



Singapore | 30 – 31 July
2009

Facilitating IP Backed Financing

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Hungarian Patent Office (HPO)

Government office for the protection of intellectual property



- Supporting the national science, technology and innovation policies using IP tools
- Facilitating national and regional economic growth through promoting the **identification, protection** and **utilization** of industrial property.
- Performing official examinations, procedures and tasks in the fields of **patents, trademarks, industrial designs** and **copyright**
- Participation in the preparation of intellectual property legislation
- International co-operation in the fields of intellectual property protection and utilization

Themes of this presentation

IP backed financing

- The increasing importance of IP assets
- The need for financing
- Monetization of IP
- IP backed financing possibilities
- Obstacles to IP backed financing

Facilitating IP backed financing

- IP valuation
- IP valuation initiatives
- Guide for legislators (UNCITRAL guide)

The increasing importance of Intellectual Property (IP) assets

IP Assets:

- *are protected as exclusive property by law: **trademarks, copyright, design rights, patents, trade secrets, etc.***
- *are the **key assets** of most businesses (sometimes the only assets)*
- *can represent **60-70% of business value**, sometimes more*
- *....are the drivers of developed economies*

The economy of Europe is now predominantly driven by intangible assets

The need for financing

- *Economic development depends, to a large extent, on innovation*
- *Innovation requires funding*
- *Innovation intensive businesses can have difficulties financing their development*
 - *cost of capital can be too high*
 - *no tangible assets to use as collateral*
 - *financing innovative businesses is a risky proposition for financiers*



Monetization of IP

- *Internal use of IP for greater revenue generation – Sale of company*
- *Licensing of IP + Technology Transfer*
- *Sale of IP*
- ***IP backed financing (securitization, collateralization)***
- *Divestiture*
- *Retention of use rights (non-exclusive or exclusive F/U)*
- *Spin off/Spin out*
- *Joint Venture*
- *Donation*
- *.. Other mechanisms to leverage IP assets*

IP backed financing possibilities

- IP-collateralized loans (IP rights serve as security for credit)
 - IP used as collateral for loans (historically only used to enhance the value of tangible assets)
 - IP used to determining credit rating

- Securitization of IP (asset backed securitization)
 - The „mortgaging“ of IP cash flows / royalty streams
 - Creation of Special Purpose Vehicle for ownership of IP assets (so that only the IP and not other assets of the company are securitized)



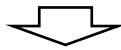
Why is IP backed financing not a widespread phenomenon?

Observations

The importance of IP assets is increasing within business value

IP intensive businesses clearly need new mechanisms for financing

The amount of capital raised directly based upon IP value is relatively low



- True revenue potential from monetizing IP often not fully understood
- There are obstacles preventing IP backed financing

Obstacles preventing the use of IP backed financing

Classification of IP assets (unsuitability of IP asset)

- *Difficult to separate IP asset from other assets*
- *Difficult to transfer IP asset to lender in case of default (enterprise specific assets)*

Markets and Liquidity

- *Often no market for the underlying asset*
- *Ownership and financial claims not registered (unless patent or TM)*

Cost of capital

- *High transaction costs (each deal has a unique structure – costly)*

Valuation of IP asset

- *No standardised financial tools to capture IP value*
- *Lack of universal valuation model*

„As a result, companies are missing substantial capital resources that could be used for business expansion or innovation investment”

Jarboe & Furrow

2008

Opportunity cost to the economies of developed countries..... as a large source of potential financing is locked up



What can be done to increase the amount of IP backed financing transactions?

Facilitating IP backed financing

Intervention needed to encourage capital markets to support and invest in IP assets and free up this potential

IP backed financing must be facilitated by initiatives from the private sector, governments and independent organisations



Create standardised tools for use by parties in IP financing transactions



Create legislation which encourages the use of IP financing practices

Increase acceptance of IP backed financing

- *Increase cooperation between internal areas (legal, tax, product development)*
- *Increase expertise in the field*
- *Develop best practice*
- *Lower the costs of IP backed financing*

Increase willingness of lenders to take IP as collateral

- *Reduce lenders' risk*
- *Provide legal certainty*
- *Provide valuation tools*
- *Increase transparency in credit system as regards the debtor's credit structure, and giving visibility to secured transactions*

IP valuation

- *IP valuation is a necessary tool for IP backed financing*
- *Further expansion of the monetization of IP assets is highly dependent on a market-wide acceptable standard for IP valuation*

Reform of secured transaction and intellectual property legislation

- *Facilitate IP backed financing through creating „friendly” legislation*
- *Coordinating the content of legislation related to **secured transactions** and **intellectual property***

IP valuation as a standardized tool
for IP backed financing
transactions



IP Valuation

Development of practical IP valuation methodology toolbox

- *Danish Patent Office/European Patent Office: IPScore software*
- *Hungarian Patent Office. IP valuation pilot projects*
- *HPO, UKIPO, Finland, Austria: IP Valuation Symposium Series*
- *IP valuation forum*
- *And many others*

Standardization of IP valuation methodology

- *International Accounting Standards Board (IASB) – IAS 38*
- *Financial Accounting Standards Board (FASB) – No. 142*
- *German Institute for Standardization - PAS 1070 “General Principles of Proper Patent Valuation”*



Challenge:

How do we assess the value of IP?

