



## IP Management

By [Paul Belleflamme](#) 16 November 2011 35



Picture by gurdonark

In their book '[Information Rules](#)' (1999), Carl Shapiro and Hal Varian write the following:

*"The important thing is to maximise the value of your intellectual property, not to protect it for the sake of protection."*

I would like you to express your views about this sentence, based on two articles that Alain Strowel and myself have recently posted on this site.

1. In "[Bayer's aspirin: a lasting success without patent and strong trademark protection](#)", Alain Strowel explains how trademark protection can usefully supplement patent protection once patents have expired.
2. In "[LEGO: Dr. Jekyll and Mr. Hyde?](#)", I try to rationalize the seemingly ambivalent attitude of LEGO with respect to intellectual property.



### About Paul Belleflamme

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## 35 Responses to IP Management



**Franck Cipolla** 17 December 2012 at 12:37 [# Edit](#)

Creativity and innovation are critical to the success of companies. In a nutshell, "innovation is the process through which new ideas are generated and ultimately put into the marketplace" (Eric Burkhard). This is extremely important for the competitiveness of companies.

"The first step in winning the future is encouraging American innovation," said President Barack Obama in January 2011.

Eric Burkhard also mentioned in its article that every product or service that we use in our daily lives is the result of succession of big or small innovations, such as changes in design or improvements that make a product as it looks today. Many others have since improved the design and function of such products, and legally protected their improvements through the acquisition of IP rights. This is likely to be the case with almost any product or service in the marketplace.

Understanding your intellectual assets and being able to capitalize on them in order to generate more revenue is one of the most important part of managing IP and boosting innovation.

But how to stay efficiently innovative in a fast moving world? I think IP continues and will continue to be a critical driver for this.

However, considering the way information is circulating today (social collaboration etc?) one growing new concept could be the answer: it is called "open innovation".

Henry Chesbrough, Executive Director for open innovation at University of California Berkeley, defines open innovation as, "the use of purposive inflows and outflows of knowledge to accelerate internal innovation, and expand the markets for external use of innovation, respectively."

The case of LEGO perfectly illustrates this concept with the crowd-sourcing design through its new Cuusoo site where people are invited to submit their ideas, creating an evolving community of innovators. Open source is another example in the IT sector.

However, the inherent risk of such model is about the possibility to identify the ownership of an idea that has been developed by several parties. The ability to properly manage your IP will therefore remain the essential for the sustainability of the competitiveness of the companies.

1. "The importance of Intellectual Property to businesses" – <http://www.ipo.gov.uk>
2. "The Role Of Intellectual Property In Your Business" by Wessel van Wyk – Entrepreneur Media SA
3. "Perspective: Intellectual property in the era of open source" by Brad Silverberg – news.cnet.com
4. "Open Innovation is the Answer for the U.S. Economy" by Eric Burkhard – IPWatchdog
5. "LEGO: Dr. Jekyll and Mr. Hyde"

Like:  0

REPLY



**BREUGNOT** 17 December 2012 at 12:04 # [Edit](#)

The ultimate goal of a firm is to create value for its stakeholders (otherwise they will allow their resources somewhere else). Intellectual property is an essential intangible asset for companies. They spend resources to create, develop and improve products, solutions, brands,... they build assets to gain market shares. As any asset, companies have to maximize their IP's value.

IP rights are an important way to protect its assets, market share and allow a fair return on investment. Companies face a global environment where protection of their rights and products is a key factor to protect themselves from copy and unauthorized uses (through patents, trademarks, copyrights,...). As explain by Professor Paul Belflamme, in the Lego Case, The Lego Company sues every company trying to use its brick's shape to protect its core business (compatible bricks may weaken its position in that industry). Even if Lego's monopoly is currently attacked by its competitors and partially broke by 2 courts, they fight to maintain their market share, otherwise they will have to modify their strategy.

A strict IP protection is not mandatory for companies to create value. Companies operating in a market with limited IP have to be more creative (following the rabbit strategy: they have to move faster than their competitors). In the Bayer's Aspirine Case, Alain Strowel, show us how a company successfully manages a product put on the market more than 100 years ago by improving the initial product and creating trademarks. Lego don't act the same way with others products (i.e. robotics kit Mindstorms). On the contrary they reap profits from improvements made by their users. Another benefit from being more "open" towards IP is mass collaboration (or crowd-sourcing), it could be an interesting way to receive new ideas with limited internal resources and moreover developing interaction with your customers. It will create more value added for customers and more value for the company.

IP laws are essential tools to create value by setting a framework allowing companies to invest without the risk to be copied. But a tool could be used in different ways and today we see a drift from IP uses. Companies like Google, Apple and Samsung have started a sort of "patent war" where they protect all kinds of assets (important but also minor). By doing so, they try to block the use of some technologies by competitors. At the end it could be a hindrance to innovation and loss of value added for customers.

To conclude, IP rights are key success factors for companies to get a return on investment, keep their competitive advantage, and boost innovation. EU had a weakness in this competition: no common European IP laws but by creating a European patent, Europe tries to not stand a step behind USA, China or India. As new technology economy is increasing year after year, IP protection will remain a major challenge.

Like:  0

REPLY



**Steve Degosserie** 15 December 2012 at 22:57 # [Edit](#)

This sentence reminds us and emphasizes the fact that intellectual property (IP) should be a source of value creation, and not just a static intangible asset on the balance sheet. Put in another way, IP should not be seen as a secret to be safeguarded behind closed walls at any cost, but as a dynamic asset with a finite lifetime, and therefore managed as such.

The case of Bayer, with its Aspirin product invented a century ago, shows that IP protection is not always the key success factor for an IP-based product. Growing the market, extending the product design and portfolio and brand building are good examples of extending the value creation beyond the boundaries of the IP legal framework. (Bayer's aspiring, IPdigit 2011)

Another example would be licensing of IP as a source of value, whether out-licensing or in-licensing. Indeed, more and more companies in various industries are resorting to licensing to generate new sources of profits, improve their product design process and overall improve their awareness of, not only their IP value, but also of their market's IP value. (Getting more from intellectual property, McKinsey Quarterly 2004)

The case of LEGO presents a dual-strategy of openness and closeness regarding its IP portfolio. While at first it appears as two conflicting strategies if taken from the IP protection angle, it is in practice just one single adaptive strategy when viewed from the IP value maximization angle. Closeness manifests itself by a mix of patents, trademarks and copyrights battles, as well as the factoring of lock-in and switching costs into the product design, while openness appears as the 'IP-friendly' crowd-sourcing design and user-based innovation. (LEGO, IPdigit 2011)

A significant issue with IP protection is that it is not always applicable on legal grounds. In emerging market such as China, where IP laws are not as advanced yet as in more mature economies, other measures must be taken at strategic and operational levels. Achieving the right cost-benefit balance in designing processes within the organization to protect its IP 'from within', as well as taking careful decisions as to what part of its IP is exposed publicly, is a tricky exercise but nonetheless an increasingly important one. (Protecting intellectual property in China, McKinsey Quarterly 2005)

More open strategies also bear risks. When a company is opening up part of its IP portfolio to the market, with partners in so-called 'IP-free zone' or through its own products and services only, with the motive of benefitting from open innovation and competition, it must ensure that other parts of its IP will remain proprietary and well guarded. However, as it is becoming more and more difficult to compete on products and technologies in various sectors, it might make sense to rely more on open components, and shift most of the core IP towards truly distinctive complementary services. (Managing the business risks of open innovation, McKinsey Quarterly 2012)

IP is an asset, and like any other asset, it has to be managed, throughout its lifecycle, and managers should make use of all relevant tools, not just the legal ones, to get the most value out of their company's IP.

