Patent portfolios CAN ATTRACT CAPITAL

By **LINDSAY MOORE,** PhD

Despite the fact that the world is slipping into a recession, intellectual property (IP) and related intangible assets appear to be surviving the storm and even prospering. For many, IP represents the structural capital necessary to rebuild the economy and market capitalization. This is good news for new ventures and existing enterprises with IP portfolios or aspirations.

As funds are withdrawn from declining investments, venture capitalists, hedge funds, private equity and institutional investors have substantial holdings to invest in the fundamentals of future market growth. Well-founded IP has the integrity to maintain its value, and to be seen as less risky than debt-based vehicles or many traditional over-leveraged securities.

As intangible, intellectual capital assets continue to be recognized as a new, entirely unleveraged class of assets, their value increases irrespective of the declining values of traditional assets. Three years ago patent auctions averaged trading prices in the five-figure ranges. Today patents are trading in the six- and even seven-figure ranges for innovative technologies and protectable business processes.

New ventures and companies that are seeking funding are finding capitalization from investors who understand that the asset mix of the economy has changed from predominantly hard assets to intellectual assets. The future competitive advantage of all enterprises will increasingly be based on the monetization of their intellectual assets, many of which are valuable across industries and markets. These properties are retaining or growing in asset value because the economic needs of the future require technological innovation. Notwithstanding the fact of the recession, we still need innovative new products and technologies to drive economic recovery and future development.

IP as a capital magnet

Companies leveraging their intangibles also attract investment because businesses that have well-managed IP tend to have greater competitive advantages and higher gross margins that are reflective of the increased value of their products and services.

For companies that have patent portfolios, the strategic next steps are to out-license technology, sell peripheral patents and abandon IP that lacks economic value.

In the alternative, for those companies that lack or fail to manage their IP, intellectual capital is created by protecting proprietary technologies and business processes. The emergence of the 'new' or 'knowledge' economy makes it clear that future success will be dependent, for all businesses, upon having or not having the right intellectual property.

But what IP is needed? First and foremost, the 'freedom to operate' is crucial.

The IP that ensures or allows these requirements is critical to an enterprise, whether it be a complex patent portfolio or an opinion that it is legal to pursue a certain business. The DSHEA legislation provided that for the dietary-supplements industry, as do clinical trials for pharmaceuticals.

Once that is secure, the next most important IP is that which provides the enterprise with its strategic advantage. Formulations, research and development, and proprietary dietary supplements are all monetized with patents, as are brands with trademarks and copyrights.

Beyond that, it is important to frame the enterprise before it goes public with regard to its IP, so that its intellectual capital will be reflected in its financial value. Earning releases, annual reports and conference calls are opportunities to build company valuation by linking corporate IP to corporate success. Well-managed IP attracts investment, so it is worthwhile for firms to be aggressive in wisely revealing their activities.

Sustainable value

The key in a knowledge-based economy is to understand how value is created in a sustainable way. The best IP ensures a successful product and preserves its monopoly power. Thus, IP ensures freedom to operate, prevents business disruption, provides gross margins and profitability, and mitigates risk.

A number of factors are driving hedge funds and private equity funds and banks toward a deeper awareness of IP, and this is especially true as investors withdraw their funding from failing investments and seek safer harbours in the market.

There are still large sums of capital under management and many investors are turning toward protected IP to avoid risk and replace the otherwise evaporating returns expected by their investors.

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