

INTELLECTUAL PROPERTY RIGHTS MANAGEMENT

Rookies, Dealers, Strategists and Strategic Dealers

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Intellectual Property Rights Management

Rookies, Dealers, Strategists and
Strategic Dealers

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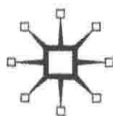
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Foreword

The management of intellectual property and other intangibles as business assets has been evolving over the past 20 years. During that time my own career has involved working with companies to define, enhance, and apply best practices relating to intellectual property management (IPM).

The year 2014 marks the 20th anniversary of the founding of the ICM (Intellectual Capital Management) Gathering, an informal group of managers utilizing corporate intangibles as business assets. These companies have been meeting three times per year to share new ideas, processes and capabilities relating to IPM. The group, initially formed for knowledge-sharing, pioneered the creation and implementation of many of the commonly accepted IP management methods and techniques in general use today. The list includes: dealing with IP and other intangibles as business assets (not solely as legal assets); relating the IP strategy to the company's business strategy; defining value and valuation characteristics of intangibles, such as recognizing that they may generate multiple, simultaneous value streams, or that a patent may be viewed as an option on a potential value stream, not necessarily only as a generator of a unique value stream.

Intellectual property continues to be a hot topic in the business community, if not the academic community. Patent lawsuits and their business implications are constantly in the news. Increasingly, sophisticated businesses are finding new and compelling ways to use their IP as a competitive business tool. Intellectual property has now increased sufficiently in importance to have become one of the focal points of national policy disputes between and among nations. All of this may cause one to ask why, if IP is so important, is it not the focus of university teaching and academic research?

This book explores that very question. It provides the introduction and fundamental concepts necessary to understand how businesses may use their IP for competitive advantage. The authors would like to create a reading audience that is capable of understanding those concepts and is interested in applying them to their own business right away.

The past 20 years has seen a large body of knowledge evolve around the management of intangibles and specifically IP. Given the continued interest and focus of the ICM Gathering, there is still much ground to cover in finding new, interesting, and profitable ways for companies to use their intellectual property to create strategic and tactical competitive advantages. I hope readers find the ideas in this book stimulating and that they provide a pathway to a brighter business future.

Suzanne Harrison

Author, Edison in the Boardroom book series

Partner Percipience, LLC

Preface

Intellectual property (IP) rights management is receiving increasing attention among scholars as well as business managers. There is a growing body of published research on IP management, and the topic is no longer just a small part of existing courses such as industrial economics, strategy or law, but has emerged as a full course in its own right, either as part of a larger required educational syllabus or as an elective in a specialized program.

Among the main reasons for the growth in interest in intellectual property rights is undoubtedly the fact that a greater proportion of firms now operate with IP and pursue activities that are IP related. Such activities are no longer the preserve of a few large organizations: small and medium-sized firms are also seeking to reap the potential benefits of IP. Managers have realized that IP may solve many of the challenges they face, but once they venture into the world of IP, they quickly discover that IP management is by no means a simple voyage.

This book provides insight and advice on how firms can consider and manage IP-related issues. The authors do not make any positive or negative normative statements regarding IP; rather, their goal has been to assess the role of IP from an objective perspective. Thus, the book puts forward arguments in favor of and against the use of IP as an instrument for overcoming challenges and obstacles in business. The aim has been to furnish an understanding of the virtues and limitations of IP and to offer the reader an appreciation of its many facets.

The authors hope that readers will find the book useful for making informed decisions in relation to their IP conduct. IP is a strategic matter and can be thought of as an integral part of a firm's overall strategizing. Yet there are also circumstances in which IP should not be considered part of a firm's management activities. This book will consider the circumstances under which firms are able to pursue IP successfully. It will also present finer and more elaborate analyses of the different ways firms can consider using IP strategically.

