

How you know when you have a world-class IP strategy

It is all very well having an IP strategy – but ensuring it has a real commercial impact is another matter. There are, though, steps you can take to ensure that you are doing the best possible job

By Henrik Olsson

As intellectual property grows in importance, rights holders are increasingly seeking to extract value from their IP portfolios. A few years ago, the question was whether a company had an IP strategy in place. With today's tougher global competition and the breakdown of long vertical company value chains into a network economy, the question now is whether such strategies are having a real commercial impact.

IP departments are growing in terms of both costs and headcount. In addition, managers tend to report higher up in the company than was previously the case, which has increased internal visibility in two ways. First, top management expects a clear contribution at a commercial level – filing numbers and portfolio size are no longer sufficient. Second, the centralisation of IP costs has led to one single IP budget instead of several smaller budgets dispersed throughout the company. This visible IP cost thus needs to be viewed in relation to the value created by the IP portfolio.

This article describes key components of a commercially oriented IP strategy and illustrates the key success factors and pitfalls. Since a strategy's execution depends on a well-functioning IP infrastructure, key elements of this are also described.

What is IP strategy?

In this article, the term 'IP strategy' describes a tool that helps to connect and direct activities in a company so that the IP portfolio, handled correctly, can create value. Depending on the pace of the particular industry, the IP strategy should be updated as appropriate – usually once or twice a year. Often there is an understanding in companies that the IP portfolio's role is to support competitive advantage against external parties (eg, competitors, suppliers, customers, technology consultancy firms, joint ventures and other industry actors).

Many companies have an IP policy as well as an IP strategy. The former usually describes internal responsibilities, governance and other dos and don'ts; while the notion of 'value' is intrinsic to the latter.

The IP infrastructure is as important as any IP strategy, since this is the backbone for activities relating to the IP portfolio. A company's IP infrastructure includes its staff, internal working methods, key stakeholders, central IP function, roles, governance, IP suppliers and incentive structures (ie, the actors which must be involved to realise an operational and commercial impact in relation to intellectual property).

Clarity of expected commercial contribution

Any strategy should define its goals and the measures needed to achieve these. This also applies to an IP strategy: it should define the expected commercial contribution from intellectual property and how to realise this.

A world-class IP strategy needs certain key elements in order to have an operational commercial impact, including the following:

- a set of general methods in which the IP rights included in the portfolio can create value (ie, IP rationales in relation to the commercial actors in the relevant industry structure);
- goals – for example, a balance between the IP rationales in terms of ranking;
- high-priority activities within the IP infrastructure (eg, interaction with R&D, design and marketing/sales departments); and
- a clear set of priorities.

A good starting point is to identify the correct IP rationales. These are closely related to the company's business model – a manufacturing company selling products and services will have one set of IP rationales, while those of a technology licensing firm may be completely different.

Depending on the company, there are often between five and eight IP rationales which can be classed as relevant. These must remain in force for a significant period of time and be sufficiently detailed to affect the IP operations. To safeguard this impact, it is crucial to understand how the IP rationales affect prosecution, especially in view of an application's design. It is often difficult to know which IP rationale(s) an IP right will support at filing, due to uncertainties relating to technology, markets and business models in early phases. However, this will often become clearer after a few years. Typical IP rationales are used to support sales from brand or unique selling point (USP) perspectives, as well as licensing and control in relation to suppliers.

A world-class IP strategy will have ranked IP rationales in order to establish priorities in IP operations – from interaction with R&D, market and design departments to proactive efforts relating to licensing and enforcement. Further, there should be clear goals defining the distribution of IP rights in relation to the IP rationales.

It often takes several years for an IP portfolio to reach

a balanced state. This involves two processes: abandoning the wrong rights and creating the right ones, which align with the IP strategy. From a cost perspective, there will be a phase during which IP costs fall, as a result of the wrong rights being abandoned. While costs are then likely to rise again once the IP strategy starts to gain traction, by this stage there should be a better understanding of the strategy's commercial contribution.

