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Insights into Intellectual Property Business Strategy

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The strategic management of IP requires a new understanding of what IP is and what role it can play in a corporate context. Understanding IP as an internal resource to a firm rather than a negative right, allows a firm to exploit IP beyond its current usage. Genuine IP meets all the criteria of what scholars of management have termed an internal resource under what is known as the ‘resource based view of the firm.’ It can be a unique and rare resource that is costly to imitate and gives a firm a competitive advantage in the market. As such, IP can constitute an instrument of business that gives an organization a unique spin. This allows to enhance a firm’s competitive advantage.

Characterizing the Business Model

A business model is at the core of every commercial undertaking. The structure afforded by a business model allows to put input factors in relation to output. As such, a business model is a mediating institution that establishes a relationship between a host of different contributions and a potential outcome. A business model is inherently utilitarian in character. Its purpose is to offer a functioning structure for a unique value proposition a firm has to offer. A functioning business model makes a firm’s unique value proposition available in the market.

I would describe a business model in its simplest form as offering an exceptional value proposition to someone else and in return receiving some sort of compensation that allows to keep oneself going. A patent attorney’s business model, for example, consists of offering expertise on the technical and legal aspects of a potential invention. These insights can subsequently lead to the granting of a patent. In exchange the patent attorney charges an hourly rate, which allows her to keep herself going.

The stronger this unique value proposition is, the more it appeals to others. The less effort it takes to offer such a unique value proposition, the stronger the business model.

Coming to Grips with an IP Business Model

But what does this mean for intellectual property?

How can the underlying rationale of a business model be best applied to intellectual property?

To come to grips with the notion of a business model for intellectual property, it makes sense to first characterize intellectual property from the perspective of an internal resource.

Traditionally, IP has been characterized as a negative right. IP provides its owner with the ability to exclude third party usage. IP understood as a right to exclude others, has paved the way for a business model that is strongly intertwined with the mechanism the legal profession has at its disposal. The ability to exclude others, can be looked at from various angles. In the first instance, it allows one to obtain patent protection. It then gives way to enforce one's IP rights against any alleged infringers. This move seeks to assure the business proposition advanced under a classical negative right's paradigm.

The legal proceedings serve as a means to assure the rightholder's ability to exclude others from the technology. The value proposition that stems from such undertakings is the preservation of a temporary monopoly in a given technology. Leaving aside the concerns that colleagues from the competition space may have when looking at such a business model, this type of approach constitutes nonetheless a business model. Hence, I do not think that for the purpose of this article, there is an awful lot that still needs to be said about this other than that it is a business model that is strongly linked to the instruments of the law.

A Resource Based View on the IP Business Model

What I find more interesting are the type of business models that can be developed when IP is defined from a resource based view. The resource based view of the firm was developed a few decades ago. Scholars of the 'resource based view' are interested in grasping the nature of a firm from the perspective of the resources a firm has at its disposal. In this school of thought a (successful) firm comprises a bundle of internal resources which are unique to the firm. As such, they are very difficult to replicate by another market participant. It is the originality, the uniqueness of its very specific set of resources that makes this firm an original.

Barriers to entry may be less given by significant upfront costs, but by the know-how, creativity and smart-ness of the firm. In a word, the unique edge is given by its intellectual property. IP understood as an internal resource, rather than a negative right, means that the intellectual property needs to be grasped from a different lens. IP as an internal resource to the firm, sheds light on the question of IP management and a firm's corporate IP strategy. IP understood as a negative right, means that IP can only pave the way to legal approaches. While without a doubt of importance, this reasoning means that important aspects of IP strategy remain unexplored.

I am not the first to note that a lot of the intellectual property that is being generated, is never being put to work. Many before me have argued that much of the IP sits on the shelves without serving any particular purpose. However, what differentiates my thinking from that of others, is that I believe that an IP business model can eventually be entirely detached from the law. Also, previous strategists have mainly justified their reasoning with respect to the need to sell or license IP out. Further considerations with respect to the management of IP have by and large gone unnoticed.

Existing approaches to IP business remain strongly entangled with the instruments that the legal profession has at its disposal. History has seen the invention of Patent Assertion Entities (PAE), of patent pools or aggregators. While the nature of a PAE is different from that of a patent pool or an aggregator, at the gist, these entities are built to collect licensing revenues from third parties. Often, the licensing of IP remains associated with legal proceedings or the risk of legal proceedings, should licensing negotiations fail. A lot has been said about this and I see no need to delve deeper into these existing approaches.

Tapping into the Unexplored

What I find more interesting, is to explore what has so far not been said and done. An IP business model detached from the legal profession and from the law, is, to my knowledge, a novelty. The deeper reason for this gap in the market is probably explained by some social factors which would deserve to be further studied and should subsequently be altered.

The establishment of IP as an internal resource gives way to an IP paradigm that allows to look at IP as a unique original resource which only this firm has and no other firm possesses. It allows to look at the original angle of IP. With this in mind, there is not really a need to state that IP can pave the way for this or that specific business model, rather such a novel understanding of IP opens the door to an entire revolution of new IP business models.

First and foremost, it puts the IP center stage in a company. This requires an organizational change in a firm. The IP unit is no longer a sub unit of either the General Counsel or the Chief Technology Unit, but is at the very core of a company. This is quite simply explained by the fact that the IP needs to be managed from the top. Only with the board's support is it possible to exploit the wide spectrum enabled by business strategy.

The strategic management of IP requires a new understanding of what IP is and what role it can play in a corporate context. Understanding IP as an internal resource to a firm rather than a negative right, allows a firm to cherish IP for what it is. An instrument of business that gives an organization a unique spin and provides it with a competitive advantage in the market place.

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