Divining The Future Of Intellectual Property

By Richard C. Bulman, Jr.

"There is nothing more powerful than an idea whose time has come." Victor Hugo's notion was never more true than with the emergence of the commercialization of intellectual property ("IP"). Long illiquid, IP is becoming monetized at a decidedly rapid pace, foreshadowing a rare opportunity to participate in recasting the role of the Idea Business in ways never before seen.

A Time Of Change

The intrinsic value of technology has morphed over the past 25 years. Traditionally, if a person or company desired new technology, it would be developed in-house or acquired from others and used for internal purposes to make or do something useful. IP, at that time, was valued primarily as an incidental part of that desired commercial process. With the advent of the personal computer in the 1980's, people began to use technology for individual as well as commercial purposes. Licensing technology for personal use became a conventional norm, transitioning technology from an integral part of a production process into a commoditized product. During the dotcom era, IP fully reversed its historical role. Instead of being incidental to a product, or a product to be sold on its own, IP became a driver of value when its worth imbued both product and use components derived from related sales, advertising, customers and collaborations. Just exactly how much value inured to any one technology firm because of stellar IP was regularly determined by both stock exchanges and bankruptcy courts. When operating and liquidation values regularly included "two comma" technologies (i.e. _,000,000) someone got the keen idea that IP assets might be ripe to exploit on a standalone basis.

Horizontal Lines

From this rather modest debut came the dramatic shift now occurring in the way people are thinking about, creating, managing and harvesting intellectual property. It's a trend certain to revolutionize the entire Idea Business and to shake the foundations of every institution with a finger in the IP pie. One need only look at a few of the parallel developments to perceive the breadth of the overall trend:

- **IP Contingency Cases.** Raymond Niro, Sr., (dubbed by some as the "Original Patent Troll") sues patent infringers. His actions are seen by some as organized extortion. Others view his privatized enforcement process as a logical means to level the playing field for small and large competitors. By legally forcing competitors to confront potential and actual infringement, Niro, and others like him, compel industrial recognition of IP worth and compel free trade through multi-million dollar licenses and settlements.
- **IP Funds.** Nathan Myhrvold, former Microsoft chief technology officer, created Intellectual Ventures, a private equity fund and hothouse, to develop and acquire a patent portfolio for license and sale to other companies. In the process he took dead aim at old school leaders like IBM who took decades to develop and harness IP for self-use. His approach may well be the new model for the industrialization of IP and should help pave the way for developers to create, companies to commercialize, and consumers to buy new and improved products through many new and better funded IP vendors.
- **IP Systems.** Over the past five years a substantial volume of patents have been filed involving business methods to identify, process, value, package, license and sell intellectual property assets. Most recently, Wall Street financiers have been hard at work filing business method patents in large numbers, ostensibly to recognize banking advances, but as likely to proffer defenses in the case of future infringement claims. This shift underscores the institutional acceptance of intellectual property asset commercialization and illustrates the vision being employed to build a new industry.
- **IP Auctions.** In April 2006, Ocean Tomo, a self proclaimed Chicago-based intellectual capital merchant banc, conducted the first-of-its kind auction where batches of patents were sold in a systemized way. This market-based ap-

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proach to the sale of IP portends the commoditization of IP and may serve as the core of a new exchange system for global IP distribution.

- **IP Insurance.** Companies like Allianz, AIG, Chubb, Gerling and certain subs of Lloyd's are offering insurance to help protect against challenges to IP authenticity or infringement. These products help to reduce risk and make it possible for investment to occur by institutional players in IP commodities—who will not commercialize IP for their own uses—but use them to create and sell novel financial instruments.
- **IP Securitizations.** In May 2006, KCD IP closed what was billed as the largest trademark securitization—$1.8 billion worth of notes—where money was paid for the right to receive future royalties from standardized trademark contracts. This event demonstrates the proven market appeal of IP as a commodity in global financial markets and paves the way to offer asset-backed financial instruments using patents and licenses.

Vertical Picture

It is the very existence of these trends, and their convergence, that broadly supports the proposition that the touted Knowledge Economy is truly materializing. The patent production of institutions is dwarfing those of sole inventors. IP investments, previously made with a view toward internal use, are now being made for external sale. Patents, long the province of science and technology, are now multiplying in the service sphere. Avenues for IP licensing and sale are becoming widespread. Most importantly, a clear outline of a global system of IP monetization is emerging, one that includes industrial and institutional support.

Enabling the development, marketing and sale of IP assets to become financially mainstreamed will dramatically change the Idea Business. Not only will standards emerge governing the ways IP will be catalogued, distinguished, valued and packaged, but such a consensus will facilitate the ability of IP to be monetized through institutional investment vehicles. Some surmise that IP may be offered for sale and exchange in ways mirroring the present global mortgage banking system. Such a process would permit IP instruments to be offered for sale on primary and secondary financial markets, and held and managed for the benefit of individuals and institutions in financial portfolios like notes, bonds and other asset-backed securities.