The book builds on empirical data drawn from extensive interviews, workshops with patent lawyers and practitioners, register data at the firm and the individual level, and IP registrations covering not only the usual suspects, such as patents, but also design rights, copyrights, trademarks and utility patents. The authors have kept the details of the analytical investigations to a minimum, with the aim of making the book more accessible to researchers new to the field. We believe that the book can be used as a primer for courses at all levels at higher education institutions, but we suggest combining it with more research-oriented literature at advanced levels of education. We also believe that the book will be useful for managers already engaged in firms or in IP management as the book makes some practical recommendations and observations with regard to the considerations the IP manager might need to take into account. Moreover, the book can serve both teaching purposes and a more general readership because it presents a taxonomy of firm archetypes with regard to IP management. By identifying with a particular archetype, a firm may be able quickly to assess some of the IP challenges it is facing, and their potential solutions, and act accordingly.

We believe that the book's strength lies not only in the extensive data analysis in which it is grounded, but also in the multidisciplinary nature of the discussions. The book does not pursue a single paradigmatic way of thinking; rather, it crosses disciplinary boundaries to provide a more elaborate picture of IP-related issues. An open-minded reader will recognize this breadth and hopefully be intrigued by the novelty of this approach.

Acknowledgments

In writing this book, we have benefited immeasurably from the support and thoughtful comments provided by many people, whom we wish to thank here. Their encouragement, informed feedback, valuable suggestions, constructive criticism, project management expertise and practical understanding of corporate IP are echoed in this book.

We are particularly grateful to two people without whom this project would never have taken shape. Jesper Kongstad (Director at the Danish Patent and Trademark Office) and Mads Lebech (CEO of the Danish Industry Foundation) strongly supported the need for academic input into a project seeking to create greater awareness among business managers of the potential and difficulties associated with managing IP, and they encouraged the inclusion of this work as part of the “IPR Turnaround Projects” (see <http://www.industriensfond.dk> and <http://www.boostyourprofit.org> for more information).

We owe special thanks to Marie Friis Madsen and Camilla Hjerminde for their insightful comments and critique, for the many discussions along the way and for organizing the interviews and feedback sessions with the project participants. Marie, Camilla and the team at the Danish Patent and Trademark Office have been instrumental in adding detail and richness to the contents.

From the very beginning we have been fortunate to have Suzanne Harrison advising us on the content and structure of the book. We would like to thank her for her valuable insights and comments, which have made the book much more compelling, and an easier and more thought-provoking read.

Over the past two years, we have also been privileged to have a steering committee following and commenting on the progress of our work. It has been a pleasure to work with Frank Petersen, Ulla Klinge, Jakob Krag Nielsen, Jesper Kongstad, Birgitte Krejsager, Lars Holmegaard and Søren Salomo from the early drafts of the research design to the full draft of the manuscript. The steering committee provided critical and straight-to-the-point suggestions for shaping the book and offered views and visions that have benefited us greatly.

The qualitative data for this book were gathered by many very insightful patent and trademark agents together with highly skilled IP consultants from the Danish Patent and Trademark Office. Reading and analyzing their semi-structured interviews has been delightful and inspiring, and has provided us with many details on IP and IP-related issues. We extend our thanks to them for being a part of the project and for participating in the workshops. Their inputs have been instrumental in forming a more comprehensive overview of how IP is really managed among managers and agents. We hope that they find their wisdom has been presented well in the book.

We would also like to thank our colleagues in the Department of Innovation and Organizational Economics at Copenhagen Business School for their comments on the ideas presented in this book, and for supporting us in undertaking the burden of this large research project. Special thanks go to Lee Davis for her comments on the full draft of the manuscript and to Jesper Lindegaard Christensen for his comments on earlier drafts.

Finally, we include the usual disclaimer that even though we have benefited tremendously from the help of others all remaining errors are our own.