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REPLY



**Paul Belleflamme** 17 December 2012 at 12:11 # [Edit](#)

Conclusion full of wisdom!

REPLY



**Jens Fiig** 15 December 2012 at 22:17 # [Edit](#)

When an organization has intellectual property rights, whether it is patents, copyrights, trademarks or trade secrets, it means that, on some level, it has exclusive rights to what it entails. E.g. a trademark on the company's name, the organization has the right to exclude others from using that name so it can develop that brand. Same for a patent, the owner has the right to prevent others from using that invention.

I tend to disagree with Messrs. Shapiro and Varian's statement, mainly as I find it contradictory. Protecting your intellectual property is an essential part of managing your exposure to competition. Although this might appear to be a purely defensive stance, it can at times be the best method of maximizing IP. Even if the organization can derive no economical benefits from specific IP it should strive to defend such IP. Alternatively relinquishing IPR could enable competitors and would-be competitors from exploiting these, helping them strengthen their resource base and turning a (to the inventor, who paid for it) useless IP into a revenue-generating asset for competitors.

The Bayer/Aspirin case is an exceptionally one. The product has existed for a very long time and has become the synonym for painkillers. Although the patent has long expired, Bayer did fight on to protect the trademark to the extend possible. Furthermore Bayer's brilliant efforts to continuously enhance certain product features (tablets to powder) and communicate direct and indirect benefits of the product helped the company to successfully reposition Aspirin over and over again. It's a great example of product marketing and product management, but not a strategy centred on IPR.

LEGO on the other hand opted for an aggressive defensive position. Despite the expiration of the patent on the product itself, other IPR were used to extend the exclusiveness of the bricks, which is the foundation of the brand itself. Concurrently LEGO had a relaxed attitude towards other areas where there were breaches in IPR. The Cuusoo and Mindstorms examples shows that at times it is better to forego a defensive stance. But in both cases it was not crucial elements of the brand or the business that were at stake. Instead the company leveraged user-based innovation and crowd-sourcing.

When done correctly, intellectual property can be a powerful advantage over would-be competitors in the marketplace. When it is not done right, an organization could be giving away secrets to its competitors without getting any real protection in return. It is worthwhile making sure the organization is going to great lengths to maximize the value it is receiving and the advantage it has over the competition through intellectual property.

Like:  0

REPLY



**Nicolas Rousseau** 15 December 2012 at 19:43 # [Edit](#)

Intangible assets ( as IP ) and Sustainable Value Creation

( Nicolas Rousseau – Student Executive MBA of LSM – Session 2012-2013 )

Our products and services have to generate a long-term competitive advantage for our customers versus their competitors. This value creation process is generated by a strong management strategy, optimizing the use of our resources ( tangible and intangible assets ), developing continuously the capabilities of our company, with innovation mindset, and trying to find the right balance between cost, manufacturability and customer perceived value.

Companies have to focus their organization design on putting value creation as first target.

Intangibles as Intellectual Property (knowledge assets) are Key drivers in the value creation process and economic growth. Many companies have explored this type of asset, managing it as a potential competitive weapon and source of unexpected returns (Germeraad, 2010; Shapiro and Varian, 1999). Intellectual property management has been reflected in the way value added has been created.

According to Rivette and Kline (2008:58-60), investing in IP allows companies to increase their expected future returns and, aligned with other structural capital, allows companies to achieve important strategic and financial returns too.

Its translation into competitive advantage can:

- Protect core technologies and business methods;
- Tap patents for new revenues;
- Boost research and development and branding effectiveness;
- Anticipate market and technology shifts
- Reduce costs; and
- Attract new capital and enhance corporate value.

The effects of organizational changes may rival the effects of changes in the production process in terms of their impact on productivity at the firm-level. The ability to create economic value from intellectual assets is highly contingent on the management capabilities of individual firms and the implementation of appropriate business strategies (OECD, 2006), and the ability of ICTs to enable complementary organizational investments such as business process and work practices constitutes a significant component of the value of ICTs. These investments, in turn, lead to productivity gains by allowing firms to reduce costs and increase output quality, for example in the form of new products or through improvements in intangible aspects of existing products, such as convenience, trademarks, customization, timeliness, quality and variety (Brynjolfsson and Hitt, 2000).

At SME's level, a dynamic part of our economic system, An OECD study of high-growth manufacturing SMEs (OECD, 2002b) highlights five aspects of firm development with a particular impact on growth: i) innovation, ii) market and technology links, iii) organization and managerial structure, iv) team-work, and v) networking. Overall, the findings point to the importance of the link between innovation and response to customer demands. High-growth SMEs tend to be very market-oriented and respond to market changes with product innovations, often also closely related to process innovations. They tend to aim for improved product quality and customer satisfaction rather than reduced costs. This is an example of how firms can create value from their intellectual assets.

As conclusion, Intangible assets are becoming important sources of value creation for firms. As example, Nearly 40% of the market capitalization of a firm such as Coca Cola is estimated by experts to arise from its brand value. Thus it is not surprising to note that in recent years firms have started giving greater thought to managing the value of their brand and IP.

Like: 0

[REPLY](#)



**Gregoire Nelis** 15 December 2012 at 19:36 # [Edit](#)

Thank you to share all these comments, it gives a lot of ideas and information! I wondered how I would approach the topic, either with a market sigh which see IP protection as a defense for a competitive advantage, or with a financial sigh which see it as intangible asset. In order not to be redundant and in order to share my experience, I would like to explain the case of the company I work for. IP is a daily concern for us. Due to discretion we want to keep about IP I won't give the brand and the name of the company.

History: The Company was founded in 1988; it specialized in sales of motorized garden equipment. Limited by the seasonal aspect of the business, the company's founder, decided in 1994 to develop a machine to clean the streets (a big vacuum cleaner). The prototype of the product was presented at the "Best" Trade Fair for the Environment in Namur (Belgium) in 1995. It has been an instant hit.

Commercialization of the product began in Belgium and France. The company discontinues its "motorized garden equipment" sales to concentrate on the technical development of the vacuum cleaner (at that time the machine was powered with a petrol engine) and its commercial expansion in Europe. In response to requests from many cities and local authorities in Belgium, France and Switzerland, the company opened its own "R&D" department to develop a 100% electric powered machine. In 2007, the company relocated in its new factory in Andenne (Belgium) to enable its expansion. The company received recognition for its achievements and won the "Grand Prix Alfiers 2009" and the "Trends Business Tour 2011" for its efforts in the fields of investment, innovation, exportation and employment. Today, with over 4.500 references and an average growth of 30% for 5 years, the machine is currently used in more than 52 countries and across 5 continents. With growing demand from local authorities and the growth of the industrial market, this is only the beginning.