Commonly used IP valuation methods:

quantitative

qualitative

Assessment of the monetary value of IP

Analysis of IP based on factors which influence it's value.

Cost Based Methods

Market Based Methods

Value indicator methods

Income Based Methods

(Option pricing based methods)



IP valuation initiatives

Hungarian Patent Office IP Valuation Pilot Project (2009): Methodology toolbox

qualitative analysis
tool

+

quantitative
assessment tool

=

Robust valuation



IP Valuation Symposium Series

Budapest

November 2008
Hungarian Patent
Office

Helsinki

May 2009
National Board of
Patents and
Registration of Finland

London

Spring 2010
UK Intellectual
Property Office

Vienna

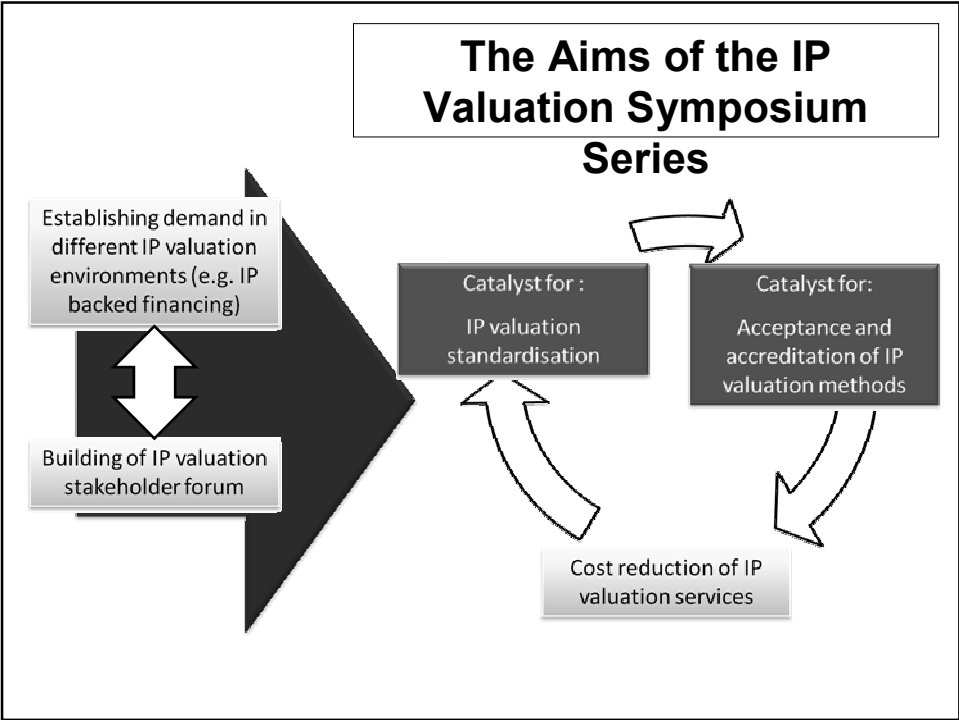
Autumn 2010
Austrian Patent Office

Important IP valuation issues investigated:

Practical IP valuation
environments

Practical methodology
issues

IP valuation solutions
and services
(international best
practice)



London
Spring 2010
UK Intellectual Property Office

Focus on IP valuation for IP backed financing

- *Include results of UNCITRAL annex*



Reform of secured transaction and intellectual property legislation

UNCITRAL Legislative Guide on Secured Transactions dealing with security rights in intellectual property

United Nations Commission on International Trade Law (UNCITRAL)

- *Mandate to further the harmonization and unification of international trade law*
- *Presently developing a Legislative Guide for use by States wishing to reform **secured transaction and intellectual property** legislation*
- *Co-operation of leading legal and academic experts and international organization representatives*
- *Guide to be completed in **Spring 2010***

http://www.uncitral.org/uncitral/en/commission/working_groups/6Security_Interests.html

Goals of the UNCITRAL guide

Facilitate increased access to credit at lower cost for businesses that own or have the right to use IP, within the parameters of IP law

- *Permitting IP owners to use their IP rights (**patent, trademark, copyright**) as **security** for credit*
- *Allowing potential creditors to determine the existence of **existing security rights** on an IP asset*
- *Enabling creditors to clearly determine the **priority** of their security right in the encumbered IP*
- *Allow secured creditors to obtain a security interest in an IP right and **enforce** it*

UNCITRAL recommendations to States

Recommendations regarding:

- *The creation of security rights*
- *Increasing effectiveness against third parties*
 - *Security rights register*
- *Priority of security rights in the case of competing claimants*
- *Enforcement of security rights*
 - *Possession of assets*
- *Insolvency of licensor or licensee*
- *The need for valuation standards*
- *Conflict of laws issues – who's law to use?*

Conclusions

- IP assets are increasingly important for businesses and developed economies
- IP assets, within the correct environment, are suitable for use to obtain financing
- IP backed financing is presently not widespread
- Initiatives are underway to facilitate the greater use of IP backed finance
- A successful future for IP financing is a significant step in further development of the IP based economy
- These initiatives will result in benefits to developed economies
- For market participants, IP financing will be of key importance to achieve their economic goals



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Thank you for your
kind attention

Wishing you a
fruitful discussion

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