

INTELLECTUAL CAPITAL

LIKE INSURANCE, UNDERSTANDING ITS VALUE MAY NOT SEEM NECESSARY UNTIL IT IS TOO LATE

Jackie Maguire

Making the decision to invest in organisations can be fraught at the best of times. And many organisations are not clear on how best to value their intellectual capital in order to make themselves attractive to potential investors, or even to protect their ideas and inventions against theft by competitors.

In many businesses there is enough to worry about just to ensure that the day-to-day activities are taken care of, particularly with start-ups - without being concerned that someone might steal your intellectual assets. It is perhaps not surprising, then, that many companies still function without taking even basic measures to protect themselves – and this applies even to some quite large organisations.

Even if an organisation has taken measures to protect its intellectual capital, they may still not understand how to exploit it fully. Protection, although important, is not enough. An organisation needs to understand just what its intellectual capital consists of, and then not just how to safeguard it, but also to commercialise it. And would-be investors need to understand this too.

Deciding which assets to retain, protect and then commercialise at the start of a new venture – or even further down the line - needs careful consideration. Intellectual capital is not just about patents and other formal IP such as trade marks, designs and copyright. A company's value is contained in its wider intellectual capital, where know-how, branding, skills and processes all have a part to play. Ideas and inventions provide a company's heart beat, but it is the wider intellectual capital that drives growth and sustainability.

For example, do your company's employment contracts stop those you recruit taking ideas to a competitor? Are their ideas and processes core to your business proposition? If your suppliers are developing novel material for you, do you own the arising intellectual property? Many organisations do not realise that intellectual property is part of a much larger piece of the jigsaw known as intellectual capital which includes workforce skills, business processes, customer and business relationships, branding, reputation and the know-how of employees.

Surveys show that awareness of IP issues and the best way of harnessing them to the benefit of the company is still very low in the boardroom. And the Intellectual Assets Centre in Scotland has undertaken studies that show that Scottish organisations are sitting on billions of pounds of unrealised IC assets. Another threat is a growing band of organisations willing to try to exploit those who do not look after their property, as in recent cases where Scottish companies were asked to pay thousands of pounds by a team claiming they had the rights to their company name.

However, some smart investors are starting to understand the value of intellectual capital and the importance of ensuring the robustness of the IP as part of their investment decisions. Oxford Capital Partners (OCP) is a science and technology venture capital firm with extensive experience of investing in and supporting businesses with high growth potential, on behalf of institutional and private investors. OCP looks for the best opportunities, backing exceptional entrepreneurs and investing across all stages of development, from start-up to IPO. Its focus is on emerging science and technology and its expertise lies in accelerating

businesses with potential for high growth in global markets.

OCP presently manages four Oxford Gateway Funds and oversees a portfolio of over 25 companies in a range of technology sectors, including ICT, clean technologies, life and physical sciences. The investors in its funds are both private and institutional, from the UK and around the world.

As part of its due diligence process OCP commissioned Collier IP Management to undertake an IP audit of a biotechnology business seeking funds for its proposed business expansion plans. The work consisted of assessment of the IP landscape associated with the business's inventions; establishing whether or not there was freedom to practice; reviewing and assessing business processes for IP capture; and highlighting any putative inventions for protection to underpin commercialisation plans.

The findings were that there is an increasing level of activity in the area, encompassing small start-ups through to large multi-national corporations. However, based on published information, the IP being developed occupied its own 'IP space' and was sufficiently novel (i.e. the potential for generation of differentiated IP) to have the prospect of generating patentable inventions that will protect and support the commercial goals of the company.

In addition, Collier IP Management recommended a number of activities in support of the biotechnology company's commercialisation plans, which needed to be addressed in order to align and secure its IP. "The IP due diligence gave us a better understanding of the activity in the specific area and helped us to come to a more fully informed investment decision" said V Christou, Investment Manager at OCP.

Not only investors, but also some banks are now starting to approach investing in start-ups from a venturing perspective, as they realise that the vast majority of corporate value today is represented by intangible assets. A patent can give more than exclusivity on sales – if done well, IP protection can be a revenue-generator.

In many instances when working with clients we have found that the due diligence process has unearthed exciting development opportunities for companies that have subsequently received funding. Where necessary, any issues relating to competing IP, technologies and processes have been flagged up early for prompt resolution between the investors and companies concerned.

Patent offices are getting busier, as the number of patents an organisation has is increasingly seen as a sign of the value of a company. There has been a surge in patent applications over the past decade. 1,660,000 patent applications were filed in 2005 showing an increase of around 5% year on year since 1995. 80% of a company's value is now in intangible assets and new financial rules are forcing companies to recognise this value on the balance sheet.

The trend is not just in the west – there was a 33% rise in applications filed through the China Patent Office making it third national rankings, with Japan and US taking pole position. Interest in protecting IP is happening at a time when the UK's manufacturing base is also transferring to Asia, placing even more emphasis on industry staying one step ahead and protecting its ideas and inventions if it is not to lose out.

An invention may never actually get to the stage where it is commercially

exploited but the mere fact of having applied for what is shown to be valid and robust patent demonstrates to potential investors not only that an organisation has ideas but also the business acumen to know how to protect them. It often shows up an R&D pipeline that is not obvious on an organisation's balance sheet.

IP on its own however, can, in fact, be a potential liability if it leads to inventorship disputes or expensive patent litigation. In developing IP, market issues need to be factored into the process to guide and inform key IP decision-making steps.

So what should organisations do to ensure that they are fully protected and are commercialising their IP effectively? Organisations trying to value their IP portfolio often turn to outside IP specialists to help. The best of these organisations will undertake a range of activities, including checking that patents are enforceable and that an organisation can maintain and defend them. Clever patenting can provide many benefits, including an incentive to investors and a deterrent to competitors, and ultimately company survival and success.

We recommend that they build an IP portfolio not in isolation but factor in market issues; that the CEO/CFO takes a strong lead in understanding how IP protects and how its value can be built and optimised – ie not left to company technologists or legal department. Senior management needs to realise that IC is the lifeblood of their company.

Many people think of intellectual property being made up of patent protection, copyright and the like. However, if broadened out to include intellectual capital and intellectual asset management, a company can not only protect its ideas and products from infringement but can actively commercialise these so-called 'intangibles' and put a real value on them – vital when raising finance, entering into partnership agreements or when engaging in investor due diligence for venture capital, M and A activity or a company sale.

Protecting and marketing your assets need not be difficult or even expensive. If integrated with the business plan right at the start, IP will emerge as a valuable asset and a start-up or small business can trade safe in the knowledge that its core products, ideas and services are not at risk. Taking steps to protect their intellectual property is something that many companies think they will get round to later - and never do. Yet, if done early on, it can save a great deal of heartache - and possible insolvency.

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