



Intellectual Property - Value & Benefits

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Quick Overview

Key benefits of well managed Intellectual Property and Intellectual Assets

- deterrence of opportunistic competitors
- protection during critical start-up and market entry stages
- establishment of your ownership of rights
- creation of a legal instrument enjoying similar benefits to physical property
- a legally enforceable monopoly once rights are registered or granted
- a basis for negotiated licences, joint venture agreements, assignments of rights, venture capital, distributorships...
- an instrument to enable the licence or assignment of rights in markets you do not have the resources to exploit
- an ability to generate income by licensing technology and skill sets to unrelated fields to your primary business
- an appreciable asset which captures the value and outcome your R&D and marketing investments
- an effective tool facilitating the introduction of new products and product lines
- a better recognition and management of the assets in your business, including those important to the operation and functioning of your business.



Intellectual Property is a Business Tool

Intellectual Property (IP) is one of the most powerful, yet least understood, set of business tools.

It is versatile enough to be equally effective for individual inventors through to large multinationals. It encompasses a suite of tools which work best when selected and used appropriately – just as a carpenter knows when to pick up a hammer instead of a saw.

As a business tool its maximum effectiveness occurs when integrated with business plans and strategies, allowing it to work in parallel to the business direction to protect innovation, create options for business opportunities, and to gather value as an appreciating asset.

The booklet alerts readers to the potential of IP, its role as part of Intellectual Capital (IC), and how it is often used to advantage. Knowing this information will cause you to rethink how you

run your business, so as to extract and leverage additional value from your efforts and innovations. Are you aware of the additional opportunities you may have been overlooking?

Any business should review how Intellectual Capital applies to them and how it can be used to help grow the business. Capable experts with experience in this area, such as patent attorneys and IP professionals, are just as essential to a growing business as any marketing, accounting, or legal specialist.

Intellectual Capital

Simply, Intellectual Capital (IC) is the sum of both the IP and Intellectual Assets (IA) of a business

$$\text{IC} = \text{IP} + \text{IA}$$

Why do we hear so little of Intellectual Capital and Assets? Because it is not traditionally taught, and because they are hard to quantitatively measure – especially in monetary terms.

Of the two, IA and IP, Intellectual Property is the more active solution, allowing you to tailor specific solutions

to your changing needs. In contrast IA is more passive, representing assets that your business has created and accumulated; often essential to the continued functioning and well-being of the organisation, as well as frequently containing hidden opportunities for growth.

Intellectual Assets

A simple way to differentiate Intellectual Assets (IA) from Intellectual Property is to regard IA as being that part of the Intellectual Capital for which no formal registration process for protection exists.

Often overlooked, the Intellectual Assets quite often tend to be those aspects and qualities of a business which are associated with how it runs (and often how successful it is). How often have you heard of businesses falling apart or struggling when key personnel leave? Or when critical records are destroyed irreplaceably, such as in a fire?

Take a look at how your business runs. Consider how important some of these typical Intellectual Assets are to the day to day success and running of your business:

- customer relationships with individual staff (sales reps, reception staff, customer managers, etc.)
- your customer list and their preferences (ask yourself how damaging this would be



to you if your main competitor acquired this)

- key skill sets and experience of staff (are they replaceable, and how long would it take to train new replacements)
- trade secrets and processes giving your business a competitive edge
- the ability of your staff to function as an effective team
- the value to competitors if key staff moved to work for them
- new innovations, and the ability of the business to continue innovating



How vulnerable is your business to a loss of Intellectual Asswets? What would happen if key staff are no longer there? What would happen if important records and information that gives your business a competitive edge are destroyed? What steps have you taken to identify and protect these Intellectual Assets?

Personnel, their skill sets, and working inter-relationships are important to a business; after all a business without staff is just an empty building.

But so too are is the information and processes they develop, acquire, and refine. Are there mechanisms to ensure this expertise and experience is documented and able to be passed on to new staff members, or shared amongst existing members? Are their copies archived?

Trade Secrets are like your Grandma's secret sauce recipe, and are part of your Intellectual Assets.

Leveraging Your Intellectual Assets

Sometimes merely being aware of your IA and improving systems to make this information more available for decision-making processes, or assisting staff in their roles, can yield benefits.

At another level, auditing your IA resources can identify new business opportunities, as these following case examples demonstrate.

Case Example 1 - SKF Bearings

SKF are a major international bearing manufacturer, able to produce custom bearings for specialised applications. When a customer requested a quote for a custom bearing they first had to develop and design a technical solution to the problem using their expertise. This took considerable time and talent, depending

on how difficult the problem was.