Contents

<i>List of Figures</i>	ix
<i>List of Tables</i>	xi
<i>Foreword</i>	xii
Suzanne Harrison	
<i>Preface</i>	xiv
<i>Acknowledgments</i>	xvi
1 Introduction	1
What is IP?	2
Patents	3
Trademarks	4
Copyrights	5
Design rights	5
IP management	6
Why do it?	8
Strategy and IP	9
Aims and objectives of the book	12
2 IP Archetypes: Rookies, Strategists, Dealers and Strategic Dealers	16
Combining IP management practices	18
Why do firms adopt IP practices in bundles?	18
Creating a taxonomy of IP management	20
Identifying archetypes	21
Exercises	32
3 The IP Rookie	33
Meet the Rookie	33
IP resources	35
IP processes	36
Experiences and narrative of IP	39
Aims and goals	42
Next steps for the Rookie	43
Exercises	45

4	The IP Dealer	46
	Meet the Dealer	46
	IP resources	48
	IP processes	50
	Experiences and narrative of IP	52
	Aims and goals	54
	Next steps for the Dealer	54
	Exercises	56
5	The IP Strategist	57
	Meet the Strategist	57
	IP resources	58
	IP processes	59
	Experiences and narratives of IP	62
	Aims and goals	64
	Next step for the Strategist	64
	Exercises	66
6	The IP Strategic Dealer	67
	Meet the Strategic Dealer	67
	IP resources	69
	IP processes	70
	Experiences and narratives of IP	76
	Aims and goals	78
	Next step for the Strategic Dealer	79
	Exercises	81
7	IP Strategy	82
	Overview	82
	Scope, direction and dimensions of an IP strategy	83
	The role of IP	83
	Dimensions of an IP strategy: a taxonomy	87
	Objectives: why do firms utilize IP?	88
	Patent strategy	92
	The patent basics	92
	Who patents?	92
	IP archetype and patents	100
	Why patents?	101
	Technology	102
	Timing	103

Geography	104
Trademark strategy	107
Why trademark?	110
IP archetype and trademarks	112
Types	115
Coverage	116
Geography	117
Implementing a trademark strategy	118
Design strategy	119
Why design rights?	119
IP archetype and design registration	123
Design rights	125
Geography	126
Timing	126
Copyright strategy	127
Basics of copyright	127
Types of protection	128
Geography	129
Trade secret strategy	129
Basics of trade secrets	129
Why trade secrets?	130
Scope of trade secrets	131
Enforcement strategy	131
How widespread are patent violations and counterfeits?	132
Preparing enforcement: the enforcement hierarchy	133
Surveillance	134
Preparing IP instruments for the battle	134
Ensuring identification and tracking own products	135
Establishing cooperation with authorities	135
Reactions against product piracy	136
Customs actions	136
Civil and criminal litigation	137
Conclusion	137
Exercises	137
8 Markets for IP	140
Introduction	140
Incentives of supply and demand	143

Securing direct rents	144
Infringement and product launch	145
Creating partnerships	146
Securing an innovation edge	147
Not so easy	149
Markets for IP and the archetypes	152
Exercises	153
9 IP Archetypes and Demographics	155
Introduction	155
Mechanisms leading to similarity in practices across firms	157
Isomorphism	157
Heritage of practices	158
Market selection	159
Resource driven similarity	160
Empirical similarities across dimensions	160
Industry	161
Geography	162
Internationalization	163
Firm size	164
Firm structure	168
Human resources	169
Conclusions	172
Exercises	173
10 IP and Economic Performance	176
Introduction	176
IP and economic performance	179
Descriptively	181
Econometrically	184
Causal inference	186
Summary and conclusion	189
Exercises	190
<i>Index</i>	191

