Written by
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More disclosure, less exposure

IP communications is a win-win scenario for most businesses. Holders are starting to realise that sharing some IP information is smarter than hiding all of it

IP rights confound and confuse. IP communications is a way for patents and other rights to be better understood both inside and outside a business. It paves the way for better performance, higher returns and enhanced shareholder value. Why then are most companies still unwilling to share even the most rudimentary IP information?

Describing intangibles can feel like an exercise in futility. Even those holders who wish to disclose results are uncertain about what and how to. Government regulators, such as the Securities and Exchange Commission in the US, have struggled with how much information investors need to make informed decisions. When it comes to intangibles, such as patents, that comprise the majority of most companies' market value, regulators have steered conspicuously clear.

Why should companies go where regulators have feared to tread? Basically, because it's good business. IP communications (IPC) provides significant advantages to businesses of all sizes and shapes. Moreover, strategic IPC enhances shareholder value and increases positive name (or brand) recognition. With some IP rights, as with shares of equity, the blurred line between perceived value and literal market value can be attributed to reputation. The foundation for establishing brand value is built on reliable information, clearly summarised and consistently delivered. The same is true for intellectual assets.

Hidden opportunity

Sharing IP information should not be seen as a burden or threat. It is an opportunity to convey performance, enhance value, manage risk and, for now at least, steer clear of regulatory scrutiny. Many otherwise intelligent people believe patents are instruments of the devil. Demystifying how a particular business benefits from these exclusive rights helps to counteract the irrational fear they sometimes inspire. A response that has led many in 2009 to call for an end to patents, which they believe are destroying innovation, or to diminish their impact dramatically through reform legislation. If more companies do not provide some level of IP disclosure soon, I believe that eventually they will be forced to.

Most IP owners are unaware there is a disconnect between them and stakeholders. Securing, deploying and measuring how rights perform affects many outside of the tiny IP orbit. Most holders don't know what assets they own let alone the best way to discuss them without running afoul of their general counsel or CEO. Many businesses believe that by disclosing less about their patents they can avoid risk; they don't realise how non-disclosure may actually foster it. Without providing IP stakeholders some level of transparency, businesses are in effect saying: "Trust us [you airheads], you don't need to know the big, boring details." In fact, frequently it is the businesses that do not understand the details, let alone how to convey them. This creates a credibility gap between IP holder and stakeholder.

A burden of responsibility

In my last column ("message in a bottle", *IAM* 36, June/July 2009) I looked at how the press has been blamed for not understanding IP when holders have done a poor job of helping inform them about what their assets mean and how they are used.

For now, at least, the burden is on the chief IP counsel or business executive to define and manage IP communications. They need to educate key IP audiences, especially senior management and the media. A few significant IP holders and managers have stepped up and risen to the challenge. IBM, Qualcomm, P&G, Microsoft and Philips come to mind. More are needed. Some may require assistance along the way; all will need to secure the attention and respect of senior management and Wall Street. The IP counsels I speak to believe that data such as patent-related income, freedom of action, and some out, in and cross-licences can be shared without damaging competitive advantage.

Best IP disclosure practices should not be confused with identifying cool inventions or supplying global patent counts. Holders must be willing to engage with stakeholders in a meaningful dialogue about what patent quality is and provide contexts for what IP performance means. They also must learn to trust each other. A discussion of IP results and data points quantifying results is not the same as shining a spotlight on innovative new products or inventors.

By whom and to whom?

Many patent attorneys are focused on prosecution. They are not typically equipped to explain IP strengths. Chief patent counsels are often seen as gatekeepers – risk adverse and legal-centric. Good patent litigators, on the other hand, are adept at bringing jurors up to speed about complex inventions and processes. It would be wonderful to apply some of their communications skills to educating clients – and their clients' clients – about IP. In some cases specialised communications or media training may be necessary. And, yes, an IP spokesperson could be a well informed c-level executive or business manager.

We need significant IP holders and their managements to disclose clearly and consistently, not just when they have good news to tell. They need to report on changes in IP position in a timely manner, as if the information shared was required. Eventually it will be. The right amount of communication will vary among industries and companies. But disclosures of performance basics such as selected freedom-of-action, licensing and brokerage activity will go a long way toward building trust and establishing an enduring IP brand.

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