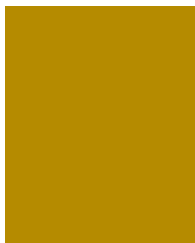


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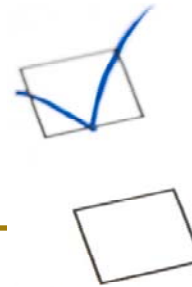
The Emerging Intellectual Property Marketplace And How Businesses Can Benefit From It

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Overview

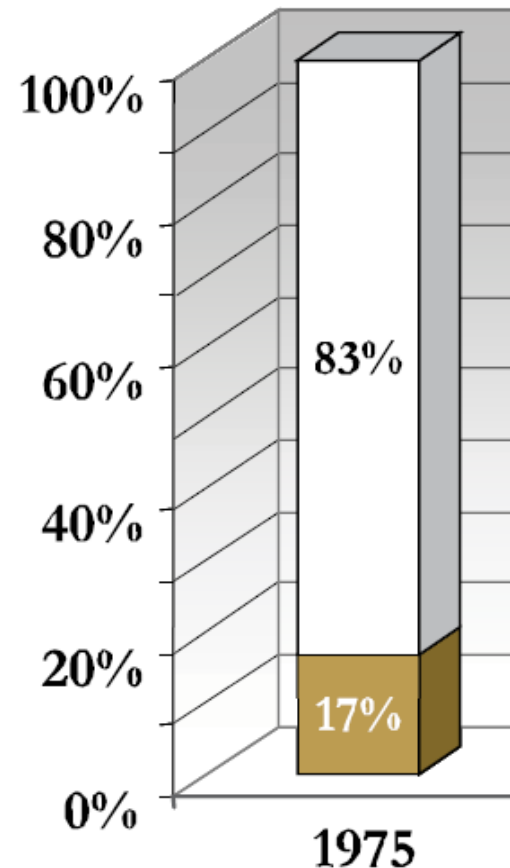
- Introduction – Value of Intellectual Property (“IP”)
- What Is IP Monetization?
- Why Is IP Monetization Happening Now?
- How Is IP Monetized?
- Who Is Driving The IP Marketplace?
- What Does All Of This Mean?

Value Of IP

- Value of IP has turned corporate America upside down
- 1975 - intangible assets such as patents and other IP accounted for 17% of a corporation's value