Our IP protection: In 1995, the company was too small to afford large expenses in IP protection. The founder decided to deposit the name (the brand) and the shape of the body, at first in Belgium, and then in other European countries. Actually, nowadays there is no European protection; it remains in the EU members responsibilities. Since last year, we are competing with a copy, made by a competitor located

outside EU. To summarize, the machine is a bad copy-past of our model 4 years ago (since we have improved our product). We can not sue the competitor because we have no protection in his country. We can only sue his distributors in Europe. We will have to sue each distributor in each EU countries, which will lead to tremendous expenses. That is IP protection reality for SMEs.

Our actual protection: Thanks to our investment in R&D we are able to compete with this new comer. Our only protection is the secrecy we keep about our innovations. Innovation and quality is the guardian of our leadership on our niche market.

Interesting link about patent filing costs in EU (French version): [http://www.gevers.eu/sites/default/files/llb\\_jun11\\_le\\_brevet\\_unitaire\\_-\\_version\\_courte.pdf](http://www.gevers.eu/sites/default/files/llb_jun11_le_brevet_unitaire_-_version_courte.pdf)

Like:  0

REPLY



**Paul Belleflamme** 17 December 2012 at 12:20 # [Edit](#)

Thanks for sharing your own experience.

About patent costs in Europe, you can also read a former article on this blog: <http://www.ipdigit.eu/2010/12/which-language-regime-for-eu-patents/>

Note, however, that these costs are likely to drop in the near future thanks to the recent agreement about the European Unitary Patent. See, e.g., <http://www.economist.com/news/business/21568436-after-40-years-trying-europe-has-unified-patent-system-sort-yes-ja-oui-no-no>

REPLY



**Carolin Zibret** 15 December 2012 at 19:27 # [Edit](#)

I believe that intellectual property protection is necessary because it secures that companies invest in research and development because it delivers them a competitive advantage on a mainly highly competitive market. If companies greatly invest in research and development, but their innovations are not protected at least for a certain period of time to recover their research and development cost, they will not be able to compete or stay in the market because competitors can easily and quickly follow the innovation and sell it at a lower price to the market.

In the case of Aspirin intellectual property protection gave Bayer the opportunity to build a strong reputation and brand in the field of pain relieves while the product was protected. The fact that Aspirin today is still a blockbuster today for Bayer comes from mentioned above (strong branding and reputation) but also from investing large amount of money in marketing and research and development to expand the usage of Aspirin for serial diseases today like repeat heart attacks and strokes after the protection period ended. Because Aspirin generated good revenues while under intellectual property protection, Bayer was and is still able to invest more research and development resources into this product which allows Bayer to compete in a market that also offers several generic products today as producers of generic products neither have the financial resources to improve the product nor I assume have they the interest to do so. If Aspirin had not been protected I question that Aspirin had generated the cash needed to allow further investments and research and development and marketing.

In the case of Lego the company also benefited from the fact that the bricks have been under protection. The incompatibility with competitor's bricks makes it very unattractive for Lego users to switch and allows Lego to charge a higher price. So this incompatibility of competitor's bricks can also be seen as a competitive advantage. Even though the Lego bricks are not protected anymore today Lego understands well how to maximize the value of product by for example introducing a platform for customers to create their own Lego models that might go in production.

I think these two cases show that both companies Lego and Bayer at the beginning benefited greatly from intellectual property and were therefore able to maximize the value of this protection, even after the protection has ended. Therefore I think the statement "The importance is to maximize the value of your intellectual property, not to protect it for the sake of protection" is somehow correct, but in my mind mainly valid after the intellectual property protection period ends.

Like:  0

REPLY



**Claudio Scalise** 14 December 2012 at 22:55 # [Edit](#)

That raises for me the question of why do I want intellectual property in the first place and why do I want to defend it? In a business environment, the answer is simple: the objective is to maximise the benefit obtained from the object of that intellectual property, in other words, the net economic inflow generated by it. In the light of that objective, intellectual property is only a tool and its use involves a rational decision, which in a business environment must be driven by cost and benefit. As it is the case with any tool, the use of intellectual property involves a cost. Obtaining intellectual property has a cost; the cost of defending it may be significant. Its use, therefore, is only justified if the expected future benefits exceed those costs. It is a common mistake to believe (and I have come across many people that think that way) that because I have incurred significant costs in acquiring some sort of know how (R&D for example), now I must protect that "investment" with intellectual property, and defend it at all cost. That is a fallacy (it is the "protect it for the sake of protecting it" part of the sentence in question as I understand it). The important question is if my intellectual property has any value in terms of future benefits, not past costs.

What is the case of Lego? They wanted the intellectual property on the blocks because that is the core of their business. Without its protection they were at risk of losing their competitive advantage. When did they decide to protect it? In the cases which involved the protection of their core business and therefore their competitive advantage. In other cases they just did not care. That is making rational decisions. They were very selective in managing their IP, which gave the impression that they had a case of double personality, when, in reality, they were just maximising future benefits.

In my opinion, the case of Bayer helps illustrate the fact that intellectual property is only a tool (and not the objective itself!), and while it is important and able to yield very good results, its use is not always necessary.

Like:  0

REPLY



**Paul Belleflamme** 17 December 2012 at 12:24 # [Edit](#)

I cannot more than agree with your sentence: "The important question is if my intellectual property has any value in terms of future benefits, not past costs."

REPLY



**Gil Lagrou** 14 December 2012 at 20:33 # [Edit](#)

Today Intellectual property in the forms of trademarks, copyrights, registered designs and patents have taken more and more a substantial part in the balance sheet of companies as intangible assets such as Umicore (5% of the total assets at the end of 2010) and GSK (even 19% at the end of 2011). This seems quite obvious in Western countries that need to rely heavily on creativity, innovation and research and development in order to maintain a competitive advantage towards the BRIC countries and other emerging countries such as Taiwan and Vietnam.

Intellectual property can help companies and SME's to have access to capital, more explicitly to business angels and venture capitalists and give inventions a bigger chance to reach the market. They can also help SME's to ensure that investments in R&D are not merely lost while working together with external institutions such as universities, technology parks, research institutions, etc. (Christopher M. Kalanye, February 2005, "Role of Intellectual Property in Innovation and New Product Development"). On the following site some case studies, articles and best practices are available about successful exploitation of IP: <http://www.wipo.int/sme/en/>.

We have seen examples of SME's and spin offs in Shanghai for example that were backed in their search to innovation: they performed research by using the equipment in a technology park at a very democratic price and they had easy access to legal support for the protection of their inventions. It would be nice that similar incentives and facilities should be more initiated in Belgium or it should at least be more transparent towards entrepreneurs.