An IP strategy should support decision making in relation to the IP portfolio – meaning that it is essential to set priorities. Examples of prioritisations include relevant technical fields, areas of design, attributes of subject matter, freedom to operate and enforcement thresholds.

In terms of language, it is better to avoid fancy vocabulary and buzzwords – which can dilute the message – and instead focus on helping people to understand. The more fuzzy words there are in an IP strategy, the less likely it is to receive support for decision making in relation to the IP portfolio.

Different business units in the company may have different IP rationales. Therefore, the overall format of the IP strategy should be scalable. This tailored fit is crucial to secure buy-in – without this, the IP strategy will be merely a document.

If a company has untapped potential in its intellectual property, here are a few steps to consider. First, identify relevant IP rationales. By providing examples of how intellectual property can create value for various internal stakeholders, one or more IP rationales will most likely be identified. A tactical approach is to identify activities where there is management attention and strong potential for intellectual property to contribute – a good way to discover this is by listening to stories being told in the company (eg, in the sales, purchasing and M&A departments). If no IP rationales can be identified, it is advisable to find a new job where intellectual property matters.

Key stakeholders

The right stakeholders also need to be involved, for several reasons. Their primary contribution is to provide relevant information in order to ensure that any IP rationales relating to their function are working. If they are, these stakeholders can then provide relevant input into the IP strategy formulation, the design of individual IP rights and IP portfolio maintenance, as well as establishing priorities and relevance when it comes to licensing and enforcement. If there is no input from internal stakeholders which understand the external context, this is a problem.

The success of an IP strategy thus depends on the involvement of the right stakeholders. It is these who perceive the value that can be created by intellectual property. For instance, while a classic IP rationale might be to support sales, it takes the right stakeholder to embrace an invitation to connect, for instance, branding and USPs to IP operations. Such a stakeholder would understand how intellectual property can help to strengthen brands and even achieve sales targets.

Alongside the risk that the right stakeholders may not want to participate is the danger that the wrong stakeholders may get involved. It is important not to get stuck with intermediaries (ie, people without the right information or the right authority). Their

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primary contribution is administration (eg, gathering and disseminating information); they have only limited potential when it comes to adding value and can even divert valuable time and effort away from value creation.

Once the right stakeholders are involved, it is vital to provide them with opportunities to meet one another. An IP portfolio as such does not create visible value – this worth is rather created through the interplays between stakeholders, the IP portfolio and any external actors that you wish to involve.

