Some thoughts on the development of the IP ecosystem in Europe: IP generation, utilisation and 'anti-utilisation'*, by David Jones and Benoit Geurts, co-Directors at Exponent IP Ltd (www.exponentip.com).*

We recently took part in a webinar, organised by Jordan on behalf of ipVA, where we showed a slide outlining the current state of what we called the "IP ecosystem" in Europe, with a particular focus on patents, and we just wanted to add a little commentary as to how the European IP ecosystem has developed in the way it has.

It would be fair to say that in the dynamic world of IP, the development of the IP ecosystem in Europe lags some way behind similar developments in the US. There are many well-documented reasons for this, not least the fact that since the USPTO opened its doors in the nineteenth century, the US has possessed a plethora of both enthusiastic IP *generators* (Universities, Inventors, Large Corporations, SMEs, specialised R&D labs) and also equally enthusiastic IP *utilisers* (Large Corporations, SMEs, new ventures, strategic aggregators). This dynamic interdependency between IP *generators* and IP *utilisers* in the US has of course also benefited from an inherent cultural acceptance of commercial opportunity – something of which the US can rightly be proud.

Whilst Europe can be said to have broadly similar sets of generating and utilising organisations (albeit spread over different nations and jurisdictions), we believe the key difference is actually a lack of awareness and/or motivation by IP generators (with a few notable exceptions) in Europe as to the opportunities that their IP holdings give them; IP *generation* is thus not an issue, whereas *utilisation* most definitely is.

Traditionally, European organisations will utilise the IP they have generated either by making products based on that IP or else by licensing that IP to another party, or a combination of the two. Beyond that, other notions of utilisation are scant, and will often, in any case, be met by the immovable object of a 'family silver' policy: *no IP should ever be sold, to anyone, under any circumstances.*

We have even come across large, IP-intensive organisations in Europe who routinely audit their IP holdings and then, with any group marked 'non-core', simply abandon them rather than sell or licence them. This is a very peculiar stance for a commercial organisation to take: generating IP is, after all, an extremely expensive business. We call such policies *anti-*

utilisation. In a public company, it seems to us that this kind of policy – in view of a company's duties to its shareholders – is something very akin to wilful misuse of company assets. Having said that, there is some merit, of course, in such a policy as a defensive strategy, but the efficacy of such a policy does in very large part depend on the *quantified* defensive qualities of the IP in question, particularly if that IP has been quantified in view of its opportunity cost as a potential candidate for sale or licence.

Such *anti-utilisation* attitudes are changing, albeit slowly. The growth of interest in IP from institutional investors, combined with the economic downturn and the downgrade of traditional 'property' assets, means that there is now a growing awareness in Europe that within an organisation's IP holdings there may be valuable, saleable assets (buried treasure, if you like) that will either never be otherwise utilised, or worse, abandoned or lost by mismanagement.

European companies who do have a good understanding of their IP holdings should therefore be considering what *exactly* is the optimum utilisation of that property: is it enabling the company to make product, to protect an existing line of business, to generate income from licensing or selling or to simply retain the IP for future development or as a general defensive instrument? And European companies who do not have a good understanding of their IP holdings should of course be asking themselves exactly the same question, having first made use of the many specialist IP service providers who are expert in this area.

So are we in the buried treasure business? Not quite – as any IP auditor can tell you, organizing IP into core/non-core/unwanted is but stage one in a long and complex process that can eventually lead to a successfully concluded transaction. And yet the rewards can be significant; significant enough, indeed, to hold the attention of any CEO (certainly when the rewards are for resources that would otherwise languish, unused, or worse, lost.) Implementing a systematic process of IP audit and exploitation can therefore not only generate income (licensing/selling) and cut costs (obviating maintenance fees); it can also allow a company to really focus on its core business. Of which, of course, expensively generated – but fully utilised – IP is central.

(An extended paper on the IP ecosystem will shortly be available at www.exponentip.com).

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