle and exploiting them as a business tool to be wealth generators is the other half. Used judiciously, they have the multiplier effect and could spark off similar activities and thoughts in other areas too, raising the bar for overall technological and economic growth for the company, individuals, communities and the nation as a whole.

## Introduction

In the book 'Successful Innovation', the authors Michael Syrett, Jean Lammiman commented that "Everybody uses a light bulb to illustrate inspiration but nobody shows where the current comes from", alluding to the fact, that nobody seeks the origin of the spark (of genius), nor traces the process of ideation to ideas. The interpretation however, could also be flipped to mean that not much is said in terms of strategies to maintain and nurture those sparks of genius or the brilliant ideas seeding innovation, to make them marketable. If the light bulb was the product metaphor, what would it take to ensure its longevity in the market and its owner golden eggs?

This led me to thinking that while there are a lot of pointers about creating potential intellectual assets out of saleable ideas and edging out competitors to a patent or other intellectual property post, most are at a loss to find their source of 'current' in terms of sustaining those innovations into profitable businesses or creating enduring revenue pipelines from them. Individuals and corporates invest and expend large amounts of resources in research and development of ideas, fence them subsequently by legal property boundaries and yet find harvesting their protected ideas an uphill task. A survey conducted in the US also found that nearly two thirds of intellectual properties owned by

US companies were neither used nor licensed by them.

Edison, the most prolific inventor of his times with 1093 patents in his kitty including one for the bulb, knew that to generate ideas and successfully commercialise them required 'sustained and methodical effort'. Though he nursed an ambition to be a business tycoon, the history of the light bulb proves how he mismanaged his businesses till he had to be removed from his companies to save them. High technology industries that begin with loud pathbreaking ideas and eventually end with a whimper are often referred to as having gone the Edison way.

## Role of IP in Value Creation

The power of knowledge lies in its innovation and the way it is captured and transformed into new products, processes and services. It could range from discerning and meeting the needs of customers, in the ways of marketing, devising brand strategies/business methods to building brands and loyalties, or making improvements in marketing, distribution and service, to creating market demands for products where none exist. From a global perspective, knowledge products that contain proprietary information are valuable commodities and are saleable at any stage from their inception to crystallisation. A well protected intellectual property can unleash tremendous wealth generation capacity if positioned and commercialised strategically.

Standard trading and intellectual property monetisation methods typically follow the licensing, franchising, merchandising routes or even outright sales of the property to willing customers. The apparent benefits of such strategies cover not only the risks and costs of product development and distribution but also rapid penetration and access to new markets, apart from generating rich and steady revenue streams through long-term royalty incomes.

One of the best illustrations of standard yet skillful management and harnessing of intellectual properties, especially copyrights and



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trademarks across levels can be seen from the successful industries that mushroomed around one success story called 'Harry Potter'. From the author J.K. Rowling, the first billionaire author to the various publishers and film producers like Warner Brothers to television and gaming companies, merchandisers and tourists companies all have been milking the wonder boy story that refuses to run dry. In 2005, Forbes estimated the Harry Potter brand to be over one billion USD and today it is over 15 billion USD (*July 2011 - Business Insider*)



## IP Securitisation

Amongst the recent trends of IP leveraging, as witnessed in some parts of the world especially countries like Japan is to raise bank loans or financial securities using intellectual properties. The Development Bank of Japan, for example, a government-related financial institution, implemented a loan system in 1995 that allows the use of patents and patent applications, as well as copyrights of computer programmes and contents, as collateral. Since then, the Bank has granted more than 250 loans to venture firms, with the Bank assessing the present value of the cash flows to be generated by the intellectual properties.

The famous transaction that happened in 1998 where musician David Bowie was able to secure \$55 million by securitising his hit music rights, was considered to be a landmark deal which started a trend of intangible securitisation in the film and music industry. Likewise, in 2006, Lehman Brothers Inc., acted as lead underwriter and sole structuring agent to close a \$1.7-billion securitisation of substantially all of the revenue-generating assets of Dunkin' Brands Inc., owner of the Dunkin' Donuts, Baskin-Robbins and Togo's brands in the US and throughout the world. Interestingly, Paramount Pictures in 2004, raised \$210 million from projected royalties for films to be made 'in future'.

IP-backed securitisation consists of the transfer of the intellectual asset by an owner for securitisation and the receipt of capital from investors in the form of a lump sum payment. Typically, the royalty streams from the IP serve as cash flow collateral for investors. However, use of IP as collateral for bank loans remains

largely unexplored, because of the limitations in valuation, computing future potential and high risk factor due to piracy, litigation, loss or erosion of the property on account of potential changes in legislation or market, and, technological obsolescence.

In India, the troubled Kingfisher Airlines pledged various assets to banks in a bid to raise cash including the 'Kingfisher' brand that was hypothecated to the banks with an estimated value of ₹4,100 crore. However, a recent directive from RBI has urged the lenders not to treat the airline brand as collateral since it is intangible and because the loan has turned non-performing for most of the banks.

