

New Financial Products

Building on the Banking on IP report and working with the co author, Martin Brassell, Scottish Enterprise has been considering the concept of using IP as collateral to secure non equity based finance. This has included reviewing the current perceived role IP plays within non equity based finance, the regulatory context and its impact, the Scottish legal perspective when taking security over IP, international government initiatives aimed at encouraging IP backed finance, the key perceived obstacles for lenders, and the emergence of insurance backed schemes.

As it stands we believe that whilst IP plays a role in a number of lending contexts in the UK, mainstream lending is seldom one of them. We are aware of a number of asset backed lending products aimed at intangible assets, especially software. We also understand that venture debt providers often take security over IP, although the IP is not thought to represent collateral as such, rather knowledge of the assets and their 'materiality' is understood to inform and strengthen some credit decisions. In addition, within the alternative lending finance sector, IP is known to play a central role in Pension led funding. A number of Asian countries are known to have introduced schemes with the intention of encouraging IP backed finance. In the main they seem to share common features such as subsidised IP valuations and state backed guarantees aimed at driving secured lending against IP. However thus far no scheme seems to represent what can be regarded as a well functioning system where the latent value of IP is used to drive lending.

In addition to the regulatory context other barriers for lenders have centred on value identification (given that historically intangible assets have seldom been visible on balance sheets), value determination (given there is a lack of standard valuation methodology) and value recovery (given there is a lack of easily accessible secondary markets).

In the UK a working group led by Quantiplay (spin off from the Big Innovation centre) and believed to include the NatWest/RBS, and Lloyds underwriter Safeguard IP is understood to be investigating an emerging approach where insurance policies protecting the value of IP are used as proxy for the value of the IP itself. Discussions are known to have taken place between this working group and the British Business bank exploring the potential of the British Business bank playing a guarantor

Within this context SE has been assessing the current world wide status, the barriers to progress and ultimately how this market need can be addressed for the benefit of Scottish companies.

Collaboration

As an organisation SE encourages innovation and the creation and transfer of IA /IP through a number of current interventions aimed at supporting collaboration. This includes SE's open innovation programme which aims to support the collaboration of small or medium sized enterprises in Scotland with large organisations or public bodies who are seeking innovative

solutions to particular technical challenges, and SE's Seek and Solve programme which aims to support companies to co develop products with potential customers

Historically UK business R&D expenditure and associated innovation levels are known to have been relatively low compared to most other OECD countries. However globally it is well known and accepted that there is valuable intellectual property that is either not being exploited at all or perhaps only in selected geographies. In theory this presents an opportunity for an intermediary to act as safe and secure conduit identifying and sourcing this under utilised IP and matchmaking with suitable UK entities. Potentially this might involve leveraging existing networks and reaching out to form new relationships with various academic and corporate entities worldwide with a view to facilitating access for suitable UK entities to their noncore IP. Conceivably it could also involve the provision of an element of co funding provided by government and matched by the IP owner to develop the opportunity/technology/business. This approach could be applied on a sectoral basis or a geographical basis. Examples can be provided as to how this might potentially work in practice.

IP Value generation

Whilst there is support available in the UK to assist companies to identify and protect IP, there is much less support directed at supporting companies to generate significant commercial return or investment from IP. In fact there are significant barriers to commercialisation: Although there are of course IP professionals in the form of patent attorneys, lawyers and accountants these are not always the most appropriate source of support required during the process of identifying suitable commercialisation partners and negotiating the main elements of a commercial deal and the costs of these professionals are in many instances prohibitive for many companies. In addition there are specific issues to be understood and addressed if such commercialisation has an international perspective.

Such support spans a variety of issues from educating companies regarding the various means of commercialisation, through to support in the negotiation process and even up to the provision of standard template business to business documents such as confidentiality agreements, licence agreements, collaboration agreements, etc. Whilst it is not expected that such off the shelf documents will fit every situation they could reduce professional costs and accelerate progress for early stage companies, companies new to the process or new to commercialisation in a particular territory or indeed support deals up to a certain financial level with limited risk. In addition, it is suggested there is a need to provide an accurate impartial directory of commercial providers of IP commercialisation support out with traditional patent attorneys and IP lawyers which should also include providers of IP Valuation services, IP licensing and monetisation support services, and IP investor groups.

Another area worthy of investigation due to the unavailability of accessible, affordable support in the current market is IP investor readiness products and services. Presently for the most part,

accountancy statements and reports focus on tangible assets and leave little opportunity to demonstrate how IP and particularly that generated internally by the company, contributes to the turnover of a business or to its bottom line value. As a consequence this can mean that IP and IA can be hidden and not fully taken into account when competing for investment. Potentially providing tools, templates, and support to create pre-investment IP diligence packs might create greater clarity. In addition to addressing key questions investors might have concerning the extent of a company's IP and IA, its status, ownership, and approach towards IP management, the key intention of these documents would be to clearly demonstrate the significance of the company's IP by linking it to revenues (current and projected) and overall business strategy and articulating how the IP relates to the company's position in the market.