I believe intellectual property can help a company to protect its return on investment. However, I do not believe it will fully protect companies against copies and infringements. Therefore, I liked the statement of GSK because they are fully aware of this: "Although we may obtain patents for our products, this does not prevent them from being challenged before they expire. Further, the grant of a patent does not mean that the issued patent will necessarily be held valid and forceable by a court. If a court determines that a patent we hold is invalid, non-infringed or unenforceable, it will not protect the market from third party entry prior to patent expire" (GSK annual report 2011, <http://www.gsk.com/content/dam/gsk/globals/documents/pdf/GSK-Annual-Report-2011.pdf>). I am certain that the products will be challenged of every company sooner or later because success will always drive opportunism. If we look at all the big designers such as Prada and Dirk Bikkembergs they have been successful for years and we can be sure that the designs have been copied many times. In some way, we can interpret this as flattery. Jeffrey Tucker means even that in the digital age it is ultimately impossible to enforce IP and he makes the comparison with the abandonment of tobacco and alcohol which according to him would never work (Jeffrey Tucker, July 2007, "Is Intellectual Property the Key to Success?", Mises Daily). If we look at all the piracy related to music and movies we have to agree with him to some extent.

I also do not believe that infringements are always bad: they stimulate the companies to continue to invest in research and development and to stay on their toes. As a consumer we should be happy with this.

I would like to end with a nice quote of a legendary consultant:

"Because the purpose of business is to create a customer, the business enterprise has two—and only two—basic functions: marketing and innovation. Marketing and innovation produce results; all the rest are costs" (Peter Drucker, 1985, "Innovative and Entrepreneurship, Practice and Principles". Harper & Row, Publishers, Inc.).

Like:  0

REPLY



**Paul Belleflamme** 17 December 2012 at 12:28 # [Edit](#)

In line with your GSK quote, Lemley and Shapiro (2005) talk about "probabilistic patents" (see <http://faculty.haas.berkeley.edu/shapiro/patents.pdf>).

REPLY

**Thomas Quinet** 12 December 2012 at 22:28 # [Edit](#)

Before looking into the maximization of the value of the Intellectual property, let us consider two conflicting aspects of the Intellectual Property which clearly show that IP protection is a complex matter in today's global business world.

Being advocate of the IP protection, one could find legitimate to protect an original idea, a concept or a product against copycats which could produce the same for cheaper or would be able to distribute faster or attain more customers in a short time. Indeed, an original idea could be developed by mister nobody which would find it difficult to protect his rights against multinational companies which could be keen to exploit the idea to their benefits. In this case, IP protection has all its sense.

On the other side, as the Lego history is showing ([http://www.hilarypagetoys.com/history.php?his\\_id=5](http://www.hilarypagetoys.com/history.php?his_id=5)), the IP legislation could also protect for a long time the wrong people. It is not here who "invented" the idea... but who protected it first and who has been able to put enough means in order to take the benefits out of it. To some extent, the Bayer case can also be seen under this light: the ingredients and the concept of the Aspirin where known since the dawn of the civilization.... Bayer has been the first one that could protect its stabilized form (and who was extremely successful in valuing it).

So yes, in today's business world, it is not about protecting the IP but it is about taking the steps that will allow an individual or a company to generate appropriate financial returns on the idea. The strategies on how to achieve this can be very different depending on the case: the Lego case (<http://www.ipdigit.eu/2011/10/lego-dr-jekyll-and-m-hyde/>) is giving different strategies followed by Lego to fight against different threats.

We see that Bayer and Lego have been using their IP strongly in relation to their marketing: they have been good into transforming their IP into a powerful "branding strategy". This has helped both companies to fence off competitors for a long time. Indeed, Lego has been very "cool" with the initiatives that were subject to augment the customer adherence to the brand while they have been harsh on those actions which could light shadow or divert the customers from the brand.

I am coming from the IT world where IP protection is difficult to organize and prime production/idea is difficult to prove. It is frequent that idea, concepts, graphical user interface (and even sometimes source codes) are being used unduly. Several legal protections exists, such as the deposit of the source code to agencies such as the "Agence de Protection des Programmes" ([www.app.asso.fr](http://www.app.asso.fr)) which can serve as a proof of the anteriority of the software. However a legal battle would be too expensive for most companies. In this case also, it is important to maximize the "visibility" of the IP in order to exploit the benefits rather than to protect it by all means.

Like: 0

REPLY

**Paul Belleflamme** 17 December 2012 at 12:31 # [Edit](#)

Thanks for sharing your experience.

REPLY

**Tran Tuan Hoan** 12 December 2012 at 19:05 # [Edit](#)

From a pure economical point of view, the meaning of Carl Shapiro and Hal Varian is quite simple: "the important thing is to maximize the (economical) values". Beside this, managing IP (when necessary) is only a tool to achieve this goal. Lego seems having understood it perfectly as the company managed to use IP protection when it judges necessary (through patent, trademarks, court trials, industrial design copyright, ...). By doing this, Lego shows that it is profitable to protect its IP as the brilliant invention of the tubes in the blocks (in order to stabilize them among each others) makes it a key success factor for the company. By protecting this invention, the company creates a strong unique product maximizing the values on the incompatibility of the bricks towards competition. Other recent example of IP protection here in Belgium: Lego vs Ice Watch, where the value on the design was maximized. (1)

So IP generally helps companies developing a presence in the marketplace (2). This helps them generate innovations by creating ideas and building business around it. Protecting ideas prevents competition from copying you and enter (too early) into your fresh new market. Moreover IP is often a prerequisite for potential investors. Who will invest in a company which doesn't care about protecting itself?

But on the contrary, Lego is also able to ride on the wave and can also adapt its IP policy when the company judges it (un)necessary. For instance when Lego has let its software been hacked by aficionados in order to improve the online ordering of bricks, Lego didn't react intentionally maximizing so the passion of its clients to create what they want, which in return has a positive impact on the business and the client satisfaction. (3)

Another example of IP management is Coca Cola, which formula is kept secret since a century! By avoiding to patent it, the soda company decided to maximize its values by creating an exclusivity which is so complex to copy that it is not needed to protect it by IP. (5)

Finally, another good example of not (over) protecting its IP, is to be found in the Aspirin case by A. Strowel which demonstrates that IP protection is not always a key factor of success. (4) The importance here sits in the words 'not always'. The role of the manager is to be aware of the existing tools that he can use in order to maximize the values, but the way the tools are used is certainly a key factor of success.



- (1) [[http://www.rtf.be/info/regions/detail\\_lego-gagne-son-proces-contre-ice-watch?id=7216073](http://www.rtf.be/info/regions/detail_lego-gagne-son-proces-contre-ice-watch?id=7216073)]  
 (2) [<http://www.mcdonaldhopkins.com/news.aspx?id=e2izdXILXU2VYTxB90rXDw>]  
 (3) [<http://www.ipdigit.eu/wp-content/uploads/2010/09/Lego-case.pdf>]  
 (4) [<http://www.ipdigit.eu/2011/10/bayers-aspirin-a-lasting-success-without-patent-and-trademark-protection/>]  
 (5) [<http://www.bloomberg.com/news/2011-12-09/samsung-teva-dc-comics-coca-cola-intellectual-property.html>]

Like:  0

REPLY



**Hugues Stiernon** 11 December 2012 at 22:42 # [Edit](#)

Maximizing the value of a company is the usual goal of a CEO. What makes a company successful is its ability to differentiate itself in the market, often based on a so called competitive advantage. Innovation can be one driver of the competitiveness of an organization. For technology based start-ups, the innovative idea is usually the main asset of the company during its start-up phase and the basis on which it will seek investors to take the product or service to market. For technology-based start-ups it is critical to find ways of appropriating their innovation in order to survive in the marketplace and obtain a competitive edge over competitors. IP rights emerge as a useful tool to resolve the "appropriability" problem, providing firms a fair degree of exclusivity over the exploitation of their innovation(s)(1), thus, making the competitive advantage sustainable.