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## IP Litigation

The secondary value of a protected intellectual property lies in its exclusivity and the right to prevent and restrict others from the unlawful enjoyment of the proprietary assets. Considering especially the amounts invested in their generation, it would explain why IP owners are quick to file million-dollar suits at the slightest whiff of an infringement and why this trend in IP leveraging has caught on especially in the US and is picking up elsewhere. The obvious merits and prospects of rich

dividends in wiping out competition and sizeable infringement damages in well fought suits far outweigh the downside of litigations and explains the sharp rise in patent and IP litigations.

A case in point would be the most epic patent battle—Polaroid vs Kodak, fought over seven Polaroid patents tenaciously over 10 years, with Kodak having to cough up USD 925 million in damages, calling back 16 million instant cameras worldwide and shutting down its instant camera plant. It is believed that over 500 million USD was paid collectively in legal fees. Instances also abound of huge IP battles being fought out in the software and telecom arenas with the international players often drawing blood over any competitive advantage to their benefit. In the smartphone wars, the recent judgement against Samsung favouring Apple was just so and evoked mixed opinions. Despite Apple being Samsung's largest customer for mobile phone components and having several cross-licensing agreements between them, Apple lost no time in suing the veteran Samsung for patent infringement claiming Samsung's Galaxy line of smartphones and tablets infringed several of its Patents and Trademarks. (Samsung has a whopping 64,976 mobile phone patents and Apple only 8991!)

The global telecom sector is set to touch USD 2.1 trillion this year and expected to grow further at an average annual rate of 5.3% to USD 2.7 trillion in 2017, consequently litigations as IP leveraging tools can only be expected to increase. According to a Gartner survey, in India alone, the mobile



handset industry will reach 250 million units by 2013. It thus, becomes clear that the player with the most patents has the most bargaining power and can negotiate a better deal for the company.

An important outcome of long drawn legal battles and a welcome trend today is the fruitful licensing deals that spring forth on converting the infringer into a licensee, either at the behest of the Court or on a sensible realisation of the parties to the suit. The Yahoo and Facebook settlement of their patent battle with a mutually beneficial partnership signals towards a maturing market place. Often the compromise settlement could spread over a wide cross licensing deal of intellectual properties on both sides. Nokia and Qualcomm settled their intellectual property battles in July 2008 through a 15-year licensing deal that gave Nokia access to a wide portfolio of Qualcomm mobile phone patents for a lumpsum amount and ongoing royalties. Nokia also agreed to hand over certain fourth generation patents in wireless networking technologies, while Qualcomm for its part was allowed to integrate Nokia technologies into its chip sets. The deal

immediately sent both the companies share prices soaring.

Another interesting facet emerging out of the litigation scenario is that irrespective of results, institution of infringement suits definitely helps create sufficient market noise that in a way enhances brand awareness and value, which in turn may be fuelled by market respect for fierce caretakers of property. Terry Ludlow of ChipWorks, a patent infringement analysis firm, recently created a time-series chart showing a substantial rise in the number of US patent lawsuits per quarter and claims, more patent lawsuits are being filed now than ever before.

### Patent Trolls

In the US, another popular phenomenon to have emerged in the intellectual property market is a negative exploitation of what is perceived to be a lucrative business. Companies/ entities are formed with the sole objective of making money through patent litigation or licensing by trapping producers who infringe those patents. They are companies that acquire patents but have no intention of working them or applying them in products. Experts have even typified these trolls as 'Incidental', 'Competitor' or 'True Blue' trolls.

The much celebrated BlackBerry case of NTP Inc vs Research in Motion is a classic illustration of successful patent trolling. In 2000, NTP a patent holding non-inventor company having 5 patents on wireless email systems and not having found licensees for its patents chose to sue RIM for using its patented technology. The courts ruled against BlackBerry citing infringement of NTP patents and passed an injunction against RIM to desist using the infringing technology and pay NTP, USD 53 million in punitive damages, 33 million in lost profits and 45 million in legal fees. Subsequently though, the US Department of Justice requested that RIM services be allowed in view of the 3 million BlackBerry users in the US who would suffer if the services were suspended. Finally in 2006, RIM and NTP settled the suit for USD 612.5 million.

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### Conclusion

Strategies and trends are only as good as the results they achieve and a seemingly smart business strategy may yet end up taking the company to the cleaners. Amongst many interesting trends developing in IP management and definitely more cost effective than IP litigations are the emerging trends of 'defensive publishing' and 'defensive disclosures'. They embrace the practice of leveraging the digital medium to place innovations in the public domain and is a tactic employed by IP savvy companies to ward off competition while maintaining a winning IP portfolio.

In a market dominated by intellectual properties whose power and value is immeasurable, strategies keep surfacing for their effective business management. Research and innovation has never been more prolific, be that in technology or in the entertainment arts or brand building and current market trends are challenging companies big and small to adopt IP maximisation as critical business tactics and practice.



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