IP investors – where to put your money now

At least 80% of publicly traded IP companies have either failed or been rebranded; some are now on life support. There is more to IP investing than patent licensing

By Bruce Berman

There is no denying it, publicly traded IP companies whose primary source of revenue is patent licensing have significantly underperformed the major market indexes over the past decade. With global stock markets entering bearish territory, it is an excellent time for IP investors to revisit public IP company (PIPCO) performance and consider possible opportunities.

Just a few years ago valuation experts thought that tech companies were remiss for failing to out-license their patents. Today, many businesses will not even consider it. Several factors have contributed to this, including increased cost, patent uncertainty and risk due to the legislative and legal environment.

The 2012 heyday for patent values is unlikely to return soon. Fuelled by Google's $12.5 billion acquisition of Motorola (largely for its intellectual property) and Rockstar, which saw Apple, Microsoft and others acquire the IP assets of bankrupt Nortel for $4.5 billion, patent licensing seemed to make business sense. But rash US legislation and adverse judicial decisions have rendered many patents unreliable and cut values dramatically.

Investors that once believed that public ownership would unlock hidden patent value by tapping the capital markets to fund litigation and acquisitions have sobered up. As licensing became more about litigation, and litigation became more arduous, many PIPCOs began to suffer. Fixing the American Invents Act and patent eligibility are likely to help, but that will take time.

Size matters

Several PIPCOs whose market capitalisation exceeds $500 million have fared well. They are better equipped to sustain the vagaries of cash flow and quarterly reporting. Unfortunately for equity investors, many of the most promising patent licensing businesses remain private.

Companies such as Marathon, CopyTele/ITUS, Inventergy, Spherix, Document Security Systems, Single Touch, MGT Capital and Prism have engaged in reverse-splits, merged or been de-listed. Several, including Tessera (Xperi) and Quarterhill (WiLAN), have changed their names and are hanging tough. Some of the larger players, such as InterDigital and Universal Display Corporation, have performed reasonably well in what until recently had been a bull market for technology shares. It remains to be seen how they will perform in a less friendly environment.

I coined the acronym PIPCO in 2012 to represent "public IP company". It was never meant to be limited to patent licensing businesses. It was intended to reflect the performance and breadth of the IP-centric universe – exchange-traded companies that own patents, valuable trademarks, trade secrets and copyrighted content.

When independent inventors and NPEs were winning damages awards and grabbing headlines some investors believed that they had struck gold; many regarded twists and turns in the course of litigation as trading opportunities. But while such antics stoked investor imagination, they also fuelled licensee resistance.

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Wake-up call

Finjan is among the more successful PIPCOs, but at a recent conference President Phil Hartstein stated that the company was considering going private. He explained that "in spite of our repeated success at the PTAB, several lucrative settlements and licenses, growth in our operating business and a bull market for technology stocks, Finjan's stock price has remained essentially unchanged over the past four years".

With approximately half of Hartstein's time devoted to public ownership, he says that it is time to reassess priorities.

Large patent owners generate return on their rights in diverse ways. Only a few depend on IP rights for direct revenue but rather use them to maintain market share and mitigate risk.

Less obvious PIPCOs are businesses such as Apple, IBM, Microsoft, Google, Disney, Bloomberg, Universal Music, Sony, Bristol-Myers Squibb, GlaxoSmithKline, Procter & Gamble, L'Oréal and Nike, which own large and diverse IP portfolios that are worth billions to them and substantial amounts to others. This is not to disparage smaller or private IP owners – but it is a wake-up call for investors that may believe that return on intellectual property is primarily about patent licensing. PIPCOs are nothing more than publicly held companies that rely on intellectual property to generate and support performance.

PIPCO 2.0

For this reason, the IP CloseUp 30 (ipcloseup.com) has restructured to focus on IP-rich – rather than just patent licensing – companies. Call it PIPCO 2.0. (Readers are encouraged to suggest companies that they believe should be included.) The focus of the updated IP CloseUp 30 is divided between patent owners, brands (and overlapping patent-brand businesses) and content providers. Comprehending the relationship between the IP rights that businesses own, their performance and stock price is something that investors should encourage, even when senior management and equity analysts do not.

PIPCOs are not going away; they are evolving. Investors should seek more diverse, nuanced offerings that provide a stable revenue stream and sustainable business model. High-tech companies that refrain from betting on a handful of great patents are not necessarily timid or without vision.

If a decade of PIPCO investing has taught us anything, it is that the best return on intellectual property is not always the most obvious. iam

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