IP rights in financial accounting terms are part of the intangible assets in the balance sheet. Today's information and knowledge based economy relies heavily on intangible. Unlike physical assets where the historical value results from clear market based transaction or from measurable consumption of resource and where the future economic benefits are generally unambiguously measurable, it is the quality of the usage made of intangible assets by a management team that creates both the "value" of the asset and the stream of future economic benefits (2). Protecting IP rights allows a company to value today the benefits of tomorrow, increasing de facto the value of the company owning them.

Protecting IP can be done in several different ways and at several different costs. Patents or trade secrets are good examples of decision entrepreneurs and SMB's face in relation to their findings (2). The choice has a different impact on the sustainability of the competitive advantage and its accountability. So company's CEO and entrepreneurs need to balance the time, the cost and the advantage a protected IP has on their competitive strategy on the "today AND tomorrow" target markets.

To conclude this post, the EU commission has put in place several innovation programs (for example: FP 7) where intensive efforts are done to sensitize SME to manage properly their Intellectual property (4). By doing so, EU commission wants to bridge the gap with other innovative countries like US, Japan India and China. With the globalization of the economy, EU is seeking ways to improve the economic exploitation of the IPR (5), in other words, the race for patent is equivalent to the race for economic power.

- (1) [http://www.wipo.int/sme/en/documents/pdf/incubator\\_survey.pdf](http://www.wipo.int/sme/en/documents/pdf/incubator_survey.pdf)  
 (2) Financial accounting and reporting, a global perspective, 3rd edition, Stolowy, Lebas, Ding p306-307)  
 (3) [http://www.wipo.int/sme/en/ip\\_business/trade\\_secrets/patent\\_trade.htm](http://www.wipo.int/sme/en/ip_business/trade_secrets/patent_trade.htm)  
 (4) <http://www.iprhelpdesk.eu/sites/default/files/newsdocuments/SMEs%20Guide.pdf>  
 (5) [http://ec.europa.eu/enterprise/policies/innovation/policy/intellectual-property/index\\_en.htm](http://ec.europa.eu/enterprise/policies/innovation/policy/intellectual-property/index_en.htm)

Like:  0

REPLY



**Paul Belleflamme** 12 December 2012 at 12:54 # [Edit](#)

The European helpdesk (your reference #4) seems very useful. Thanks for pointing to it.

REPLY



**Aurélien Pallade** 11 December 2012 at 18:56 # [Edit](#)

Innovation and intellectual property right management are essential for sustaining and protecting competitive advantages. The cases of Lego™ and Bayer Aspirin™ are perfect example: how to extent product success overtime by maximizing their IPRs.

When an article is speaking about intellectual property right, most people will think about patent whereas the range of property right is broad.

Both companies had seen their patents expired or expropriated however they have been capable to remain leader on their market.

For a while Lego has attempted to protect is product by asserting the shaping of the knob configuration of bricks was a distinguish guise. In that way LEGO was claiming functional trade-marks in Canada and Europe. Canadian and European courts had given a judgment against LEGO in 2005 and 2010.

As part of war reparations specified in the 1919 Treaty of Versailles, Bayer was forced to give up its trademark rights in "Aspirin" and "Bayer" names. It fought hard to retain is exclusive use of trademarks but it could never win back trademark protection in many countries and notably US. However it reacquired his "Bayer" name in 1994 in the US, which allowed it to market "Bayer Aspirin".

Both companies had faced in different industry sectors the same issues: lost their patents, lost their trade-marks. However they dodge easily



with those issues.

As soon as Bayer reacquired the "Bayer" name, it started to reinvested efforts to market the brand "Bayer Aspirin" . It has continued his R&D efforts to find new medicinal application such as heart attacks, strokes, rheumatism... or find new patented formulation (Cafiaspirina, fast action aspirin).

In a totally different way, LEGO had the brilliant idea to use crowd sourcing to boost the number of new models and brand awareness. Cuusoo is the new site of LEGO, people can submit their idea and new model built. By signing up the originator of the models are agreeing to transfer the ownership of the idea and the design right. LEGO is thus protecting ideas/ models which didn't cost him a penny to develop and being sure it will succeed.

Bayer and LEGO are the perfect example it is not worth to continue to try protecting IPRs when they are over. However they also demonstrated, it is worth to innovate ( new brand, new design, new application...) and then protect if the innovation is valuable. In the view of LEGO and BAYER cases compared to the Carl Shapiro and Hal Varian quotation , the most important to maximize the value of intellectual property is first to innovate. Innovation is the best protection against any competitor. In fact IPRS won't last indefinitely however if you keep pace with innovation it will last. It doesn't mean innovation should not be protected but it should be done only if it worth to do so and if it can be copied easily by competitors.

Like:  0

REPLY



**Laurent Vanhoudenhove** 10 December 2012 at 21:46 # [Edit](#)

Obviously, IBA as Apple as thousands of business companies started with an innovation. Equally obvious is the fact that those innovations and the related investments in capital and human resources has affected, affect or will affect not only the company market value but also the global economic wealth and the social progress.

What is in debate is to know whether it justifies wholly the need for societies for providing innovators and investors protection on their intellectual works and intangible assets?

Reversing the thesis, we can argue whether intellectual property protection – under the form of patents, copyright or trademarks – would generate a lack of incentives to produce new ideas and new values creation which will generate social costs and economic decline?

Although economists are generally in favor of patents and copyright protection, a few at the contrary think that intellectual property is not like an ordinary property at all, but "constitutes a government grant of a costly and dangerous private monopoly over ideas" (ref :Michele Boldrin and David K. Levine – Against Intellectual Property (2007)). In their book (by the way free downloadable) they demonstrate with numerous examples that intellectual monopoly is not necessary "promoting innovation and as a practical matter is damaging to growth, prosperity and liberty".

For example in chapter 4 of the book, Boldrin and Levine explain how the pace and nature of innovation increased after the expiration of the Watt patent on steam engines and how monopolistic his position was during the time of the patent.

In the same vein, the office of United Nations for Human Right recognizes that "conflicts may exist between the implementation of current intellectual property systems and the respect for other human rights" arguing that IP tends to be governed by economic goals instead of serving human well-being.

And indeed, Intellectual Property is about defending or acquiring monopolistic positions.

Look at the web search giant Google which surprised investors in May this year by buying the loss maker mobile manufacturer Motorola Mobility for such a high \$12.5bn price explaining that its primary motivation was to get its hands on the company's 17,000 patents and 7,500 pending patents.

And then later in September Google used the fresh acquired valuable intellectual property to attack rivals Apple on its own behalf claiming that a number of features on Apple's iPhone, including its Siri voice control, infringe seven patents it acquired as part of the Motorola Mobility deal.

Early November, thus almost at the same time, Motorola Mobility announced plans to cut 4,000 staff, a fifth of its workforce, marking the first major change under its new parent company Google !!!