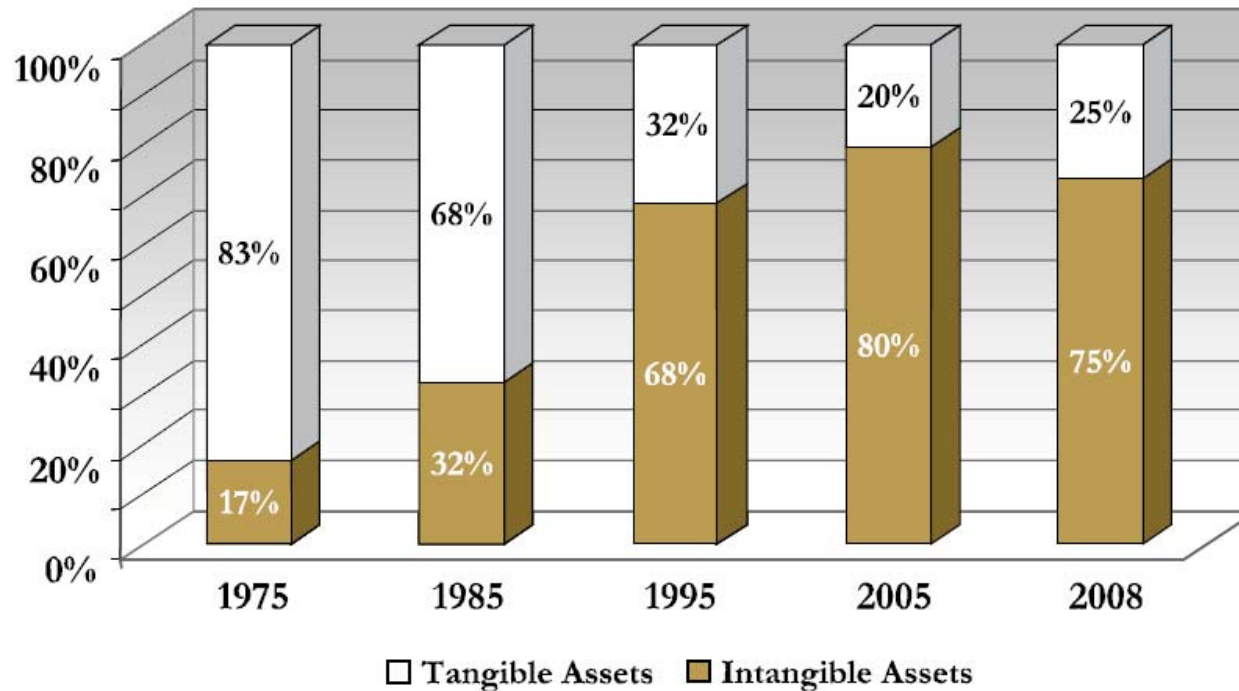
□ Tangible Assets ■ Intangible Assets

Source: Ocean Tomo



Value Of IP - Economic Inversion

Components of S&P 500 Market Value



Source: Ocean Tomo

Value Of IP (continued)

- Much of corporate America still trapped in upside-down 1975 thinking about the treatment of IP
- **1975:**



Value Of IP (continued)

- Forward thinking, IP-savvy businesses have embraced New World IP Marketplace
- Sprinting out ahead of competitors in IP Marketplace
- **2009:**



New World IP Marketplace

- Growing daily 
- Emerging as entirely new asset class
- Driving global economy
- Far more developed than many realize



New World IP Marketplace (continued)

- **GOAL:** Assist businesses to shed 1970s mindset towards IP
- Catch up to the New World IP Marketplace



What Is IP Monetization?

- IP Monetization is deriving revenue directly through an intellectual property asset:
 - most commonly a patent
 - sale
 - licensing
 - collateral



What Is IP Monetization? (continued)

- Hallmark of IP Monetization:

Treating IP itself as a stand-alone asset that generates revenue independent of the products protected by the IP

What Is IP Monetization? (continued)

- IP has tremendous economic **value**
- “A 2002 survey of the Fortune 500 companies estimated that anywhere from 45% to 75% of the wealth of individual companies comes from their Intellectual Property Rights.”

(Source: “Assessing the Value of a Patent: Things to Bear in Mind,” by Ian Cockburn, World Intellectual Property Organization, http://www.wipo.int/sme/en/documents/valuing_patents.htm)

What Is IP Monetization? (continued)

- Intangible assets, including IP, good will, and market knowledge, have increased in value from approximately 17% of the value of S&P500 companies to nearly 80% in 30 years. (Source: 2005 Ocean Tomo whitepaper: www.claymore.com/docs/wp_oceantomo.pdf)
- Business world becoming increasingly aware of the immense value of IP
- Savvy businesses already selling and acquiring IP for strategic purposes

Why Is IP Monetization Happening Now?

- History Of IP
- New Era Of IP
- Research & Development (“R&D”)
- The Result



History of IP



- Prior to the 1980s, the U.S. patent system had grown relatively weak
- Enforcement of patents very difficult
- In some cases, patents stridently ignored by infringers who took advantage of difficulty in enforcing patents in litigation

History of IP (continued)



- Congress recognized paramount importance to the U.S. economy of strong patent laws
- Created centralized appellate court in 1982 – the Federal Circuit – for all patent suits
 - Primary purpose to strengthen U.S. patent laws
 - Also created to harmonize application of patent laws throughout U.S. and prevent forum shopping

History of IP (continued)

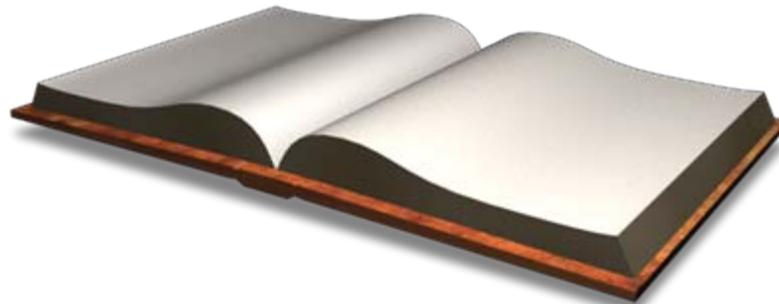


- It took until the mid-1990s for the patent system to be rehabilitated and for corporate America to regain confidence in the patent system
- Late 1990s, with the birth of the dot-com era, marked a tipping point in the IP marketplace
- 1998: Business method patents recognized
- Created entirely new class of patents
- U.S. Supreme Court reconsidering business method patents right now

