



## PR Campaign For IP Can Give Firms A Boost

By **Erin Coe**

Law360, New York (July 14, 2009) -- Many businesses are clueless about how to promote their intellectual property or are reluctant to reveal too much, but experts say that in this tight credit market, companies can no longer afford to keep their IP to themselves.

Companies that hone their communication skills to flaunt what is in their portfolio and what they plan to do with it are in a better position to boost their public image, their profits and their market share.

The value of IP is in the eye of the beholder, and it can be shaped through effective public relations, according to Michael W. Connelly, a partner of [McDermott Will & Emery LLP](#).

"Some companies prefer to stay under the radar, but these days when it is difficult to get funding and to get the attention of people with funding, differentiation matters. IP can help differentiate a company, and the path to that is PR," he said.

Because between 50 percent and 70 percent of market value is tied up in intangibles like IP, companies have much to gain from being more transparent about their portfolio and strategy, according to [Bruce Berman, CEO of Brody Berman Associates Inc.](#), a management consulting and communications firm.

"Businesses can profit from an IP strategy that does not necessarily have to do with royalties. Maybe a company bought or filed patents that read on a rival's patents to block them. There are so many IP strategies, but they are not always articulated," [he said](#).

With their specialized knowledge, IP lawyers can help guide their clients through the process of conveying the importance and value of their patents, copyrights, trademarks and trade secrets.

“The biggest problem with IP in many ways is that there is a lot of misinformation. Lawyers need to learn how to play a better role as educators to inform their clients about how to educate others,” [Berman said](#).

Before firms consider how they want to promote their IP to outsiders, they first need to look within. Businesses need to ask themselves what they want to divulge and what is unique about their IP position, [Berman said](#).

“At a minimum, companies both big and small should be able to explain their basic strategy. Why they out-license and in-license. Why they never out-license or why they choose not to manufacture products. It may seem obvious to them, but it is not to stakeholders,” [he said](#).

Communicating the importance of IP should first be directed to a company’s employees so that everyone is on the same page.

Businesses should explain to sales and marketing employees what kind of IP they are securing for related inventions and emphasize that they cannot establish their position in the market without it.

They also may want to set up incentive programs for technical employees to come up with inventions and educate their engineers about how to keep trade secrets under wraps.

After taking steps to raise IP awareness internally, then companies can consider how they want to develop their message for the public.

Funding will be easier to come by if a business is able to highlight its IP as something separable from the company and as something that holds real value, according to Connelly.

“For investors, IP can enhance a firm's acquisition value. It can also be an asset that a firm can sell and get some money back,” he said.

By sending a cohesive message about its IP strategy, a company can show it is forward-thinking and can help give investors and potential acquirers a sense of comfort that it knows what it is doing and where it is headed.

“By saying, we have a strategy, we own this space and we are using money to acquire patents and protect trade secrets in order to keep this space as our own — that’s profitable. Companies need to portray their IP as a moat that surrounds their market space,” Connelly said.

Companies can also use press releases and filings with the U.S. Securities and Exchange Commission to distinguish themselves from the competition and put industry rivals on notice.

“A press release about a new patent being issued may give notice to competitors that a company is staking its ground in the market and they better not come near or it will assert its patent. It gives a perception that there is a barrier to entry and a perception to investors that a company has something that competitors don’t,” Connelly said.

StemCells Inc., which develops and markets cell-based therapies, has made use of regular press releases and its Web site to show it has carved out a niche through patent protection, according to Connelly.

“It is letting investors and competitors know exactly the spaces where it believes it has ownership of the market,” he said.

[Acacia Research](#) Corp., which takes noncore assets and monetizes them, puts out a press release with every new acquisition it makes to show the new technology covered by its patents, to alert certain targets to its IP and to keep investors up to date, Connelly said.

Companies that are able to articulate what they have spent on research and development can also help make a product seem less like a commodity and give consumers a better appreciation of its value.

“Letting consumers know that R&D cost millions of dollars will make them feel it is reasonable to spend money on the product,” said Stuart P. Meyer, a partner of [Fenwick & West](#) LLP.

Companies have used different strategies to tout their IP and gain a foothold in the market.

[Procter & Gamble](#) Co., which has more than 25,000 patents worldwide, has used marketing not only to endorse its laundry detergent Tide as a quality product, but also its 55 patents that cover the process of making Tide and that have been licensed to other industries for noncompeting products, according to Berman. “P&G is not just a good marketer for its products, but for its technology and inventions,” he said.

Berman said the reason [Intel](#) Corp. was able to charge more for its Pentium microprocessor than the one made by rival [Advanced Micro Devices](#) Inc. had to do with the trademarking of its invention.

“It is effectively a commodity item, but what gave it value was this perception that it was better and Intel did that through product advertising. Now it is able to out-license its technology,” he said.

Intellectual Ventures Management LLC has made use of a strategy threatening to sue companies, while Olympus Corp. has issued press releases to show that it has patents and out-licenses in areas beyond cameras in order to let shareholders know it is involved in high-margin markets as well, Berman said.

Certain events, like a litigation victory or a successful patent re-examination, can also be crucial for companies to publicize in releases.

Connelly recalled a client that had a drug development patent thrown into a re-exam proceeding, and when the U.S. Patent and Trademark Office upheld the patent and all of its claims, the company took the opportunity to issue a press release highlighting its leading role in the market and the validity of its invention.

“Everybody had been nervous about whether the company would come out of the re-exam, and after the press release, the funding spigot turned back on,” he said.

While pharmaceutical and high-technology firms are often savvy in understanding the link between promotion of IP and investments, other companies offering commodities, such as oil, gas and steel, could be better about using public relations to play up their IP, according to Connelly.

“The U.S. has a huge core of small and mid-level oil and gas companies that do innovative work. They have great patents and they have created niches for themselves. But as a group, they are not as great at advertising ownership of their unique technology and market spaces, and in some sense that hurts them. They are failing to differentiate themselves from the crowd,” he said.

Companies can even promote the fact that they own trade secrets without giving away the secrets themselves. A company may see benefits in disclosing how it trains employees and takes other measures to protect trade secrets, according to Meyer.

“The process can be disclosed and that benefits everybody, including the competition. If the marketplace remains clean, companies don’t have to spend as much time and money on trade secret lawsuits,” he said.