

The strategic positioning of intangible assets

Patents, trademarks, copyrights and other intangibles are not worth anything if they sit in isolation. It requires individuals with vision and ability to understand their potential and to turn this into meaningful return by putting in place programmes that will maximise their value.

By Dr Lindsay Moore and Lesley S Craig, Esq

Despite the increasing recognition of intangible assets within the corporate world, integrating them with the strategic planning agenda inside a corporation often remains elusive.

Since the late 1990s, much has been written about the importance of these intangible, intellectual assets, heralding them as the intellectual capital of the new millennium and casting them as the critical strategic instruments of modern business and the sources of vast societal wealth.

Consultants and CEOs, economists and chief marketing officers, attorneys and accountants have all arisen in profusion during these years to advocate the importance of these assets in driving market capitalisation and delivering competitive advantage.

Simultaneously, thinkers and practitioners of the emerging arts and sciences of leveraging intangibles have advanced important theoretical models, demonstrative case studies and best practices to guide the effective deployment of all forms of intangible intellectual capital assets.

As intangible assets make their way towards centre stage in a world increasingly dominated by knowledge-based assets, the opportunities presented by intangibles still remain largely unrealised and unexploited. If these intellectual assets possess such potentially untapped and unlimited value, how could they be so overlooked within organisations that have otherwise mastered the optimisation in value within the hands of marketing departments, and knowledge and ideas throughout organisations remain uncaptured and undeveloped. In all such cases intellectual assets within corporations lie outside of the scope of strategic thinking.

Even though many organisations in the world have heard about intangible assets, only a handful have learned to apply this new body of knowledge to their enterprise strategy. Clearly, the strategic positioning and optimisation of intangible assets require more than theory and practice, and more than recognition and esteem. Successful positioning requires vision, leadership and wisdom on the part of those who would unlock the value within these assets.

What stands in the way of the strategic use of intangible assets?

Often there is a fundamental lack of awareness as to the nature (or even the existence) of intangible assets, and thus a failure to recognise the value and opportunity of managing them. For such organisations and their executives, the fact that a brand is more than the paper of a trademark registration may be a revelation. In the same vein, all too many organisations perceive patents to be of value only if they have the fortune and fortitude to engage in patent litigation.

But what about the organisations that understand intellectual property, support R&D and own portfolios of patents, trademarks and copyrights? In many such organisations, individuals on the front line of the IP function see that patents still lie unasserted and unlicensed within the files of the legal department, copyrighted materials remain unleveraged within content archives, trademarks and brand equity lie unexploited and declining in value within the hands of marketing departments, and knowledge and ideas throughout organisations remain uncaptured and undeveloped. In all such cases intellectual assets within corporations lie outside of the scope of strategic thinking.

How to start managing intangible assets

Whether you believe that leaders are born or made, any enterprise and anyone in an enterprise can better align their thinking and activities with the concepts expressed in this article. Here's how to begin:

- Assess whether executive leadership is thinking strategically about intangible assets, or whether senior people are from the old school and operating only under the traditional asset paradigm.
- Take stock of where you are. Look at the current organisational structure and see if the brand or IP, and their respective functions, are integrated into strategic planning.
- Encourage everyone to read and get educated in the new ways of thinking that equally understand both tangible and intangible assets and leverage each to achieve corporate goals.
- Keep alert for opportunities to make intellectual asset management a part of strategic thinking in the organisation.

Often there are at least three factors that stand in the way of the strategic use of intangibles:

- Tangible asset management paradigms and managerial competencies.
- The functional management of strategic assets.
- The lack of intangible asset leadership.

Perhaps by discussing each of these factors we can begin to see the way towards getting intangible assets a place at the strategy table.

Tangible asset management paradigms and managerial competencies

Most of the managers and executives within today's organisations were taught to optimise tangible assets such as the traditional property, plant, equipment and financial capital. Under the paradigms of industrialisation and manufacturing that ruled in corporations throughout most of the 20th century, strategic thinking was thus concerned with developing process-based competencies, achieving economies of scale and scope, managing costs, perfecting vertical integration and instituting ongoing incremental optimisations. Until the 1990s, such strategies of operational effectiveness ruled the corporate world and dictated the careers of managers and executives.