List of Figures

1	Descriptive statistics of questions 1–6 used for identifying archetypes	24
2	Descriptive statistics of questions 7–8 used for identifying archetypes	25
3	Scatter plot between the two dimensions of IP management	28
4	Elements of an IP strategy	88
5	How firms use and combine IP rights	90
6	Percentage of firms (in)active in any IP registration (2000–2010) divided by firm size	91
7	Percentage of firms active in any IP registration (2000–2010) divided by industry	91
8	Percentage of firms active in patenting (2000–2010) divided by industry	94
9	Percentage of firms active in patenting (2000–2010) divided by firm size	95
10	Turnover, productivity, firm size, and exports, compared to annual patent applications	95
11	Turnover and exports per employee compared to annual patent applications	96
12	Percentage of firms active in patenting (2000–2010) divided by IP archetypes	100
13	Distribution of patent applications by number of countries	105
14	Skewness of patent value	106
15	Percentage of firms active in trademark registration (2000–2010) divided by firm size	111
16	Trademark registrations and firm size (employees and turnover)	111
17	Trademark registrations and firm size, (a) exports, (b) productivity, and (c) turnover per employee	113
18	Percentage of firms active in trademark registration (2000–2010) divided by industry	113

19	Percentage of firms active in trademark registration (2000–2010) divided by IP archetype	114
20	NICE classifications per trademark	119
21	Number of countries per trademark	120
22	Number of annual design registrations	121
23	Percentage of firms active in design registration (2000–2010) divided by industry	121
24	Percentage of firms active in design registration (2000–2010) divided by firm size	123
25	Firm (a) size, (b) productivity, and (c) turnover correlated with design applications	124
26	Percentage of firms active in design registration (2000–2010) divided by IP archetype	125
27	The enforcement preparation hierarchy (2010)	134
28	Share of firms that export across IP archetypes	165
29	Mean share of revenues from exports across IP archetypes	165

List of Tables

1	Loadings showing how the eight questions contributed to the two identified dimensions of IP management	26
2	Distribution of firms across archetypes	29
3	Archetype characteristics	31
4	Overview of the Rookie	43
5	Overview of the Dealer	55
6	Overview of the Strategist	65
7	Overview of the Strategic Dealer	80
8	Top 10 international patent applicants in 2012 and 2006	93
9	IP archetype and average number of patent applications	101
10	Most valuable trademarks, 2012	107
11	Top 10 trademark registrants in the US in 2012	110
12	Number of trademark registrations across archetypes	114
13	Number of design registrations across archetypes	124
14	Countries in which the author can benefit from copyright registration	128
15	Revenues across archetypes	167
16	Employees across archetypes	167
17	Relative number of managers across archetypes	169
18	Number of scientific employees across archetypes	171
19	Number of employees with a law degree across archetypes	172
20	Number of employees with an engineering degree across archetypes	173
21	Descriptive statistics on firm performance across IP archetypes	182
22	Results of regression against firm performance	185
23	Results of performances across matched samples	188

1

Introduction

Abstract: *The creation and usage of intellectual property (IP) is central to a wide variety of firms. Firms engaged in new technologies or other intangible assets often find it difficult to reap the rewards of their efforts, not least because of competitors imitating or copying their products. IP is a useful tool for avoiding these infringements, for protecting ideas, for investments and for the future of the firm. However, IP is not only useful for gaining or retaining market share. It may be used as a directly tradable asset or as part of the firm's strategy to increase competitiveness or positioning in a variety of markets. An IP strategy is a crucial element in the overall strategy of the firm, which addresses marketing, production and sales. The number of IP registrations is increasing globally. IP is hence increasingly relevant to a firm's ability to operate efficiently and satisfactorily. This chapter argues for the relevance of working with IP as part of the firm's strategy. The objective and outline of the book is presented in the closing section.*

McDonalds does it, Sony does it, Johnson & Johnson does it, not to mention Honda Motor Company and L'Oreal, who also do it. Large firms do it and small firms do it. Old established and newly founded firms do it. Firms in all sorts of industries do it, as do individuals, both men and women. Universities, agencies, committees, and public and military organizations also do it. It is a widespread activity that transcends institutional borders and barriers. These days it is hard to read a newspaper without hearing about it. The creation and utilization of Intellectual Property (IP) has become common in today's world and is here to stay.