IP & Finance

“Right on the Money?”

17 September 2019
Our Panel

• Calum Smyth - Global Head of IP, Barclays
• Jon Calvert – Partner, Deloittes
• Gerald Brady – MD, Silicon Valley Bank
• Jane Mutimear – Partner, Bird & Bird
• Michael Nixon, - Principal Economist, Baker & Mackenzie
• Hu Junjian, Director, IP Utilization Promotion Department, National Intellectual Property Administration, PRC
Intangible Asset Valuations

Jon Calvert
IP Advisory
Deloitte
A quick introduction

Press releases

Deloitte acquires leading intellectual property consulting & transaction advisory firm ClearViewIP

4 June 2019

Jon Calvert – Partner IP Advisory
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Reasons for performing valuations

Different reasons for performing valuations may impact measure of value but underlying principles applied in the valuation will generally be the same.

- Liquidation or reorganisation
- Tax
- IPO
- ESOP
- Dispute/Litigation/Arbitration/Potential losses
- Financial reporting purposes
- Under articles of company or agreement
- M&A Buy/sell side, specific buyer, Private equity/trade/MBI

www.aippi.org
Overview

Valuation Approaches

- **Market approach**: In the market approach, recent sales and listings of *comparable assets* are gathered and analysed.

- **Cost Approach**: The discrete valuation of an asset using a cost approach is based upon the concept of replacement as an indicator of value.

- **Income approach**: Based on the premise that the value of a business or asset is the present value of the future earning capacity that is available for distribution to investors in that business or asset;
  - Excess Earnings Method; and
  - Relief-From-Royalty Method ("RFR").
Types of Asset and Case Studies

- **Developed Technology**
- **Patents**
- **Trademark/Trademark**
- **Know How**

**Case Studies from ClearViewIP**
- IP Asset Based Lending – UK Bank
- Patent portfolio valuation – JP Consumer Electronics
- “Content” and social media valuation – YouTube Channel
- Licensing Strategy – Chemical Co
Silicon Valley Bank

Right on the Money – IP & Finance

17th September 2019
We help innovators move bold ideas forward, fast.

SVB is at the intersection of innovation and capital

- Hardware & Infrastructure
- Software & Internet
- Life Science & Healthcare
- Energy & Resource Innovation
- Private Equity & Venture Capital
- Premium Wine

Providing a range of comprehensive financial services

- Global Commercial Banking
- Investment Solutions
- Research & Insights
- Funds Management
- SVB Leerink
- Private Banking & Wealth Management
We help high-growth companies navigate at every stage

SVB LOAN PORTFOLIO

Corporate: 6%
Growth: 94%
Startups: 6%
Larger companies:

OUR CLIENTS

50%* of all venture capital-backed tech and life science companies in the U.S.
60%** of US venture capital-backed companies with an IPO in Q1 2018

*Approximate
**According to NVCA data
Q2 2019 highlights

SVB financial highlights

Q2 2019
$318M Net Income
$147B Deposits & Investments

Full Year 2018
$974M Net Income
$92B In Investment Funds (off balance sheet)

Q2 2019
$29B Total Loans
$64B Assets

3,310+ Employees
15 US states and 8 countries
US | UK | Canada | China | India | Ireland | Germany | Israel

SVB Confidential
We understand the startup landscape

With knowledge of companies in all innovation sectors, across multiple geographies and stages, we understand startups like no other bank.
Venture debt 101

EXTENDING YOUR STARTUP’S RUNWAY: VENTURE DEBT 101

Debt vs. Equity 101

THE CAPITAL STACK

- Common Equity
- Preferred Equity
- Subordinate Debt
- Senior Debt

REPAYMENT PRIORITY

- Senior Secured
- Second Lien
- Mezzanine
- Preferred Equity
- Common Equity

Potential Return & Risk

- High
- Medium
- Low
Venture debt relies on IP for downside protection

Venture Debt Parameters

- **Uses of capital... FINANCING GROWTH**
  - General corporate purposes
  - Financing specific fixed assets

- **Security/Collateral**
  - First priority lien on all business assets
  - Typically a negative pledge on IP
  - No personal guarantees or investor guarantees

- **Repayment and Covenants**
  - 6-12 month interest-only draw period followed by ~30-36 month principal repayment
  - Few financial covenants
  - Standard negative covenants (i.e. consents needed for M&A, subordination of other debt, etc.)

- **Pricing**
  - Interest rates in the mid single digits to low double digits
  - Warrants typically equal to ~0.25-1.00% fully diluted ownership
We view IP through a downside protection lens

<table>
<thead>
<tr>
<th>Strategic Financial</th>
<th>Debt</th>
<th>Equity</th>
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<tbody>
<tr>
<td>Liquidation value</td>
<td>IP</td>
<td>Growth value</td>
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<td>Monetization value</td>
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<td>Strategic value</td>
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Culture – our secret sauce
Attitude to risk
FRAND and Telecoms: a case study

Jane Mutimear

Bird & Bird LLP
Case study: Patents as financial assets in practice

• In the telecommunication industry large scale R&D focused on standards development led to large patent portfolios

• Large patent portfolios are expensive to maintain. Choice of licensing or selling.

• Difference between rates obtained licence for e.g. 1000 patent families and say 1025 minimal. Some decided to liquidate under-performing asset

• Standard essential patents easier to sell as identifiable market – two main types of purchaser – implementer and licensor
Straightforward asset liquidation?