The strategic deployment of intangible assets is fairly new in the history of strategic thought and, at this stage, relatively difficult to apply in practice. Many, if not most, of the individuals who built their careers within the traditional approaches to tangible assets lack the experience and vision necessary to shift effectively into the era of intellectual capital assets. While they may be experienced at trimming one-tenth of one per cent off the cost of goods sold in a manufacturing plant, they are often unclear how to build brand equity, how to unbundle and rebundle copyrighted media content, or how to utilise patents in creative ways to enhance profitability and drive market capitalisation.

While the operational effectiveness strategies of the manufacturing era are still important and relevant to their respective tangible assets, the individuals schooled within the manufacturing era often find it hard to develop strategic thinking that leads to the exploitation of intangible assets. Many managerial competencies are paradigm-specific, and the tangible asset paradigm does not easily embrace the intangible asset vision without a leap in thought and the development of appropriate new managerial competencies.

Thus, the best strategic thinkers of today are those who are strategically bilingual and

able to think in terms of strategies that ensure the optimal, effective leveraging of both traditional tangible assets and the new intangible intellectual capital assets.

The functional management of strategic assets

Concurrent with the manufacturing paradigm is a theory of corporate organisation that often locates responsibility for what are now intellectual assets within functional disciplines.

These disciplines, such as marketing and legal, often lack the strategic orientation that is now appropriate to the management of valuable intangible assets. Such functional disciplines, as originally defined during the manufacturing era, are often unable to rise to the new level of responsibility required for the executive management of intangible assets. Therefore, under the new, emerging intellectual capital paradigm, these assets, which are actually or potentially the most valuable assets of the organisation, are becoming the responsibility of executive management and the material of strategic planning.

For example, in the past, an asset that is today so valuable as a brand was once the responsibility of the marketing department and was treated as a mere tool of the marketing strategy. Today, with brands in very large companies valued in the billions of dollars (for example, Coca-Cola, the most valuable brand in the world, was recently valued for *Business Week* magazine at US\$70.45 billion in 2003), the brand has become the responsibility of the CEO, the chief marketing officer and often the entire executive leadership team.

Another example is that of patents. In most technology-based companies, the intellectual property portfolio consists of technologies, trade secrets, know-how and patents. In the past, these holdings were viewed as matters of law and title, and thus they were safely administered within the legal department that played a strategic role only when there were significant matters of infringement, wrongdoing or contractual arrangements, such as licences or joint venture agreements.

Today, traditional intellectual property management departments often experience an identity crisis as the objects of their administrative activities become matters of the new strategic thinking. As the focus at the levels of strategy formation shifts from tangible to intangible assets, general counsels and vice presidents of intellectual property are often called to play new strategic roles within their organisations that go beyond their normal functional roles of filing, prosecuting,

maintaining and protecting intellectual property.

Within corporations, assets are assigned to levels of leadership and responsibility according to their value and strategic significance, with the strategic direction of the most valuable enterprise assets being trusted to the executive levels of management that form corporate strategy. Thus, as intellectual capital emerges, such functional disciplines as marketing and legal, which once held responsibility for the brand and intellectual property, find their roles changing to reflect the new value of their assets.

As a brand or intellectual property portfolio is deployed anew as intellectual capital, under the leadership of top corporate executives and for strategic purposes, marketing and intellectual property managers are faced with critical decisions about their responsibilities and their careers.

On the one hand, they may continue to be administrators and technical experts in the machinations of their discipline, or they may choose to elevate their functional practice to a level of strategic significance within their organisation and to join the other strategic thinkers, such as the chief marketing officer or the chief financial officer.

Choosing the former may put an individual in a disappearing nether land of a once-relevant functional department, while choosing the latter will require acquiring an executive

presence and an ability to contribute ideas based upon a greater understanding of corporate strategy and finance than is customary within the functional disciplines.