I would be intellectually dishonest linking the two elements since they have different economical foundations but the simultaneity of the two events is notwithstanding cynical

However this example illustrates how difficult it is for an established powerful company as Google to stimulate internal new pioneering innovation and therefore how Intellectual Property could become a market on its own.

When an IP index on the New York Stock Exchange?

Like:  0

REPLY



**Paul Belleflamme** 12 December 2012 at 12:57 # [Edit](#)

Interesting food for thought!

REPLY



**David Hachez** 10 December 2012 at 14:46 # [Edit](#)

Who would be able to admire the most beautiful painting in the world if it is kept in a safe under highly secured protection? No one.

The same applies to IP. There is no interest in keeping an invention/innovation secret if the objective is to generate value on a defined market\*. Both examples – Bayer Aspirin and Lego – are a proof to that thesis.

Both companies showed openness (desired or under some constraints) towards the market.

In the case of Bayer, a strong name (branding that became the product itself), a great product (meeting its market) combined with a first mover advantage (good timing that gave a competitive edge) make it still a “winner” more than 100 years later despite the low level of IP protection involved. The importance of managing a reputation (a brand in the case of Aspirin) is probably more valuable in this case than to patent a technology or invention.

In the case of Lego, the “crowdsourcing” trend plays a major role. Lego relies on a strong community of fans who are ready to contribute to the creation of value for the company. The emergence of the “crowd-involvement” proposes a new paradigm in the value creation chain, where the value does not lie in the patent or in the intellectual property only, but where the product users are creating the value themselves; the value does not lie intrinsically in the products (and its IP related dimension) but rather in its application and usage.

An easy parallel could be drawn here with the software industry. The open-source economy does not rely on the IP protection of the software to generate value, but rather in the creativity of its users who can transform their actions in value.

The value of something lies in its usage (living material) and not in the ownership of a concept (dead material).

In this “copy-left” context, what is then the future of intellectual property ?

—

\*excluding maybe the defence industry; to be debated.

Like: 0

[REPLY](#)



**Paul Belleflamme** 10 December 2012 at 14:50 # [Edit](#)

The future of IP? Don't forget its role on incentives? A product cannot be applied and used if it has not be created in the first place.

[REPLY](#)



**David Hachez** 13 December 2012 at 17:05 # [Edit](#)

Sure. But maybe there will be no need to protect IP on new products in the future. If everything goes in the open-source direction, why IP would be relevant in the value creation chain?

Like: 0

[REPLY](#)



**Minh Phan** 8 December 2012 at 14:04 # [Edit](#)

I fully agree with the statement made by Carl Shapiro and Hal Varian in their book ‘Information Rules’ (1999), if it were with a long-term (i.e. sustainable) perspective from the firm.

The Lego-case perfectly illustrates that by – almost obsessively – protecting its ‘bricks’ concept, it provided Lego significant competitive advantage on the short-term. Lego was able to win some time (and in the meantime consume resources of competitors) in order to be able to look further and to anticipate market needs. It perfectly built up his brand further with the open strategy (cf. Crowd-Sourcing and Mindstorms) and managed to capitalize on the complementarity between various products.

To my opinion, protecting intellectual property is essential (if not, crucial) in this increasingly knowledge-based economy which has led to extremely short Product Life Cycles. The recent example of Ipad – that faced fierce competition from compatible products – contrasts extremely with the pace with which the telephone, radio and television have reached households around the world.

Organizations have to innovate continuously and with an ever faster pace.. Without being able to protect its ‘innovation’ within a certain time frame, organizations see themselves ‘outpaced’ constantly by its competitors as markets & products have become more global; as new forms of media arise more frequently and as technology evolves persistently.. ([http://en.wikipedia.org/wiki/Knowledge\\_economy](http://en.wikipedia.org/wiki/Knowledge_economy))

As stated earlier, intellectual property provides organizations with a ‘temporary’ competitive advantage, as they should focus on building up sustainable competitive advantages. Patents, copyrights, trademarks, brands, trade secrets, ... are merely tools and enablers for gaining competitive advantage.

Organizations need to comprehend (1) the key resources and (2) the drivers of performance & value in their organizations. (1) Resources are

traditionally viewed as being physical, such as land and machines or financial capital. Nevertheless, intellectual capital has also been acknowledged as a key resource and driver of organizational performance and value creation. (2) Organizations should keep in mind that it is never resources themselves that create value, but the services that the resources can render. In other words, the value generated is a function of the way in which resources are managed. (The dynamics of value creation: Mapping your intellectual performance drivers" by Bernard Marr in Journal of Intellectual Capital Vol. 5 No. 2, 2004. pp. 312-325)

This is perfectly demonstrated with the Aspirin story which showed to be very uncommon in modern drugs history where huge profits could only be generated during the short life-time of patent protection. Despite the loss of IP protection, Bayer continued innovation by expanding the medicinal uses of aspirin; with periodic reformulations and by intensively marketing the product.

Hiroyuki Itami defines invisible assets as information-based assets, which includes technology, consumer trust, brand image, corporate culture, as well as management skills and agrees that they are the most important resources for long-term success because only invisible assets can be used simultaneously in several areas.

"Intangible assets drive capability differentials, which in turn drive sustainable competitive advantage.. "

(The dynamics of value creation: Mapping your intellectual performance drivers" by Bernard Marr in Journal of Intellectual Capital Vol. 5 No. 2, 2004. pp. 312-325)

Like:  0

REPLY



**Zehra Lebrun** 7 December 2012 at 12:11 # [Edit](#)

Depending on the sector, intellectual property can have a bigger portion on the company assets (mainly for technology-driven industries like pharmaceutical, consumer electronics). IP protection may be a costly process depending on how many countries that the company wants protection, and you can never really protect your property unless you keep it a trade secret. So, companies shall smartly define to which level they shall protect their IP rights, while adopting a less strict policy for some cases.

Examples from Lego shows us that some companies choose to protect its IP rights mainly around their core business (bricks in Lego case) while they leave more space to explore in others (crowd sourcing and free software). I think the main distinction in deciding a more or less protective strategy is the importance of the product in company's product portfolio and how if it is creating a competitive advantage for the company. Recognizing that IP is driving today's technology-based economy, savvy companies are leveraging their intellectual property to differentiate products, protect margins, create barriers to entry, sustain first-mover advantage, and drive innovation.

(<http://venturebeat.com/2010/11/10/how-to-maximize-the-value-of-your-organization%E2%80%99s-ip-investment-2/#/4c30EWQZrop1bpF.99>)

To exemplify from a technology –driven market; Apple, who is distinguishing itself from its competitors by its design, innovative products and its integrated software platforms, is a good example of the companies that protect its core business smartly. Since 1982, Apple protects its IP rights by using different patent types as design patterns, trade dress etc. and uses those in its legal claims against Samsung. Many of Apple's patents relate to the look and feel of devices or particular ways of using a machine, rather than a basic technology breakthrough. Although Apple protects its products against multiple competitors, I think it is not totally protective because software can usually be slightly changed to find a non-infringing alternative. (<http://www.businessweek.com/news/2011-12-28/apple-scorched-earth-legal-strategy-may-undervalue-its-patents.html>)

Apple's devotion to protect its core business can be easily felt from the below quote from its new CEO, Tim Cook, on defending the intellectual property that has enabled the iPhone to revolutionize the smartphone industry. (<http://www.macrumors.com/2009/01/22/tim-cook-apple-will-aggressively-protect-iphone-intellectual-property/>)

"We approach this business as a software platform business. And so I think we approach it fundamentally different than people that are approaching it only from a hardware point of view. And, so, as I've said before, we're very, very confident with where we are competitively. We are watching the landscape. We like competition, as long as they don't rip off our IP. And if they do, were going to go after anybody that does."