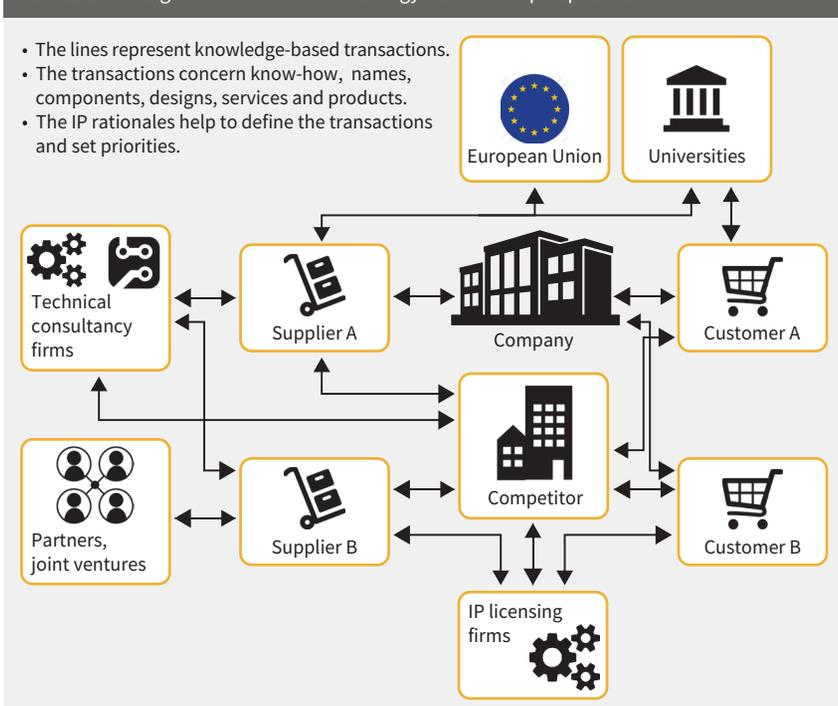
Key performance indicators

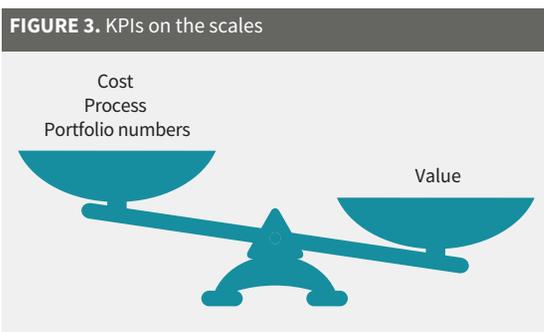
It is well known that key performance indicators (KPIs) can be challenging to those in the IP community. Some KPIs are easy to measure, but give a poor indication of what you are actually trying to quantify and vice versa. One recommendation is to have few KPIs and to focus on setting the right ones; the wrong ones may involve a lot of administration and still be unhelpful.

There are different types of KPI:

- portfolio related – numbers relating to portfolio size;
- process related – aspects relating to IP operations within the company (eg, compliance with specific processes for creating and reviewing the IP portfolio, including lead times);
- cost related – aspects relating to IP costs (eg, total

FIGURE 1. Setting for a commercial IP strategy – an actor's perspective





- IP costs, balance between in-house work and use of suppliers, cost levels for certain activities); and
- value related – aspects relating to the commercial contribution (eg, licensing income, damages, information relating to the IP rationales and number of enforcement activities).

A common mistake is to use filing numbers and IP portfolio size as KPIs to direct IP operations. While these are often good from a budgeting perspective, they can be detrimental from a value perspective, since with KPIs you tend to get what you measure (ie, there is a risk that using these may lead to too strong a focus on filing and other portfolio-related metrics). KPIs should be designed to support a commercial perspective and not just be a quantitative number to reduce the risk of spending time and money on the wrong cases. Still, it is reasonable to have an upper limit on filing numbers and some portfolio metrics, since most companies have a maximum capacity when it comes to handling cases from a resource perspective.

Process KPIs are primarily relevant for the IP department and can assist with ongoing improvement efforts. There is normally no need to send them elsewhere within the company.

Cost KPIs are often more useful than numbers relating to filings and portfolio size. In addition, it is preferable to have the freedom to distribute costs between various fields and activities. Keeping litigation costs outside this KPI is often recommended.

Value KPIs should be communicated upwards in the organisation – especially if the company receives significant amounts of money in damages or licensing revenues (in some companies this is already budgeted as revenue). Commercially oriented KPIs are recommended, especially those relating to how the

IP portfolio creates or is intended to create value (eg, numbers relating to the relevant IP rationales, how the IP portfolio should be balanced between them and their status). Taking this a step further, one KPI for an IP rationale could be that 20% of the IP portfolio has a significant link to the USPs of a key product or service. This could also work as a basis for future damages and licensing revenues.

Care should be taken over whom to communicate which KPI to. Value KPIs should be communicated upwards and to the relevant stakeholders. Controllers at the finance department are most likely the best recipients of certain cost-related KPIs; the management of the IP function should make use of the rest. Communicating the right KPIs to the right internal stakeholders helps to put intellectual property on the corporate map.

Since the IP strategy is a governing document, certain KPIs can be included there to help direct daily IP operations.

Communicating IP strategies

Strategies are often secret, with only a few people able to access them. However, since IP concerns affect many different functions of the company, it is crucial to communicate relevant information to stakeholders so that they can understand the strategy’s direction – in particular, the relevant IP rationales – and how they might contribute to it (eg, by helping inventors to develop technology in line with the IP rationales).