New Era Of IP



- Two seminal books heralded new era of IP:
 1. Rembrandts in the Attic, by Kevin G. Rivette and David Kline (1999)
 2. Edison in the Boardroom: How Leading Companies Realize Value From Their Intellectual Assets, by Julie L. Davis and Suzanne Harrison (2001)



New Era Of IP (continued)



- These books:
 - Assisted executives to understand that IP is not just a patent that collects dust on a shelf
 - Introduced idea of IP as an asset to larger audience
 - Shined a light on companies like IBM and TI that use IP as a major source of revenue
 - Treated IP as a competitive field no different from that traditional fight over raw materials or market share with other companies

New Era Of IP (continued)



- Non-practicing entities (also called “Patent Trolls”) brought the concept of IP monetization to a whole new level
 - Brought IP monetization to the door steps and balance sheets of businesses throughout the U.S.
- Non-practicing entities (discussed later) are at the forefront of driving the IP Marketplace

New Era Of IP (continued)



- Ocean Tomo Splash
- Ocean Tomo held first live IP auction in San Francisco in 2006
- Brought interest in monetizing IP to new levels
- Sold over \$100 million from auction floor since 2006
- Only tip of iceberg in terms of all IP monetization transactions

New Era Of IP (continued)



- In the last ten years, companies have become more focused upon protecting IP
- Increased globalization leaves IP as one of few competitive advantages in U.S.

New Era Of IP (continued)



- Realization that much of IP is not used
 - Companies change products, change designs, change business strategies
 - Some IP that has coverage over several industries but may only be used in a single industry
 - Some IP has broader coverage than the IP owner needs
 - Underutilized asset

Research & Development



- Companies will seek out to acquire existing IP rather than start from nothing
 - R&D is **risky**
 - R&D is **expensive**
 - R&D is **unpredictable**

Research & Development (continued)



- R&D may result in nothing
- Difficult to know when breakthroughs will occur in R&D
 - Fraught with legal traps
 - Accidental disclosure in a research paper, presentation, or marketing effort may eliminate the chances for patent protection
 - Contractors, prototype manufacturers, suppliers are potential sources of accidental actions harming patent rights

Research & Development (continued)



- R&D risk creates a **demand** for existing IP
 - Buying IP eliminates much uncertainty
 - Buyers can evaluate the breadth, strength, and invalidity risk of the patent
 - Buyers can also find potential infringers before spending anything on the invention

The Result



- Increased supply, increased demand, high value, opportunity for reduced risk, and increase in options
- Increased market **liquidity**
 - Companies can now free up capital in underused assets more easily
- Market has emerged for the exchange of IP
- The mindset towards IP is slowly evolving

Old Mindset



- LITIGATION DRIVEN!!

New Mindset



- Create liquidity
 - Efficient market
 - Openly traded exchange
-
- **CLOSER THAN YOU REALIZE!!!**



How Is IP Monetized?

- What Are The Vehicles Of IP Monetization?
 - Private Transaction
 - Private Broker
 - Private Auction
 - Public Auction

Private Transaction

- Direct transaction between the buyer and seller
- Conventional vehicle familiar to corporate America



Private Broker

- Sophisticated broker assists in valuation and finding potential buyers
- Key role of broker is finding the buyer
- Corporations do not typically entertain unsolicited offers for IP, but brokers provide an “in”

Private Auction

- Typically involves private broker
- Helps avoid disagreements over valuation
- May improve a selling price
- Good option when the potential buyers are known
- Appealing to bidder because veiled in secrecy

Public Auction

- Ocean Tomo and some others
- Ocean Tomo's auction business sold this summer to ICAP
- Public auction is favorable when the potential buyers of a patent are unknown