These customers would then take their solution to other manufacturers who would undercut SKF (as they did not have to invest time or resources into developing solutions).

Reviewing their Intellectual Assets, they realised a business opportunity existed. A new section was created where customers could now pay for a custom technical solution. The customer could then take this solution elsewhere (SKF had been recompensed for their time and expertise), or allow SKF to carry on with manufacturing as a separate paid stage. A loss was turned into a viable earning solution.

Case Example 2 - McLaren Automotive

In January 2015 McLaren (the Formula 1 racing team) announced that it was going to become McLaren Technology.

A review of its Intellectual Assets and resources identified that three quarters of its 3,000 employees were working on technologies other than directly related to motor sport. Many of these technologies were useful in other industries. As a consequence McLaren Applied Technologies now licences its analytical software to multinationals and businesses not involved in motor racing.

Intellectual Capital is an important business

asset for businesses. All businesses can benefit from identifying the aspects of Intellectual Capital which provide them with competitive advantages, and opportunities for growth. This may require a more entrepreneurial approach to identify available new opportunities, and decide how to best implement new strategies to realise those advantages.



INTELLECTUAL PROPERTY

An Active Business Tool Suite

While Intellectual Assets are associated with a business or organisation as a whole, Intellectual Property (IP) are an active set of business tools able to be used both strategically and tactically.

In a tactical sense they are commonly used in relation to the development and launch of a new project; to provide protection and an opportunity to leverage the IP for growth.

In a strategic sense they are used to capture

increasing value in IP such as brands (and associated goodwill). Tactical plans often contribute to part of a larger strategy — such as to pave the way for continuing innovation and upgrades in a product line, or for a business to increase its capabilities and market presence.

Once they understand the various attributes, advantages, and limitations of each tool in the IP suite, businesses can avail themselves of a virtually limitless number of flexible strategies customised to their current and changing needs.

The beauty of Intellectual Property is that small businesses and individuals can avail themselves of the same tools that large corporations do, the difference being that larger organisations are often more aware of the benefits.

Overview of Key Advantages of IP Rights

IP rights give the owner a monopoly over specific uses or aspects of the IP.

The purpose of formal IP rights is to provide the owner with a defined monopoly. This also grants the owner a right to enforce their monopoly.

Such monopolies can block or divert competitors, which make formal IP rights especially valuable in the business world. Often such monopolies are addressed by negotiated licences, partnerships, or other arrangements.



IP rights are valuable and a useful tool for negotiating licenses, distributorships, alliances and partnerships, etc.

Monopolies can also attract newer players willing to pay for the privilege of working under the umbrella of your formal IP rights; yielding further opportunities for revenue streams by licensing, joint ventures, or assignment of rights in specific regions, etc.

IP rights protect innovations

IP rights are among the only tools for protecting ideas and innovations. Formal granted or registered IP rights can be likened to a deed of ownership for physical property.

Applications pending grant or registration are also valuable and useful tools.

While pending applications are not typically enforceable (as the scope of the granted rights are not yet set), competitors will be aware that a monopoly may eventually be granted on the content of the IP application. Ignoring this may mean that avenues they follow in that direction may eventually be blocked and that there may

be other legal and financial ramifications. Hence pending applications are typically treated with great caution. Hence, they may deter or re-direct competitors in the direction they take.

Pending applications are also useful for deterring many opportunistic infringers who tend to look for easy paths with minimum risk.

Interim remedies such as injunctions, and expedited processing of pending applications are also available in most cases. For patents, filing divided applications specifically targeting the 'unwanted activity' in question (while the main application proceeds as normal) is sometimes used very effectively. This strategy is only available for pending applications - not granted patents.

Pending Applications can be more powerful as a tactical and strategic tool than granted rights.

For a pending application the scope of granted rights is still subject to change. This creates a quandary for competitors as they are effectively trying to develop a game plan with a set of goal posts which can keep changing in position. Once an application is granted, those goal posts are immovable.

The result is that it is often easier to negotiate with the owner of pending IP rights than to deal with the uncertainty of where it is safe to proceed. For this reason many applicants for IP rights, especially patents, keep applications pending for as long as possible.



Once the process for registration of IP rights has started, IP owners can enjoy:

- the ability to license technology
- an instrument to facilitate joint ventures
- an instrument for negotiating venture capital
- an effective deterrent to competitors
- a means to influence the direction of the market and competitors
- an ability implement different strategies for different regions or market segments
- a means to generate a return from countries your business can't personally exploit
- means for starting to capture the value of goodwill generated in business

Once formally registered the granted or registered IP additionally affords

- a defined monopoly
- a legal instrument to enforce your granted rights in the Court



- a legal instrument strongly influencing conflict resolution by settlement or agreement rather than Court action

IP in a Business Environment

Any business tool which allows you to influence the actions of the market and your competitors is a powerful business tool.

