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Public IP companies (PIPCOs) – a business model whose time has come

This is likely to be a crucial year for publicly held licensing companies (PIPCOs). Interest is booming as a result of savvier IP investors, PIPCOs' access to capital markets, and better marks in court

The emergence of IP-rich companies whose shares trade on global exchanges is presenting new opportunities for patent holders and investors alike.

Pure-play licensing companies – non-practising patent licensing companies with a single method of generating return – are being supplanted by more robust business models. Through acquisition or merger with complementary operating businesses, publicly held licensing companies (PIPCOs) are emerging as vehicles that are more easily understood by investors, better able to access the capital markets and more acceptable to the courts.

PIPCOs are no longer simply non-practising entities (NPEs), but neither are they every company with a patent portfolio and licensing agreement. Investors are realising that public IP ownership can take many forms. Innovative businesses that secure IP rights for defensive purposes via self-funded R&D have given way to enterprises with more synergy and less risk. Critics tend to cut public IP monetisers some slack, generally refraining from labelling them with the T word. Perhaps sharing the spoils of patent enforcement through public ownership and having to make public disclosures is seen as inherently more democratic than individually owned licensing operations, such as those controlled by Lemelson, Katz and Myhrvold?

At last count, no fewer than 27 companies trade on US, UK and Canadian stock exchanges that include among their primary objectives direct patent monetisation. As recently as 18 months ago, all but a few would have been considered licensing-only businesses. The mix now includes: enforcement businesses, which joint-venture inventors and SMEs; licensing businesses, which conduct proprietary R&D and obtain patents through filings; so-called privateers which acquire rights from others, including operating companies that stand to profit; and small companies which sell products and have the resources to enforce patents.

While the patent monetisation business makes good sense, it is not for every holder. Many file suit because the legal system forces them to. Defendants frequently find it more cost effective to drag out a case rather than to settle. Whether their primary premise is operations or IP monetisation, PIPCOs are emerging as a class of stocks that are increasingly attractive to investors and are now followed regularly by IP-aware securities analysts at investment firms, including Davenport & Co, Jefferies, Lake Street Capital, Craig Hallum and Brean Murray.

Capital for PIPCOs is available not only from the public markets, but also from litigation financing firms like Juridica (see "Patent litigation as an investment class" in *IAM* 56), and in the form of contingency representation from law firms, which have improved their ability to model the risk and economics of patent disputes.

Another reason for the rise of PIPCOs has been the acceptance of patent disputes as a type of public spectacle. Closely watched technology litigations today command an international media audience. What were once considered boring courtroom battles over minute engineering advances are now seen as prize fights between innovation Goliaths (or Davids and Goliaths) that affect people's lives. There is no lack of experts willing to speculate on their meaning.

With the exception of Qualcomm, Acacia, InterDigital and VirnetX, all with billion-dollar plus valuations, public IP licensing companies tend to be small caps. Mosaid, Tessera, Rambus and WiLAN comprise the next tier, between US$500 million and US$1 billion. The remaining 19 companies are what Wall Street calls micro-caps. These include Vringo, Document Security Systems and Augme Technologies. (See "IP CloseUp" for a more complete list of PIPCOs). Most technology mutual funds and institutional investors will not own them because of their limited float and low volume, which can cause share prices to spike. Micro-caps tend to be owned by experienced individual investors and smaller investment firms and funds with a higher tolerance for volatility.

The lack of broad ownership means that these companies are frequently misunderstood. Most of them are excellent little companies with impressive assets and astute management. But they also are story stocks that need to be explained carefully. If PIPCOs truly are an idea whose time has come their future depends on delivering on promises, not simply making them. Defensive-minded patent-rich companies such as Microsoft, IBM and Samsung, are arguably also PIPCOs, although their huge market cap and revenue streams make them less dependent on the outcome of individual IP disputes.

IP investors today are better able to recognise the managers, rights, disputes and structures that will lead to positive returns. They also realise that for some better overall return on investments can be achieved when patent ownership is a compliment to product sales. This focus is a testament not only to the growing importance of patents in commerce, but also to the maturity of IP management. Since beginning to write this column a decade ago, I have maintained that an educated IP investor is a powerful resource. This has not changed. The PIPCOs most likely to succeed will present performance that goes beyond required disclosure and be able to convey it convincingly to diverse audiences.

Disclosure: Bruce Berman nor Brody Berman Associates holds a position in any of the companies above. Bruce Berman is a principal with Brody Berman Associates in New York which advises public and private IP companies.

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