Publicly Traded Exchange

- On the IP horizon
 - IPXI
 - Others coming



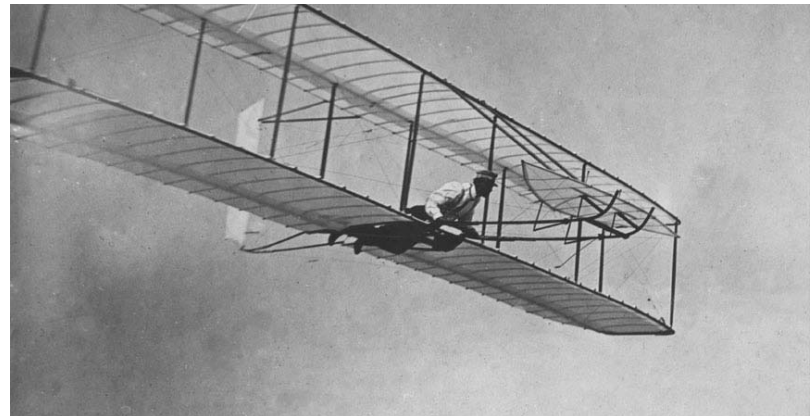
Who Is Driving The IP Marketplace?

- Forward-Thinking Businesses
- Non-Practicing Entities
 - Also Called Patent Trolls
- Patent Aggregators
- Private Investors

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Defining An NPE



Defining An NPE (continued)

- NPE term coined by the Federal Trade Commission in a 2003 report
- Also referred to as Patent Licensing and Enforcement Companies (“PLECs”) or “patent trolls,” which is considered pejorative by some
 - Several judges have banned use of the term “patent troll” during trial
 - Phrase coined in 2001 by Peter Detkin while an Assistant General Counsel at Intel

Defining An NPE (continued)

- An NPE is commonly defined as an entity that acquires ownership of patent rights to technology that it does not practice, exercising ownership rights to generate revenue from these patents through royalties received by settling patent litigation
- Some argue that universities also fall into the NPE category, although this inclusion becomes somewhat difficult given that universities expend resources to develop the patented technology

Defining An NPE (continued)

- The more famous (or infamous depending upon one’s perspective) NPEs include:
 - Lemelson Foundation
 - Ronald Katz
 - Data Treasury
 - Acacia
 - Pangea
 - Eolas
 - NTP
 - Saxon
 - Rembrandt IP
- And the “constellation” NPEs including entities named after constellations such as Orion, Taurus, and Gemini

Defining An NPE (continued)

- NPEs often acquire patents with broad claims covering technology used throughout certain industries, and often related to internet-based technologies
- The Wright brothers might have been regarded as NPEs given their delay for several years in commercializing the airplane while at the same time charging what were regarded as exorbitant license fees that stunted the growth of the new airplane industry
- *Unlocking the Sky: Glenn Hammond Curtiss and the Race to Invent the Airplane* by Seth Schulman provides an informative historical analysis of the Wright brothers' patent battles

Defining An NPE (continued)

NPE Name	Total Cases	% since 2003
Acacia Technologies	319	78%
Rates Technology Inc	134	31%
Millennium LP	101	91%
Cygnus Telecommunications Technology LLC	69	45%
General Patent Corp International	66	55%
Plutus IP	65	100%
Papst Licensing GmbH	60	53%
F&G Research Inc	56	91%
Catch Curve Inc	54	69%
Ronald A Katz Technology Licensing	54	89%

Source: PatentFreedom © 2009 Data captured as of January 1, 2009

Defining An NPE (continued)

- Common theme to all NPEs is that they are driven by money rather than protecting market share or other competitive reasons
- Interesting phenomenon: NPEs deter foreign companies from entering the U.S. market with technology



Patent Aggregators

- New phenomenon
- Rose to prominence during last 18 months
- Acquire IP assets for a variety of reasons
 - Licensing
 - Technology incubators
 - Defensive purposes
- Examples
 - Intellectual Ventures
 - RPX
 - Allied Security Trust

What Does All Of This Mean?

1. Adjust IP Strategy Going Forward

- Consider creating IP for sole purpose of monetizing
- Consider strategic acquisitions of IP
- IP is one of the last competitive edges in the U.S.



2. Conduct An IP Audit To Understand Your IP

- Do not wait until the patent maintenance fees are due



What Does All Of This Mean? (continued)

3. IP Clearance More Important Than Ever!

- IP enforcement is now super charged
- Catastrophic to those caught in the 70s mindset



4. Think In The Now!!



Think In The Now About IP Monetization!!



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Questions



Thank you!

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* Special thanks to Mark Lemke