Within organisational structures, each time a functional discipline and its assets become critical to the survival and success of the organisation, the functional department is reinvented under more senior-level leadership to rise to the challenge. This occurred during the 1990s with the rise of both brands and information technology, resulting in the emergence of chief marketing officers and chief information officers. In each case, these new officers were saddled with ensuring that the strategic issues surrounding their functional disciplines were represented and advanced at the strategy table.

Today, as the bundle of intellectual property assets emerges into strategic significance, we see the emergence of a new discipline known as intellectual asset management (IAM). This discipline assumes the burden to straddle both the legal and strategic worlds, remaining responsible for representing the legally protectable aspects of intellectual capital while simultaneously assuming responsibility, under the leadership of individuals of executive calibre, for the strategic role of these assets within the organisation. This new discipline, and the vision for it, depends upon this executive leadership.

Interview with John Nevard, senior patent counsel: "Changing the role of IP in a traditional corporation"

Mr John Nevard, is the senior patent counsel at Unipath Limited, headquartered in Bedford, England, and Inverness Medical Innovations, Inc, headquartered in Waltham, Massachusetts. Previously, he was the Global Intellectual Property Manager of Huntsman Polyurethanes, a former business of ICI plc.

Lesley Craig: You have been a part of the intellectual asset or IP management function in major corporations for many years. Have you observed a difference in the expectations of executive management with respect to intangible assets over that period?

John Nevard: Yes, I have. I think, to paraphrase the historian Sidney Mean, "you have to analyse the past, in order to understand the present". This is true with organisations as well. The current behaviour of an organisation is rooted in its past.

If you look at a chemical company, such as ICI, where I was previously the global intellectual property manager for one of its businesses, it was a technology organisation and so the IP

strategy was often directed by the technocrats to serve their interests. Older-style technological companies usually see IP as the output or by-product of a research programme. Thus, such companies measure the number of patents produced per year, without regard to the market applicability or commercial application of the patents per se. They don't see IP as an asset but as a by-product of the research process.

At Unipath, the organisation is focused upon the market. We look to see what is needed in the marketplace and then we deploy IP to protect our investment in that market and to enhance our competitive advantage. Top management at Unipath views IP as an asset, no different from bricks and mortar, to be leveraged to fulfil market demand and provide competitive advantage.

Lesley Craig: When did you realise that IP could play a more strategic role within organisations?

John Nevard: It seemed like common sense to me that IP could be used to generate

money, offset expenses or to deliver a business position.

If an organisation is going to embark upon a capital investment to drive a project forward, it seems clear to me that it must provide a profitable return on that investment. Therefore, given the often-immense cost of securing a set of patents, a commensurate return is necessary. It is just basic economic common sense.

Lesley Craig: But a traditional patent attorney wouldn't normally think that way. Wouldn't they view the expenses involved in securing patents as merely a cost of the project?

John Nevard: Yes but, at the end of the day, you have to reflect on who is actually paying your salary and ensure that your organisation is adequately profitable.

Before I became a patent counsel, I was originally a chemical engineer and I quickly learned that all of my projects were regulated by budgets and that I had to think about the worth of my activities in terms of return on

Becoming an intangible asset leader

The intangible asset leader does the following:

- Studies the history of strategy and understands, and can articulate, the differences between industrial/manufacturing-era strategies and intangible asset strategies.
- Thinks strategically about the central problems of the enterprise.
- Advances and defends strategically sound strategies that use intellectual assets when they offer a superior solution.
- Gets involved in strategic planning, the strategic conversations within the company and makes a contribution.
- Grows out of functional discipline management into executive leadership.

Because corporate strategy is not formed at the level of functional disciplines, this is where the matter of vision and leadership comes into the successful, strategic positioning of intangible assets within an organisation. Intangible assets are strategically positioned only in the persons of the CEO, the chief marketing officer, the general counsel, the vice-president of intellectual property and the like. It is only in the hands of individuals at this level that intangible asset matters are on the table and the expertise is present to form the appropriate organisational strategy.

