PIPCOs adapt to ch- changing times

"Turn and face the strange," sang David Bowie, whose flair for reinvention is something that some public non-practising entities are hoping to replicate

By Bruce Berman

Over the past 18 months, at least half a dozen public IP licensing companies (PIPCOs) have changed their names to an effort to reframe, if not entirely reinvent, themselves. The move appears part of an attempt to shed the past, given that many of these businesses have significantly underperformed the S&P 500 Index over the past six years. With patent values at historic lows and trading volume down, a fresh perspective can only help.

But are PIPCOs merely rearranging their stripes or are they undergoing fundamental changes to their business model which will propel them to higher returns? It depends which ones you are talking about.

Perils of public ownership

Scepticism about most public IP businesses is warranted. While one can appreciate different patent strategies and the need to monetise good assets through innovative business models, the perils of public ownership are ill-suited for the majority of companies whose primary focus is licensing. Today, even more so. (Disclosure: Brody Berman Associates has advised several of the businesses mentioned below.)

PIPCO revenue is too inconsistent to satisfy all but the most patient investors. Growth can be sluggish and financial reporting a costly distraction. PIPCOs today are a bit like the biotech companies of the 1980s – while they sometimes traded actively, most never really developed into viable businesses. What attracted investors to PIPCOs in the first place were interesting litigation stories. However, with the Patent Trial and Appeal Board slowing things down and recent court decisions limiting damages, newsworthy scenarios for equity trading are less viable.

A closer look at the IP CloseUp 30 reveals several significant developments. One trend which financial analysts tend to question is rebranding; another is a reverse split, where a $0.50 stock can suddenly become a $4 one when investors are provided with fewer shares at a higher price. To casual observers, it can appear that performance has taken off, when in fact the weak stock price is merely being obscured by a diminished public float. Many PIPCOs were formed by merging a private enterprise into a public shell, which while not disreputable, often comes with baggage. The following are some recent PIPCO changes worth noting:

- Tessera – changed its name to Xperi Corporation in February 2017;
- Vringo – became Form Holdings in May 2016;
- WiLAN – became Quarterhill, Inc in June, with a new investment strategy;
- CopyTele – became Itus Corporation as of 2014;
- OPTi Inc – announced its liquidation in November 2016;
- Prisim – formerly Internet Patents Corp – voluntarily delisted in February;
- Pendrell – announced a reverse split in September 2016 (investors got one for 10);
- DSS – currently focusing on its security printing business – announced a reverse split (one for four) in August 2016;
- MGT Capital – appointed John McAfee, the controversial computer security pioneer, CEO in November 2016;
- Marathon – had its stock valued at $0.24, with 20% still owned by Erich and Audrey Spangenberg; and
- Gerchen Keller – a private litigation fund which raised almost $1 billion for patent and other litigation – quietly merged into Burford in December 2016.

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Bright spots

The sector is not without positives: Finjan – which survived 47 *inter partes* reviews, 32 of which were not instituted – turned a profit for the first time in 2016 and its stock continues to do well. Network-1, overseen by the indomitable Corey Horowitz, has tripled over the past 18 months.

Additionally, there are private non-practising entities (NPEs) with excellent patents and cash flow. These include the inventor-owned Personalized Media Communications, which continues to license, Northwestern University and New York University – both of which have generated more than $1 billion in licensing fees. Stamford's equity stake in Google shares alone is worth $336 million.

There also are Qualcomm and ARM Holdings, which generate most of their revenues from patent licensing. Qualcomm's annual net income is almost $8 billion, while ARM's acquisition by Japanese Softbank in 2016 was valued at £23.4 billion. Indeed, some investors are still betting that a more adaptable public patent licensing model can work.

Some PIPCOs are repositioning themselves as operating companies which happen to hold strong patents. This not only helps them to escape from the 'troll' label, but also gives them greater access to injunctive relief, which since *eBay* is no longer readily available to NPEs, regardless of how good their patents or how blatant the infringement.

Diversified

Jim Skippen recently told *The Patent Investor* that Quarterhill, formerly WiLAN, will be a diversified holding company in the manner of Warren Buffett's Berkshire Hathaway.

Quality patents, patience and cash still matter; but not as much as they did in 2011 and 2012, when the tone was set for record-breaking smartphone transactions by Nortel, Motorola and InterDigital. While the new realities may be painful, it is heartening to see resourceful businesses adapt fundamentally to secular changes. Like Bowie who fell to earth, they are embarking on a journey to a new world. iam

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