Despite above examples; Apple is not always totally closed in the protection of its IP assets. Despite being one of the most tightly controlled technology companies on the market, Apple has a surprisingly complicated relationship with open source as Apple walks the fence between open and closed. As the first major computer company to make Open Source development a key part of its on-going software strategy, Apple remains committed to the Open Source development model. Major components of Mac OS X, including the UNIX core, are made available under Apple's Open Source license, allowing developers and students to view source code, learn from it and submit suggestions and modifications. In addition, Apple uses software created by the Open Source community, such as the HTML rendering engine for Safari, and returns its enhancements to the community. To summarize; Apple is neither too open nor too closed and it seems to have found a good balance between the two depending on its business strategy. (<http://www.apple.com/opensource/>)

At the end, to maximize the value of IP does not always mean to strictly protect it, but aligning the protection level to the business strategy. Looking from a business perspective; companies have to think through the problem from many angles to come up with a good strategy, considering "where is the profit going to be made?"

As a last view on the subject from society's perspective; for consumers, more intellectual property means more monopolies — and higher prices. It also means that companies divert research money to lawyers and that the overall space for innovation shrinks. To exemplify; following Apple's success to protect its intellectual property since 1982, more and more companies started to search their rights in courts for ip protection of every description they registered. In such process, there is less chance to manoeuvre for start-ups, as they may be clashed by a big monopolist on the way for re-using their IP without consent and they may not afford high legal fees.

(<http://gigaom.com/2012/08/01/illegal-as-apples-products-evolved-so-did-a-strategy-to-protect-them/>)

Like:  0

REPLY

**Paul Belleflamme** 10 December 2012 at 13:43 # [Edit](#)

Very instructive, thanks.

REPLY

**Philippe Simon** 6 December 2012 at 10:10 # [Edit](#)

“The important thing is to maximize the value of your intellectual property, not to protect it for the sake of protection”

By reading this sentence, I was surprised by the used terminology.

“Intellectual property” seems to me a term grouping abstract concepts. Then, how can we value and then, maximize the value of IP?

The here under definition of intellectual property helps me to clarify what has to be valued: “Intellectual property” (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce” (<http://www.wipo.int/about-ip/en/>)

Based on the here above definition, the scope is not limited to a technology, a product or a brand but it is broader.

After some readings, I understand that several ways are possible to value the “intellectual property”. If the objective is to maximize the value, first we need to understand how valuing it. From a purely financial point of view, the “Intellectual property” is considered as an intangible asset and needs to be valued as such. An intangible assets can be defined as an assets which is not physical in nature ([www.investopedia.com](http://www.investopedia.com))

To value and then maximize intangible assets, the following three valuation methods are the most widely accepted (Maximizing Intellectual Property and Intangible Assets, Case Studies in Intangible Asset Finance, Ian Ellis, Athena Alliance, November 2009) :

- Market approach: which requires comparable market transactions
- Cost approach: which assumes the expense for replacing or reproducing the entity and depreciation
- Income approach: which attempts to determine the income of the assets, considering both expenses for utilizing the assets and the revenue generated

The Income approach or direct capitalization method is the key element to understand that to value intangible assets or “intellectual property” we need to identify the future incomes that will be generated thanks to this asset.

Related to the original statement, objective is not necessary to protect intellectual property but more to maximize the future incomes result from the “intellectual property”.

The statement expresses that we have to think in term of future benefits and not in term of today's benefits. The idea is that we do not have to focus only our attention on the value that the “intellectual property” bring today but think about what value you can create at long term. Don't spend all your energy to protect “intellectual property” but try to leverage his value. It doesn't means that IP has not to be protected, it that IP protection is not the main or the only objective. Depending on business case, the protection of IP by legal could be useful or not. Some companies make the choice to not protect by patent to avoid sharing information (ex: Coca Cola recipe). Others companies patent all components and their combinations (ex: Apple). Lego's and Bayer's case, are two other examples of company trying to leverage IP that cannot be protected infinitively by legal. There are no rule how to protect IP, all cases are different and legal is not the only way. In any case, the core question is: “How can I leverage IP to maximize future income?”

Like: 0

REPLY

**Nevena Petrova** 6 December 2012 at 09:47 # [Edit](#)

In the Second Treaties, John Locke claims that civil society was created for the protection of property. His position holds “that when labor produces something of value to others, something beyond what morality requires the laborer to produce – then the laborer deserves some benefit of it”.

The theory asserts that labor often creates social value, and it is this production of social value that “deserves” reward, not the labor that produces it. One of the interpretations of the Locke's labor theory of value suggests, that people will add value to the society if some of this value accrues to them personally. This interpretation reflects my thoughts. A company is worth to protect its intellectual property if this property adds value to the company's business and to the society. And not seeking protection for the sake of it.

Companies should assess the future business and commercial value of each piece of intellectual property they create, before filing for protection. IP rights themselves are not naturally valuable. Their value is the strategic advantage which the company gains by excluding others from using the intellectual property. To be valuable, the company's rights should be strategically aligned with the core businesses. Without this alignment, the company may be wasting investment and missing opportunities to capture valuable market advantages.

The most valuable IP rights are those that provide a competitive advantage over competitors and build equity in the company's business. Whether the company's invention provides unique functionality or improved efficiency, the marketable value is in having the company recognized as the exclusive source of these offerings. The value of the IP rights will depend greatly on how well the company aligns its intellectual property protection with its business goals.

In this fast-moving society, the process of IP protection is slow, costly and unsecure. Will the efforts of protecting your IP justify the benefits you get from it? Does this invention adds value to your business and does it bring something valuable to the society? These are questions which need to be answered before filing for protection.

Like:  0

REPLY



**Sébastien Macarty** 5 December 2012 at 11:05 # [Edit](#)

In today's free and global market, the management of intellectual property is becoming an important issue but also a difficult one to handle due to its intangible nature. Usually, when it comes to tangible assets the whole value chain is usually integrated to the business strategy of a company but IP is rarely part of it. Some companies are slowly integrating the IP value chain into their business strategy in order to use IP not as a goal but as a mean to support business objectives.

(<http://www.nature.com/bioent/2003/030101/full/nbt0602supp-BE43.html>).

I think this is the way to go for companies like biotech companies where IP is the heart of their activity.

It seems to me like successfull companies like Apple create value by strategically combining 2 forms of IP in their portfolio and therefore 2 attitudes: proprietary IP and a defensive attitude (patents, copyrights) and non-proprietary IP and an offensive attitude (open-source technologies, non-patented innovation) depending on the business strategy. Proprietary IP will generate direct financial benefits by preventing others from commercialising your new technology but non-proprietary IP seems to generate other kind of benefits as important for the overall business (like in the Lego case; see <http://www.ipdigit.eu/2011/10/lego-dr-jekyll-and-m-hyde/>).