The lack of intangible asset leadership

The adoption of intangible asset strategies at the top of an organisation is less a function of theory or practice or functional disciplines *per se* and more the direct result of the ability of those persons who have a seat at the strategy table to think strategically within the new paradigm of intellectual capital and to deliver on key corporate objectives.

We all may marvel over the purported degree of market capitalisation that is now driven by intangibles in the public markets. We may agree that these intellectual capital assets are of the greatest significance and strategic importance to an enterprise. But in the end it is those persons who have the vision and the responsibility to, for example,

build a lifestyle brand, leverage a patent to create a new revenue stream or create a merger around copyrighted content that will form, with other executives, the strategies to turn intangible assets into competitive advantage and profitability.

Thus, the strategic positioning of intangible assets depends upon both the knowledge of how to leverage intangible assets and, most importantly, intangible asset leadership at the executive level.

We may hear of the savvy CEO who makes intangible assets a plank in their strategic platform, of those executives who know what the intellectual asset manager knows and bring it to the strategy table. But, on the whole, many thousands of organisations in the world will begin to create and leverage their intangible assets only when those with the vision have assumed the responsibility to lead and form those strategies that successfully leverage intangible assets, turning them into intellectual capital. ■

Dr Lindsay Moore and Lesley S Craig, Esq

Dr Moore is the founder and CEO of KLM Inc, a management consultation firm located in Boulder, Colorado. Ms Craig is an attorney-at-law and founder of the Denver, Colorado, office of Townsend and Townsend and Crew LLP. lmoore@klm-inc.com lscraig@townsend.com

investment. Working in a corporation requires you to learn the vocabulary of budgets, profit and loss, and return on investment to be successful.

Dr Lindsay Moore: How do you position IP to get the attention of executive management?

John Nevard: Early in my career, I noticed that most attorneys spoke to their executives in a kind of legal speak that caused them to quit listening and their eyes to glaze over. I saw how ineffective their communications became and I learned to adopt the business vocabulary, to listen carefully to the business problems and to try to understand the business issues.

Attorneys are often like monks sitting in their cloisters. You have to get out and make contact with the business people and to understand the business terminology.

So, I don't position IP, I go out and I listen to the business problems. Then, when I have an idea, I say: "Have you thought about this or that?" Making IP a part of corporate strategy can best be understood by an analogy with

marketing products. You don't force a product into the market. Rather, you see where there is a demand and then you develop a solution that fits that need. The same is true with the role of intellectual asset management. I don't bang the drum for IP. I look for business problems I can solve and, because I am a patent attorney, my solutions often involve IP.

Dr Lindsay Moore: What has made you most successful in your career as a patent executive and a strategic thinker?

John Nevard: A willingness to take risks. Dare I say that the patent profession isn't known for its excitement or risk-taking? But you have to exercise a kind of judgement and demonstrate the ability to make decisions, and that is often risk-taking for an attorney. I am not advocating any irresponsibility but attorneys often have a hard time deciding that they have enough information to make a decision. But, in business, you frequently have to make decisions without all of the information you may wish to have, otherwise

the business opportunity will pass you by. The judgement is in having the right balance of information to make good decisions. As one senior executive said: "You don't get fired for being wrong, you get fired for not trying." Although that wouldn't be true at all companies, you have to be willing to make decisions and take appropriate risks.

Dr Lindsay Moore: What advice would you give patent attorneys who are excited by the new strategic dimensions of IP?

John Nevard: "Good luck!" No, seriously, my advice would be to avoid being overly concerned with the law and to get to know the business and see where the law can be applied.

Whenever I interview prospective attorneys for our organisation, I always assume their knowledge of the law, it is a given, and I focus on how they think. Do they think "this is an invention and I will patent it", or do they think, "this is an invention and how do I make money with it"? So few attorneys think that what they do has to be commercially relevant.