There might also be a need to send a message to external parties. The IP strategy may well define threshold levels with regard to when to enforce and these should be kept secret. Still, it is often a good idea to communicate externally that significant efforts will be taken to track down and stop infringers.

IP infrastructure and IP strategy execution

Intellectual property involves complex cross-functional internal processes and the details must thus be managed correctly. A crucial prerequisite for executing an IP strategy is a well-designed IP infrastructure; without it, the IP strategy will never get traction and will remain merely a document. The IP infrastructure extends beyond the boundaries of the central IP function, concerning all stakeholders involved in the relevant IP rationales. Examples of key elements of an IP infrastructure include the following:

- organisation;
- internal processes;
- governance (decision making in IP operations);
- resources, competence and roles describing tasks and responsibilities at an individual level; and
- incentive structures.

Examples of factors which have a negative impact on the speed and quality of an IP strategy’s execution are language barriers, clashes between company cultures, time zones and too many individuals being involved in a process. Each interaction and handover of information can be a source of delay and mishandling.

One efficiency measure is to set up internal processes which cross as few organisational boundaries as possible, keep the number of individuals involved to a minimum and limit the number of information handovers. For this to happen, the central IP function’s responsibilities

and resources should increase. The more responsibilities are vested in this function, the smaller the impact on IP operations when wider organisational changes are carried out – that is, the more the IP infrastructure depends on involvement and engagement from other departments, the less stable it is. However, despite this, input from other departments is still crucial.

In an IP infrastructure with efficient and effective internal processes and competent resources, it is possible to delegate standard IP decisions downwards in the organisation, provided that the IP strategy is clear as to the expected commercial contribution. This may, for instance, require commercially oriented characteristics of inventions and designs to be highlighted.

This becomes especially important in truly global companies which have R&D, design and marketing/sales functions in many countries. The challenge increases if R&D is performed at one site and the results are exploited at another.

Another efficiency measure is to design the governance of intellectual property so that local personnel are empowered to act under the guidance of the IP strategy.

From a competence viewpoint, not everyone contributing to internal processes needs to know everything about intellectual property; a general understanding – along with enough knowledge to carry out their part of the process – is usually sufficient. Each role is likely to require dedicated IP training to enable the transition towards a more commercially oriented way of working.

It is crucial that the right inventions and designs be developed and communicated to the central IP function. A well-structured invention or design remuneration scheme with different levels of reward can help to guide creativity by communicating what the company finds valuable.

Internal ownership of IP strategy and infrastructure

A relevant question when a company enhances its IP operations is: which division bears overall responsibility? The current trend is to make the central IP function responsible for IP operations. The primary reason for this is that when intellectual property grows in importance, the individuals with the highest professional IP competence must assume more responsibility than before. Typical responsibilities which are best left to the central IP function include the key elements of the IP infrastructure listed above – that is:

- IP strategy;
- internal processes;
- governance (decision making in IP operations);
- IP budget;
- resources, competence and roles describing tasks and responsibilities at an individual level; and
- incentive structure.

However, the central IP function cannot and should not do everything. Several of the responsibilities listed above have both a format and content aspect. While responsibility for the format (eg, the structure of the IP strategy or the details of the internal processes) is best placed within the central IP function – since that should have the highest IP competence in the company – from a content perspective, it is important that certain decisions (eg, which IP rationales are relevant) are based on information received from other parts of the company.

“A well-structured invention or design remuneration scheme with different levels of reward can help to guide creativity by communicating what the company finds valuable”

Decision making in broader matters may still lie within the central IP function, provided that there is a clear mandate and processes in place for such matters to be handled or pushed higher up the organisation, as appropriate.

Way ahead

This article outlines several factors which are crucial to the commercial success of an IP strategy. However, some additional factors should also be borne in mind.

