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Swing dance: IP valuations on the rise

IP valuations have sunk to record lows, but we're now poised to see things swing in a new direction

It is the familiar swing over time between two opposing sides – right to left, conservative to liberal, chocolate to vanilla. Lately, for IP much of that swing has been a dance around perceived market value. Traditionally, this has been a slow, graceful waltz in syncopated rhythm with a relatively constant legal and economic tune. But a recent confluence of events changed the beat, so to speak, and now it feels more as though we are in the strident throes of the mosh-pit, with IP valuations taking a real battering. Yet just as there is an opportunity for broader economic recovery, we are now equally poised to climb from the pit and reset the IP economy. It requires leaving past perceptions behind and rethinking how IP assets can create value and foster economic recovery in the future.

Illumination

Well, the future is unfamiliar territory so its most easily traversed when reflection on the past helps illuminate the way. Looking back five years, it seems IP has made the trip from being overvalued in the marketplace as demonstrated, for example, by excessive litigation settlements in the US, to perhaps now being equally undervalued, as shown by large-scale IP divestitures often at what amount to wholesale pricing.

How does a business asset swing so dramatically from being overvalued to undervalued in the marketplace? It seems it would be useful to look at some of the key factors contributing to our perception of IP value. If we have made some of the same mistakes before, perhaps we can learn some of the same lessons – the easy way, for a change.

History in the making

Speaking of change, what has changed and how has it influenced our perception of IP value? Certainly the underlying innovations have not changed *per se*, but the attendant IP protection and how it can be exercised in the market as a business asset are not the same as they once were.

In the US, one of the more visible shifts affecting IP value in the marketplace has evolved over the past few years through a litany of CAFC and Supreme Court decisions. By constraining both the scope of protection available and the ability to enforce that protection, these decisions effectively diminished the value of the market position the IP assets comprehend.

In addition, the weight of a sinking economy added further downward pressure on the value of IP assets. Markets eroded and as the value of companies and their products declined, so too did the value of the IP assets that underlie them. Though this sinking tide had an impact on most aspects of value creation roughly equally, it left IP portfolios particularly vulnerable as they are often (erroneously) perceived as disposable assets in times of stress.

Another contributing factor is that the market for IP assets is itself neutral. It facilitated the rise of IP to its vaunted peak of overvaluation, fuelled by high-profile assertions and the PR wars over patent headcount among larger firms. And that same IP market facilitated the sale of those newly disposal IP assets on the cheap during the economic downturn, and depressed IP valuations to new lows.

Getting past and getting back

All of these factors conspired to diminish the real and perceived value of IP assets. As a result, many firms reduced their investment in IP and even the antecedent R&D that sustains the future of innovation – if IP assets are less valuable, then they merit lower investment, or so the thinking goes. It is time to stop the music on that death-dance and its downward spiral of increasingly negative expectations. Though perhaps less tangible than the other factors, perception proves no less potent in its ability to influence IP value in the marketplace. It is that nudge of over-interpretation that helps drive the swing dance from one extreme to the other: over-shooting or under-shooting true market value.

Not too dissimilar from the manufacturing sectors, IP inventories are down. And as the economy continues its (hopefully) steady upward climb, we will need to repopulate our own shelves with (again, hopefully) new and improved IP assets. It is at once an opportunity and a challenge. We have got an opportunity effectively to reset the IP economy, and to create and employ new best practice in IP asset creation. We have also got a challenge in ensuring those IP assets (and enabling investments) serve both the IP economy and the broader economic recovery – a virtuous spiral for a change.

Though some elements of the IP economy are still in motion, many have already stabilised. Change in the legal environment has settled down, though it has admittedly left the dance floor a bit smaller – not an entirely bad thing, as it keeps us nimble on our feet. As new products with new innovations fill the shelves, they will dispel old notions about IP value and we will re-learn an old lesson proving again to ourselves the worth and necessity of investment in innovation and IP.

We have already seen the versatility of the new IP market in providing arbitrage and ready liquidity of IP assets across geographic and industry boundaries. While it may have helped to deepen the recent IP recession, it is also likely to be a necessary tool in the IP economy's recovery. And it will recover. Faster, if we can get past those distractions and misperceptions that limit our vision and get back to first principles: aggressively aligning IP creation with economic value creation.

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