Understanding the role and benefits of each form of IP protection also allows any IP strategy and portfolio to be tailored to the specific plans and strategic objectives of a business. When this occurs, not only does the IP owner create better value for the investment, but the resulting portfolio is significantly more powerful and effective as a business tool. Ideally specialist advice is sought to marry IP and business strategies.

Formal IP Registration

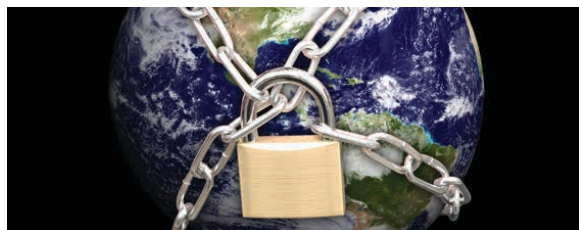
A distinction needs to be made between IP and registered IP. What is the difference? Application for IP registration is a formal (and sometimes automatic) process whereby the rights of the true owner are recognised or recorded. In failing to seek protection, the

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IP often becomes part of the common public domain, free for anyone to use. When this occurs, its effectiveness as a business tool is negligible, and often you have given competitors an advantage.

Effectively any form of granted or registered IP grants a monopoly to the rightful owner. Some forms of IP (such as copyright) afford these benefits automatically and without the need for a registration process. However most forms of IP require formal registration through an application process if their full benefits are to be enjoyed.

- Some forms of IP require formal registration, others don't;
- Granted or Registered forms of IP rights tend to be stronger and more readily enforceable;
- Some IP automatically enters the public domain if formal registration is not initiated in a timely manner;
- Often a timely manner means before public disclosure, but this varies;
- If something is in the public domain it may make it available for anyone to freely use;



- Full IP rights, including an ability to enforce, are not available until after grant or registration;
- Failing to provide supporting materials or specifications with applications for IP protection may jeopardise the ability to obtain useful IP protection.
- IP rights are often territorial and you may need to formally seek protection in individual regions or countries.
- Formal IP registration processes can be difficult, and specialist assistance is recommended to avoid loss or diminishment of your rights.
- Formally granted and registered IP rights are tangible rights, and are treated like other physical property

A Bigger Picture - Using different forms of IP Rights As Part of a Larger Strategy.

Most businesses are multifaceted - a business may both manufacture and market their goods. They may also have an expansion strategy in place to sell the product in new countries overseas, possibly with the assistance of other entities.

For the average business, consideration to more than one form of Intellectual Property is required. Their innovations may be protected by patents, and specific products also by copyright

or design registrations. The products may also have a brand presence requiring consideration of registered trade-marks.

Most businesses also have a strategic plan and there can be significant advantages when the IP portfolio follows a strategy supporting the business plan. When done well, the IP strategy can expand upon the opportunities available to the business, sometimes enlarging the scope of the business plan.

As can be appreciated, designing a balanced and effective IP strategy mirroring the aims of the business requires a special skill set. Hence engaging a suitable IP specialist understanding how different aspects of IP can work cooperatively to benefit your business can be a good investment.

Case Study 1 – Suppressing Opportunistic competition

John's business produces goods which are innovative and popular. His business has succumbed in the past to opportunistic parties copying and manufacturing similar goods fairly shortly after he enters his products into the market. In fact others



often watch to see what John's latest products are. John requires means to deter opportunistic competitors while he establishes each product in the local market, develops strong distribution channels, and exploits overseas markets.

One potential solution is for John to consider patent, design, and copyright protection for each new product. The choices available will depend on the product itself. Even while in the application stage there is a very strong deterrent value to would-be competitors and especially if John clearly identifies his various forms of IP protection. If copying occurs, John can accelerate his application process to gain granted enforceable rights sooner.

These new applications also provide interim benefits overseas, allowing John to simultaneously negotiate overseas agreements for licensing, distributing, manufacturing, or an outright sale of rights for different countries or regions.

This period of competition suppression also allows John to develop and implement a branding strategy for his trademarks. Once John progressively increases the public awareness and reputation of his brand, he will find that the public may preferentially buy his product over his competitors. His registered trademarks then become another valuable commodity he can licence to other parties (typically those licensing his product rights) locally or overseas.

Case Study 2 – Blocking Competitors

Sam's business is in a specialised and competitive field. The market responds to improved products which can save them money or time. Sam's business and the competitors are active innovators as they realise any marked improvement can significantly increase their market share. Sam's business has developed a new feature for one of its products which will leapfrog them ahead of its competitors, and could become the new industry standard.