- The biggest ICT patent issue in the second half of this decade is "privateering": the act of large companies feeding trolls with patents in order to maximize their patent monetization income and/or drive up their competitors' total cost of defense.
  - Florian Muller, Foss Patents, 21/4/15
- Pledged allegation that dividing a portfolio is in breach of competition law as leads to higher royalties
  - Samsung's pleading in Unwired Planet v Huawei, 2014
- We're asking universities around the country to protect their inventions from patent trolls by signing the Public Interest Patent Pledge.
  - Electronic Frontier Foundation, 2016
Court as arbiter of value

• Most frequently addressed in claims for damages for past infringement
  – Generally compensatory: at least reasonable royalty
  – US – Georgia Pacific 15 factors
  – Close comparable licences most useful
Court as arbiter of value: UK

• Damages assessed as reasonable royalty if patent licensed.

• If not licensed then can seek lost profits on lost sales, lost profits on any reduction of own sales price, reasonable royalty on sales the defendant made that the claimant would not have made. Can also seek account of profits.

• Surprisingly few decided cases – usually settles
Determining portfolio values

• Determinations of FRAND portfolio rates by courts:
  – Either where parties agree (e.g. US case: TCL v Ericsson) or
  – As intermediate consideration when granting injunctive relief

• Some courts will just decide whether claimant's offer was FRAND and issue injunction if it was (German infringement courts, Chinese infringement courts).

• English Court will determine what would be a FRAND licence (e.g. Unwired Planet v Huawei). On appeal to Supreme Court. Issue whether FRAND licence is global or national.
Determining portfolio values (2)

- Two main approaches:
  - Comparables
  - Top down analysis

- Comparables:
  - Consider similarity between portfolios
  - Consider change over time, including relevance of standards licensed
  - Assessing relative essentiality against comparable
Determining portfolio values (3)

• Top down approach
  – Assumes a value cap for the technology in question, usually expressed as a % of net sales price (e.g. 6-8% for 4G, Shenzhen Court Huawei v Samsung)
  – Often SSPPU argument raised
  – Assess industry share held by portfolio in question: by numerical or valuation metric. Consider applying essentiality assessment
  – Used as main approach or sanity check
#1: A hub for IP transactions & management
Aims to support the potential for Singapore to be a vibrant IP marketplace where people can transact and manage IP.

#2: A hub for quality IP filings
Aims to support the opportunity for Singapore to benefit from the increase in IP activities in the region and globally.

#3: A hub for IP dispute resolution
Aims to support the potential to attract international IP disputes to be litigated in Singapore.
Targets for Goal #1

- Introduce IP financing scheme
- Set up CoE for IP valuations
- Support securitization, IP fund management & work with industry
- Attract IP intermediaries via incentives
- Establish licensing platform
- Support & co-fund projects in IP ecosystem
Goal #1: Overall conclusions

- Ambitious set of objectives, which require significant groundwork before they can be fully realized.

- IP transactions and management is also a nascent field (excepting USA).

- Singapore’s institutions succeeded to support domestic enterprises to improve IP awareness and management (IPVL) and the starting blocks for IP financing (government-supported IPFS).

- The current focus is to build up capabilities of domestic enterprises and FI’s to commercialize/transact in IP assets.

- More complex activities will follow once first phase focus areas are addressed.
About the IP Financing Scheme

- Supported SG-based qualifying companies
- IP as collateral on loan, government shared risk
- FI's determined credit risk, did DD
- Valuation subsidy from government
- FIs could issue of up to SGD 100m
- Panel of valuers & participating FI's
IPFS: Key outcomes and lessons

- Some loans in scheme, but relatively small number - interest in FI’s limited given small nature of scheme, capability to assess creditworthiness and lack of secondary market, plus regulatory capital requirements under Basel III

- Need to more broadly develop ecosystem for scheme to work more effectively – solving many difficult problems at same time (secondary market, capability, collateral, insurance, etc.) – which requires many participants to work together effectively

- Price of valuations a factor for borrowers

- Aim moving forward to support development of sector while improving access to market-based funding solutions

- Some work with PE/VC sector to support other means of capital raising (Makara Innovation Fund & IPOS support in DD), valuation standards and training, improve IP enforcement & augment with IP insurance (collaboration with Lloyds)
Other schemes in Singapore

• Via Enterprise Singapore, various grants, loans and insurance available to help knowledge-intensive SMEs grow, for example:
  ▪ Startup SG Tech grants
  ▪ Market Readiness Assistance grants
  ▪ International Co-Innovation Programmes
  ▪ SME Venture Loans
  ▪ Internationalization Finance Scheme (including IFS Non-Recourse)
  ▪ Loan Insurance Scheme

• Tax incentives are also available for exploitation of IP based on activities included in Singapore, and for VC/PE funds.
Brief introduction of Intellectual Property
Financial Service Works in China

Hu Junjian
Director, IP Utilisation Promotion Dept
National IP Administration, PRC
1. Objectives of IP financial service

• build up a multi-layer intellectual property financial service system
• concentrate financial resources to real economy of intellectual property
• expand the financing channel for medium, small and micro-sized enterprises through patent pledge.
2. Measures of IP finance work

- Create working system with policies and rules at first.
- Fully upgrade service level with the government cooperation with banks or insurance institutions.
- Enhance the establishment of service mechanism based on the needs of SMEs.
3. Working Achievements

- On pledge financial of intellectual property. The financing amount grows fast.
4. Difficulties

• The imperfection of patent value evaluation system.
• The immaturity of transaction market, makes the pledge hard to be realizable.
• The SMEs’ risk resistance capacity is low.
• The promotion of patent insurance is difficult.
5. Conclusions

- innovation of public service mechanism
- improvement of risk control mechanism
- improvement of market operation mechanism.
Thanks for your attention!