Patents & Strategic IPR Management

by Severin de Wit
Why IPR management?

- IPR as strategic corporate tool
- IPR operationally run as a normal business with own P&L responsibility
- IPR and business model, e.g. music industry Steve’s Shake Up

IP is regarded as capital and used to trade
Why IPR management?

- IPR as strategic corporate tool
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- IPR and business model, e.g. music industry Steve’s Shake Up

Strategy forms integral part of the corporate strategy
Why IPR management?

- IPR as strategic corporate tool
- IPR operationally run as a normal business with own P&L responsibility
- IPR and business model, e.g. music industry

IPR has a direct relation with business model of a whole industry, e.g. music industry.
Choice of IPR (1)

- Part of IPR management which protection to choose
- Publication vs. Secrecy

IT: copyright vs. patent

Consumer electronics: combination trademark, design, copyright, patent

Pharma: New molecule with therapeutic function
Choice of IPR (2)

- Part of IPR management which protection to choose
- Publication vs. Secrecy

Patent vs. Know How

"Know How goes home at 17.00 p.m."
IPR serves different interests (1)

- Offensive interests
  - Protection market share
  - Support corporate strategy
  - Generates royalties
  - Trade off for technology acquisition
- Defensive interests
- Marketing mechanism
- Reduction of costs of R&D
- Innovation instrument
IPR serves different interests (2)

- Offensive interests
- Defensive interests
- Marketing mechanism
- Reduction of costs of R&D
- Innovation instrument

- Protects key competencies
- Bargaining chip for X-license
- Freedom to Operate
IPR serves different interests (3)

- Offensive interests
- Defensive interests
- Marketing mechanism
- Reduction of costs of R&D
- Innovation instrument

Means to differentiate
Ads Value to Product
IPR serves different interests (4)

- Offensive interests
- Defensive interests
- Marketing mechanism
- Reduction of costs of R&D
- Innovation instrument

R&D intensive companies (IT, telecom, electronics, semiconductor industry)

Pharma and Biotech companies
Reduction of R&D Costs (1)

- Results of Open Innovation
  - Intensive price erosion for consumer electronics

Convergence of technologies
- Increased R&D costs
- Pressure on R&D budgets
- Companies faced with pressure to shorten time-to-market
Reduction of R&D Costs (2)

Results of Open Innovation

- Intensive price erosion for consumer electronics

Bron: Philips IP & Standards, Ruud Peters
Traditional Business Model R&D

- R & D
- Manufacturing
- Marketing & Sales
- Products

Return on investments
Present Business Model R&D

Return on investments

Technology Patents

R & D

Manufacturing

Trademarks Designs

IP

Products

Marketing & Sales

Return on investments
Reduction of R&D Costs (5)

- Offensive interests
- Defensive interests
- Marketing mechanism
- Reduction of costs of R&D
- Innovation instrument

Patents source of knowledge

Current discussion on exact role between patents and innovation
84% more patent applications EPO

- Has Europe become more innovative?
- Do European companies make better strategic use of patents?

- European applications filed and Euro-PCT applications entering the European phase
- European applications filed and Euro-PCT applications (international phase)
Increase European Patents (2)

- 84% more patent applications EPO
- Has Europe become more innovative?
- Do European companies make better strategic use of patents?

Research US economists do not support that view.

"EU Trendchart Innovation Policy in Europe 2004" Indicates worse position EU vs US-Asia
Increase European Patents (3)

- 84% more patent applications EPO
- Has Europe become more innovative?
- Do European companies make better strategic use of patents?