A solution for Sam's business is to focus on protecting the concept through a patent application – the broadest form of IP protection. Once granted this will effectively block competitors developing products in this direction. Even as a patent application, competitors must deal with the reality that granted protection may eventuate and this also influences their decisions now. Copyright and design registration are considered as additional obstacles that competitors must also consider and navigate.

Given the value of this innovation, Sam's business actively pursues licensing and sale of technology options in countries and markets beyond their resources to develop, thereby netting them additional income.

Sam's business also considers additional branding for this innovation, to supplement their existing product brands. These too may become the basis of licensing overseas to generate further income and control over those markets.

Case Study 3 – Licensing & Franchising

Chris has a new service, but doesn't want to deal with the hassle and time involved with building a large national business from scratch. Being service based there are a lot of compliance and staff issues that Chris would rather not deal with.

The service Chris provides has some innovations over others already providing similar services. These can provide Chris with a cost advantage. In addition Chris has a number of new complementary products which can be sold to customers.

Upon analysis it was clear that Chris's service did not have any specific steps or aspects which made it directly protectable- business plans and methods are typically aren't. However it was noted that Chris's cost advantage was due to a special product used, made from a specific blend of components. The product was not sufficiently novel to seek patent protection, and would be easy to make from off the shelf components if the formulation was known.

A business analyst decided that the best option for Chris, that Chris was happy with, was the licensing/franchising route. This would enable Chris to create various franchises to accelerate growth into different regions, while focusing on her own region and growing the franchise. The franchise route would also lead to ready expansion overseas, as it was identified that several countries required the same services.

For franchising to be effective Chris needs to create a value package which people are prepared to pay for. Key aspects of this package need to be protected and able to be enforced to protect Chris against franchisees leaving and setting up in competition, as well as helping protect franchisees against unwanted competition.

The key part of the franchise were the trademarks; the brands used for the service, and those used on the products Chris wanted to sell. Trade Mark Registration captures the goodwill that the franchisees create over time, and can be used to stop anyone else using the same or a confusingly similar brand for the same services. Trade Mark registrations are often a key part of any franchise agreement, and have the advantage that they last forever providing registration fees are paid.

It was decided to keep the specific formulation of Chris's product a trade secret, and to supply it directly to franchisees. This is a little bit like the secret recipes of Coca Cola, or Kentucky Fried Chicken. Chris will only supply this product to franchisees.

Chris created a detailed procedure manual governing the conduct, and processes, franchisees need to follow. The document is covered by copyright. This is also part of her Intellectual Assets, and is a form of quality control over how the business is represented by franchisees.

Chris owns the phone numbers, comprising a national toll-free number which gets directed to

franchisees. Another of her Intellectual Assets.

Chris's main company owns all the appropriate internet domain names, thwarting any attempts by competitors to siphon off business. Her trademark registrations enable her to deal with domain name cyber squatters.

Effective franchise agreements help secure the franchises, and prevent franchisees immediately leaving and setting up in competition. More importantly, Chris has training, marketing, and incentive schemes to encourage franchisees to stay within the fold, and to attract new franchisees.

Franchises are an example of how formal IP rights, Intellectual Assets, legal agreements, and good business practices can work together to create an effective business with good revenue streams and an ability for rapid expansion into new regions, locally and overseas.

Summary

Intellectual Property is a set of active tools businesses can use for growth and the creation of new revenue streams. Intellectual Assets are assets inherent in a business which are often overlooked or under-utilised. Identifying and utilising both these forms of Intellectual Capital can be amongst the most powerful tools a business has access to.


About the Author - Antonia Sims

With over 25 years IP experience Antonia is a registered NZ and Australian Patent & Trademark Attorney. She is a generalist with considerable expertise in all areas enabling her to create IP strategies and portfolios complementing her clients' business strategies. She also has specific expertise in patents and technology due to her three degrees in science. She has acted



for and against clients in virtually all areas, from individuals to multinational corporates. Apart from considerable experience obtaining IP rights locally and internationally, she has considerable experience with opposition work. Working in central NZ she has significant expertise with engineering, horticultural, forestry, agricultural, dairy, construction, and science based inventions, as well as dealing with Intellectual Property issues of all kinds.

The content of this booklet is intended to make people aware of Intellectual Property and the advantages it can afford. It is not intended to be, and should not be, used as an alternative for proper professional advice.



Intellectual Property is possibly the most valuable tool businesses can use for growth and the creation of new revenue streams. Intellectual Assets are assets inherent in a business which are often overlooked or under-utilised. Identifying and utilising both these forms of Intellectual Capital are amongst the most important things any business can do



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