One of the key elements for companies to maximise the value of their IP is to consider IP rights as "goods" and start trading them. Keep and use the high-values ones, probably the ones that can be integrated to an existing product or service and sell the low-value ones (via licensing) to another company for whom the value of this IP as a business opportunity is much higher.

This new IP market is a very hot topic for the EU these days (<http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/>) who is now looking into the set-up of an international legal framework in order to defend our competitiveness against countries like China. Good luck!

Like:  0

REPLY



**Laurent Barremaecker** 2 December 2012 at 10:06 # [Edit](#)

Intellectual property management can be considered as a running « poker game » where the play field seems to be extremely defined and regulated but where, at the same time, not all players "quality" are identified. Each actor will build his hand (with IP bullets) and then try to empower its position around the table through expert bluff management.

The expected protection will, most of the time, disappear as soon as the poker game is finished and that all players have to show their cards in a law court settlement. In order to avoid this uncontrolled situation, the players should try to find bilateral commercial agreements that will ensure win-win conclusions and not random law decisions to the benefit of a single actor.

Considering the previously addressed risks and facts, we could consider that the IP management strategy should not be focused on protection aspects (that is definitively not a guaranty) but well on value creation for the company. When protection is mandatory, secrecy should be considered as the best protective solution to be put in place (Coca Cola demonstrated winning solution with its raw syrup formula). This approach is of course not perfect if not combined with a "first mover" strategy to transfer your product to the market and consequently avoid being trapped in a patent infringement trial that could be initiated by your competitors.

For SME's, the secrecy approach offers another huge benefit since this strategy is "free of charge". All other protections will generate direct and mainly indirect costs if the companies have to defend their position in law court. These financial loads are therefore only sustainable by large and rich companies.

Beside of these protection aspects, we are living in an extremely competitive environment where the value of a company can be directly linked to its IP portfolio. In the frame of "merge and acquisition" investigations, companies that can not present evidence of IP will, most of the time, be discarded as potential investment targets. This concern is therefore a major issue for SMEs that are fast growers or that have key technologies or services that are targeted by larger companies.

As a conclusion, Intellectual Property management should be considered in all companies (from SME's to large global actors) in a defensive approach that will most of the time not protect the company against threats but well increase its long term value on the market.

Like:  0

REPLY



**Paul Belleflamme** 3 December 2012 at 08:43 # [Edit](#)

As written by Shpairo and Varian (1999), "The important thing is to maximize the value of your intellectual property, not to protect it for the sake of protection."

REPLY



**Christophe Soleil** 8 December 2012 at 21:49 # [Edit](#)

Companies' primary target is to focus their time and energy on building shareholder value by developing and implementing profitable business models, moving products closer to the market and gaining market share. In the same order of idea, Intellectual Properties (IP) as intangible assets are not simply a legal matter for defensive purpose. They have real value and therefore must be managed in order to increase shareholder value. Managing Intellectual Property (IP) is one of the key factors to reach this target. It requires the implementation of an IP strategy. Companies should actively and strategically manage their IP pipeline to ensure maximum return on their IP investments. It is therefore important to develop an IP vision and specific objectives that define how the companies will invest their time and resources in IP portfolios that will, along with the business and product strategies, help support sustainable competitive advantages. The IP strategy tells inventors where to innovate, the legal team how to evaluate that innovation, and a CEO where and how to invest in protecting it.(1)

For example, during the entry phase of the Product Life Cycle (PLC), IP rights can help leverage the product competitive advantages: At the beginning of this phase, it is beneficial to defend the company's IP rights (patents) which served to develop the product launched for the first time on the market and without which it can not exist. It will allow the company to build, during the entry and growing phases of the PLC, barriers of entry for potential new comers and provide time to create competitive advantages for the period when the IP rights will expire. It is strategically crucial, to take advantage of this period where IP protections exist to invest in the brand, to expand the potential usages of the product, to invest in product improvement and differentiation, to invest in marketing,... in order to gain the competitive advantage which at the end will be more powerful than the one provided by the initial IP rights protections.

As IP is not only a matter of patents and also involve trademarks, brands, strategic relationships, know how,...(2) in the IP strategy definition, it is important to keep in mind that maximizing value of these intangible assets is not only a matter of patenting innovation and protecting those, but also a matter of assessing what are the main drivers for the value creation and what creates a sustainable competitive advantage.

In following this model, Bayer has managed to keep its aspirin as a blockbuster despite it was invented a century ago and is no longer protected by patent. (3)

On its side, LEGO also developed a strategy to manage its IP portfolio and maximize its value. They remain very open when it comes to enhance their brand image and very closed when it comes to protect their core business, the bricks (which are no longer protected by patent) (4).

(1) "Building a strategy for maximizing intellectual property value" William A. Barrett

(2) "Maximizing the value of Intellectual property" Gerbsman Partners

(3) "The serial painkiller" Financial Time

(4) "LEGO: Dr. Jekyll and Mr. Hyde"

Like: 0

REPLY



**oussama abbas** 25 November 2012 at 14:56 # [Edit](#)

We get used to hear that patent protection is a MUST to protect against copying a new invention. Nowadays, with the development of new technologies and the significant acceleration of data circulation, we have to admit that a patent have a real added value BUT is no longer enough to ensure a sustainable protection.

"After you've filed for a patent and, hopefully, received protection for your invention, you may think that the hard part is done. Unfortunately, the most difficult part lies ahead. Receiving a patent from the U.S. Patent and Trade Office (PTO) affords your invention — and your business — legal protection, but the government isn't responsible for policing your patent and rooting out violators, counterfeiters, competitors, or from lapsing. That job is mostly up to you" (www.inc.com › ... › Patent and Trademark Protection).

For that reason, more than the patent application itself, any patent owner has to build up a real strategy to protect its invention. I consider that this strategy could be even more effective than the patent itself.

In the pharmaceutical sector, a lot of companies decided to launch their own generics to limit the competitors' access to the market. In the US, this launch is sometimes allowed even prior to the patent expiry date (Patent protection strategies – Maximizing Product revenue, Peter Norman, 2007) which can give an additional advantage to the patent owner.

In the IT and Communication sector, the strategy of Samsung has significantly reinforced its patent team and is to continuously strengthen patent alliance by expanding a cross-license patent cooperation strategy with global IT companies (www. Samsung.com) .

What is sure is that one of the golden jobs to have nowadays, and mostly for the future, is lawyer in patent expertise. Actually, companies that will develop new products able to meet a successful worldwide distribution, will most probably have to be defended against patent attacks or will have to drive lawsuits against patent infringements.

Of course, this will certainly be easier for big companies with robust financial structure but how it's possible to reinforce patents in smaller

companies. Unfortunately, there's still no real solution for them unless SECRECY.

Finally, in all cases, a 100% protection is not realistic especially when it comes to foreign markets like China. In fact, more important than attacking the Chinese copiers, it is mandatory to fight against the threats of having the copied products on our local markets. In this case, we have to count on the vigilance and policies of our customs... !

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REPLY



**Paul Belleflamme** 27 November 2012 at 14:03 # [Edit](#)

Thanks for your opinions and for starting the discussion on this theme!

REPLY

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