First, building IP capability enhances the internal visibility of intellectual property, which leads to higher expectations from it. The reward is that stakeholders will appreciate the results.

Second, an IP strategy will succeed only where one or more individuals are willing to assume the challenge of driving change. This in turn requires management support. A good way to secure this is to create a set of relevant IP rationales and discuss them with top management. It is also good if the recipients of the value from intellectual property (ie, the relevant stakeholders) help to spread the good news of higher value upwards, to attract management attention.

Third, the role of intellectual property in the new

TABLE 1. Troubleshooting

Question	If the answer is no, then...	Fix it by...
Do the people involved in the internal processes know how to contribute commercially?	Your IP strategy has limited traction.	Training the relevant parties on how they should do their jobs.
Does the IP creation process work quickly and smoothly?	Possibly it is too complex or there are too many actors/decisions.	Shortening the process, defining clear interfaces between steps and delegating decision making.
Do you receive external requests for IP licences or do other parties file oppositions/re-examinations against your IP rights?	The IP portfolio may lack commercial focus.	Mapping the IP rights in line with the IP rationales and interacting with R&D to ensure that inventions are more in line with the IP strategy.
Have you filed a litigation suit during the last five years?	The IP portfolio may lack commercial focus or you may be unaware of ongoing infringements.	Finding out which IP rights are best from a commercial perspective and proactively seeking out infringers.
Do you receive sufficient relevant inventions from an IP strategy perspective?	Colleagues in R&D may not know what is needed from a commercial quality perspective.	Interacting more closely with R&D and setting clear priorities to encourage the right inventions.
Do the attorneys know how to draft IP rights so that they cover the correct commercial transactions, as outlined in the IP strategy?	It is likely that your enforcement and licensing efforts will be fewer, their outcomes more uncertain and they will take longer to close.	Training attorneys in commercial aspects of intellectual property, including how to draft claims to cover the relevant commercial transactions.

Action plan



Companies seeking to create a world-class IP strategy need to go through a detailed evaluation and implementation process:

- Find information about which IP rationales are relevant.
- Create involvement and engagement from the relevant stakeholders related to the IP rationales, since they are the ones who will recognise the value.
- Revise the resources needed to ensure deliveries for these commercially enhanced IP operations.
- Revise the internal processes so that they support the relevant IP rationales, ensuring as few information handovers as possible.
- Review the roles and competences needed to ensure that the involved persons can do their part.
- Review governance to see which decisions

can be delegated upwards or downwards.

- Ensure sufficient anchoring and decisions to implement the enhanced set-up.
- Secure proper involvement and engagement from the people who will deliver the enhanced IP operations.
- Secure necessary decisions from top management.
- Train relevant persons in the new way of working – each role may require special training.
- Start with a pilot to see how it works and possibly fine-tune components in the IP strategy and IP infrastructure.
- After gaining insight from the pilot, plan and execute a broader implementation.
- Review the enhanced IP operations (regularly) to find improvement opportunities.

economy is crucial. Now that long internal value chains have been broken down into networks of companies specialising in core activities, there are more interfaces which need to be managed professionally from an IP

perspective. Intellectual property is still vitally important in this new economy and should be managed accordingly.

In particular, norms affect behaviour. A common norm in tech-based companies is that a valuable technology is one that is better than the previous technology – which leads to an emphasis on patenting. While this norm – which may well be a primary driver of IP operations – does not consider the commercial aspects of a new technology, it may still be relevant in the long term, beyond current strategies for products and services.

Practically speaking, an action plan can help to enhance IP operations and move them in a more commercial direction. Companies can take several key steps to achieve this. The structural phase consists of gathering information, creating improved ways of operating and working to help the relevant people understand and commit to the IP strategy. The implementation phase takes more time and effort, since it involves more people and requires more detailed information.

A final note is that it is not possible to include everything in a strategy. No IP strategy can replace common sense and judgement. Many situations involve an IP issue which simply needs to be handled. The IP strategy is not itself the reality – rather, it should help to shape the reality. *iam*

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