The adoption of such a world view portends structural changes to the present IP world order. To be successful, a global IP monetization network will require critical mass for the performance of functions essential to enabling the development, commercialization, protection, marketing, financing, regulation and monetization of intellectual property. Key players in this process include IP inventors, developers, buyers, sellers, agents, communicators, evaluators, insurers, bankers, financiers, portfolio managers, professionals and regulators who will all need to work collectively to support and maintain such a system on a global scale.

Accordingly, individuals and institutions need to acknowledge that now is the time to consider reengineering their business approach to IP. The present "concept to market" IP methodology—from law firm patent prosecutions, to worldwide agency filing networks, to hit or miss IP marketing, to VC based tech company funding—will surely evolve and be supplanted. In its stead will exist numerous businesses only too happy to manage a place in this new world order at the expense of those who see the future as the past.

Some key industry segments and activities where diversification is likely to transpire:

- **IP Data.** Collecting myriad data streams to quickly and easily search potential patent conflicts, systematically filing patent applications and facilitating
- **IP Securitization.** Activities much like what Thomson and Thomson and Reed Elsevier and world agents now do, only with more process specialization.
- **IP Brokerages.** Facilitating the sale and exchange of IP assets and licenses within defined networks. Think Century 21 on a global basis.
- **IP Exchanges.** Establishing multinational exchanges of IP assets via license or sale and IP asset backed instruments. Precursors: the NYSE for stock or BMI for media.
- **IP Business Associations.** Facilitating the development of uniform industry standards and laws with new players. Stand-by industry groups like the Licensing Executives Society and the International Intellectual Property Law Association need to interact with NYSE, AMEX, NASDAQ, FTSE, SEC, NASD and other global associations.
- **IP Insurance Agencies.** Underwriting IP risk to permit more ready IP sale; reducing the cost of litigation-oriented IP products and adding coverage to more closely mirror U.S. title insurance

policies and prices. Allianz, Chubb and other IP insurance companies need to focus coverage and lower prices.

- **IP Analytical Services.** Providing IP valuation and risk services. Initiating global royalty tracking for licensing and investment purposes much like CONSOR does for trademarks or the Fed does for interest rates.
- **IP Consulting Services.** Advisory services to assist in the technical requirements of patent filings in emerging scientific areas. Similar to activities patent lawyers and agents now undertake, only using industry and technical professionals with cutting edge knowledge of scientific specialties.
- **IP Finance.** Providing money to companies one-to-one or through pools to help fund IP commercialization efforts. Much like what HSBC, Goldman Sachs and American Century now generally do for individuals, businesses and institutions and what Intellectual Ventures now does for inventors and companies.

Trepidations

If there is reluctance about the IP commercialization movement afoot, perhaps it's because of the fears that great wealth will get hoarded or misused. Today's patent trolls may create so much anxiety no one will push the envelope on patented technologies. With the Myhrvold's of the world, some predict the technology will be tied up in the hands of a few at the expense of the commonwealth. Should such systems reward application but not actual use, fewer incentives may exist for inventors to finalize usable technologies. Also, novelty may not be optimized but diminished with more people patenting less substantive ideas. IP rights sold as commodities may simply be lost in the shuffle or used defensively without public benefit. Finally, like the systemization of bubble gum sports cards trading, the fun may be lost, cheapening the creative opportunity for those most passionate about new ideas.

Clear Gains

Others view the influx of a new IP order as a beautiful thing. The playing field can be made more level. The threat of lawsuits may be just the impetus needed to enable more ubiquitous global licensing systems with standardized royalty models. Wealthy benefactors from ages past have directed great societal trends. Today's smart money investing in groundbreaking concepts can do much to create a fertile field for new advances and sustained economic growth. Creating more options for many more people to invest in technology reduces societal risk. Empowering and funding people on an international basis to develop, commercialize, exchange and harness technologies can improve our collective standard of living and enhance cross-border relations.

Opportunities Presented

Ditching today's piecemeal Idea Business for a new paradigm is like exchanging a backyard well for a community water system. It's the way of the future but change never comes easy. Today's IP visionaries are just beginning to realize the implications of their prophecy. Yes, industry models have been conceptualized, valuation methods are being employed and systems are being built. But the vision of a global system for IP monetization is clearly nascent and incomplete. Some pieces are conflicting. New stuff is bound to occur that will change the dynamic. As progress occurs in fits and spurts, there is plenty of room for innovation. For those in the Idea Business, it is clearly time to rise up and impact this process, to clarify the potential risks and rewards, and to help the future take shape in ways that may benefit us all. ■