Negative indications here as well
Use of Patents in Europe (1)

"Information contained in patents is of commercial advantage for my company"

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EPC10
Countries from the EPC20 + Estonia, Bulgaria, Czech Republic, Hungary, Slovenia, Slovakia, Romania, Latvia, Lithuania an Poland

Use of Patents in Europe (2)

“I have used patent information in the past to solve technical or engineering problems”

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Use of Patents in Europe (3)

“I have used patent information in the past to find out if someone else had independently arrived at the same idea as mine”

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Use of Patents in Europe (4)

- Licensed Only: 5.0%
- Licensed & Internally Used: 4.3%
- Cross Licensing: 2.5%
- Internally Used Only: 52.4%
- Not Used: 35.9%

Bron: PatVal-EU Survey
Patent Strategy – Theoretical Model

Corporate goal

Planning
- Capital investments
- IP Management Process

Protection
- "Blocking" patents
- "Picket Fence" patents

Competition analysis
- Patent Citation Trees
- Mapping
- Competitor Watches
- Work Arounds

Commercialization
- Licensing
- Litigation

Cash
Market Advantage
The Case ASML vs. Nikon Europe's Wake Up Call
Patent Strategies (1)

- Picket Fence
- Toll Gate
- Bargaining Chip
- Design around
- Delayed prosecution
- Strategic Publishing

Strategy to place pickets around core technology
Patent Picket Fence

- MITSUBISHI, 257 Japanese patents
- FUSION CORE technology
  Ultraviolet Microwave Lamp
- Incremental Improvements

© Severin de Wit, 2006
Patent Picket Fence

- MITSUBISHI, 257 Japanese patents
- FUSION CORE technology
  Ultraviolet Microwave Lamp
- Incremental Improvements

X-licensing

© Severin de Wit, 2006
Patent Strategies (2)

- Picket Fence
- Toll Gate
- Bargaining Chip
- Design around
- Delayed prosecution
- Strategic Publishing

Finding novel basic technology at early stage (e.g. DRM)

Combined with active participation standard setting organizations
Patent Strategies (3)

- Picket Fence
- Toll Gate
- Bargaining Chip
- Design around
- Delayed prosecution
- Strategic Publishing

Access to patented technology

Acquiring patent portfolios

X-licensing at reduced costs

In Co-Branding situations
Patent Strategies (4)

- Picket Fence
- Toll Gate
- Bargaining Chip
- Design around
- Delayed prosecution
- Strategic Publishing

CAFC Kimberly Clark vs. Johnson & Johnson

Technology suitors (China, Taiwan)
General Motors vs. Chery (China)
Patent Strategies (5)

- Picket Fence
- Toll Gate
- Bargaining Chip
- Design around
- **Delayed prosecution**

Divisional strategy (not to be confused with Submarine patents)
Patent Strategies (6)

- Picket Fence
- Toll Gate
- Bargaining Chip
- Design around
- Delayed prosecution
- Strategic Publishing
W-CDMA Patent Gold Rush

- W-CDMA technology behind UMTS standard in Europe and FOMA in Asia for 3G Wireless has lead to patent "Gold Rush"

- In 2001 alone: more than 10,000 telecom-related patent applications received at European Patent Office
GSM - EU case

- Essential IP positions around GSM
  - IPR positions
  - Network operators joined in GSM MoU

Motorola
- IPRs switching subsystems

Siemens
- IPRs base stations

Alcatel
- IPRs terminals
GSM - EU case

- Essential IP positions around GSM
- IPR positions
- Network operators joined in GSM MoU

force German, French equipment manufacturers into Digital Standard CEPT (now: ETSI)
GSM - EU case

- Essential IP positions around GSM
- IPR positions
- Network operators joined in GSM MoU

Forced equipment makers to give up IPRs in joined EU procurement system.

Conflict arose, i.e. Motorola’s IPRs almost blocked GSM standard
IPR in corporate take over strategy

**Company A**
- Chip patent

**Company B**
- (depressed value)

**Semicon industry**

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Patent portfolio
- deal: “Go away, don’t bother us”

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patent infringement

take over attempt
IPR in corporate take over strategy

Company A
Chip patent

patent infringement

Company B
(depressed value)

Patent portfolio
deal: “Go away, don’t bother us”

Semicon industry
Thank you for your attention

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