ASPEN PUBLISHER

AUGUST 2010

DEVOTED TO LEADERS IN THE INTELLECTUAL PROPERTY AND ENTERTAINMENT COMMUNITY

VOLUME 30 NUMBER 7

THE Licensing Journal

Edited by the Law Firm of Grimes & Battersby

Wolters Kluwer
Law & Business

Enhancing Shareholder Value by Assessing Company Intellectual Property

Paul R. Juhasz

Paul R. Juhasz is a founder of The Juhasz Law Firm in Houston, TX. He has been a practicing patent attorney for over 25 years, beginning his career at Pennie & Edmonds in New York and continuing on to work for such companies as Nokia as Director IP America of intellectual property in the Western Hemisphere, Symbol as VP IP and Assistant General Counsel where he served as Chairman of the Lemelson Joint Defense Group of companies that defeated the Lemelson patents, and partner at the law firm of Williams, Morgan & Amerson in Houston, TX.
This article represents the views and analysis of the author alone and not of Juhasz Law or any other company. The author thanks Jeffrey A. Pyle of Williams, Morgan & Amerson, Houston, TX for reviewing the text and providing valuable terminology feedback. In addition, the author thanks Tom O. Miller of the Sage Group for his valuable review and contribution. For more on Juhasz Law visit the firm's Web site at http://www.patenthorizon.com.

There are many types of assessments that can be made involving intellectual property (IP). One type of IP assessment involves a determination of the potential value of a patent to a business. The potential value of the patent may include the ability to exclude competitors from an existing or planned market (potential injunctive value) or the potential ability of the patent to generate revenues from licensing or sale of the patent (potential licensing value).

To the extent the IP assessment is directed to determining the potential value of a patent to a business, the assessment typically involves a two-step process. First, an assessment is made to determine the potential importance of a patent to the business and second, an assessment is made to determine the potential for the patent to secure an injunction for or generate revenues from that business. In short, the first assessment determines the injunctive and licensing potential of a patent to a company and the second assessment determines the likelihood of realizing that potential.

The first assessment generally is an "internally directed assessment" in that it typically involves looking inside the company to identify how patents line up with potential drivers of corporate profitability. There is a range of methodologies that often are used in making this internal assessment, which typically boils down to a determination of whether a patent covers an important product or an important market of the company. The internal assessment often is a first order assessment because the assessment usually depends on one variable or objective criterion, *e.g.*, importance of a patent to a product or importance of a patent to a market. To the extent it is based on objective criteria or objective IP data, the internal assessment may be objective.

The second assessment generally is an "externally directed assessment" in that it typically involves first a study of the patent claims and specification and its file history to determine the quality of a patent and then the application of the patent to a competitor's product, to arrive at an assessment of the likelihood of the patent in securing an injunction or licensing revenues for the company and is sometimes called an "infringement assessment." While the goal in any IP assessment is to be as objective as possible in the assessment, the infringement assessment is susceptible to subjectivity to the extent it draws on the unique experiences of the practitioner in determining the likelihood of the patent in securing an injunction or licensing revenues for the company. Objective as the infringement assessment may attempt to be, there is an element in these assessments that involves the "wet finger in the air test" to find out which way the wind is blowing with respect to a patent that introduces some subjectivity into the assessment.

The value of an IP assessment as a tool for use by a company turns on the trustworthiness and comprehensibility of the assessment. Conventional IP assessments tend to skew towards the subjective because there often is not enough attention given to the more objective internal company assessment part of the IP assessment before doing the more subjective wet

finger in the air test of the infringement assessment. Often, the internal assessment is reduced to a simple determination of whether a patent generally covers an important product or an important market of the company after which the IP assessment advances to the infringement assessment part of the IP assessment involving the wet finger in the air test to determine the likelihood of the patent in securing an injunction or licensing revenues for the company. Nonetheless, conventional infringement assessments and hence the IP assessments of which they form a part generally have proven to be valuable tools to companies provided the infringement analysis is understandable and the subjectivity in the wet finger in the air assessment used in the infringement assessment is backed up by the experience of a practitioner with a proven track record.

This article explores a novel methodology for assessing the potential value of IP, such as patents, based on identifying how the patents line up with potential drivers of corporate profitability. This methodology is known as the Heart of the Company℠ assessment.[1] This methodology introduces more objectivity into an IP assessment by providing a more comprehensive and structured approach to the internal assessment component of the IP assessment. The approach of the Heart of the Company℠ assessment involves the generation of a structured objective IP data set that preferably is made up of 16 IP data points that can be used in the principled identification of the potential injunctive or revenue generating value of a patent or other IP. A powerful IP valuation tool maintains a simplicity that makes it understandable and an objectivity that gives it a great deal of trustworthiness.

The Heart of the Company℠ Assessment

The Heart of the Company℠ assessment involves a two-step process. First is the generation of preferably a fourth order unstructured data set of a patent. Second is the structuring of that unstructured IP data set to unlock further information about how the patent under study may be positioned to drive corporate profitability.

Step One: Generating Fourth Order Unstructured Data Sets

The Heart of the Company℠ assessment looks into the "heart of the company" to identify patents with the potential for driving corporate profitability. The novel methodology of the Heart of the Company℠ assessment is premised on two fundamental assumptions. The first assumption is that each company has a set of key attributes that drive the profitability of the company. The second assumption is that how well IP can drive the profitability of a company depends on how well the IP is aligned with those key attributes of the company.

Based on over 25 years of IP experience, this author has discovered that four attributes emerge over and over again as key drivers of company profitability. These attributes are: (1) the core competency of the company, (2) the strategic plan of the company, (3) the product availability, and (4) the market readiness. By understanding how each piece of IP is aligned with these four key attributes, a company can unlock the secrets of how each piece of IP can possibly best be used to drive the profitability of the company. For example, a piece of IP that aligns with certain key attributes of the company may indicate that the IP may better serve the company when used for potential injunction purposes whereas a different alignment of a piece of IP with those attributes may indicate that the IP may better serve the company when used for potential revenue generating purposes, such as through a license or sale of the patent.

In conventional internal assessments, the assessment usually is a function of one variable, such as the importance of the patent to a product or to a market such as shown below:

Potential importance of patent = f(product)or f(market)

In other words, the assessment is typically a first order assessment. In the novel methodology used in the Heart of the Company℠ assessment, the assessment is a function of preferably four variables, namely: (1) core competency, (2) strategic alliance, (3) product availability, and (4) market readiness as follows:

> Potential importance of patent = f(core competency, strategy, product availability, market readiness)

Hence the novel methodology yields a fourth order assessment that provides an insight into the positioning of a patent with respect to driving corporate profitability that is far more meaningful than is attainable from a conventional first order assessment.

While a fourth order assessment has been found to be preferable, it will be appreciated that assessments of lower or higher orders of the above four or other variables known to drive profitability also may be in the Heart of the Company℠ assessment. For instance,

the novel methodology may be designed to be a function of two variables preferably taken from the following group of variables, namely: core competency, strategic alliance, product availability, and market readiness as follows:

> Potential importance of patent = f(core competency, strategy) or f(product availability, market readiness)

In this example, the result yields a second order assessment.

In the novel methodology for doing a fourth order Heart of the Company℠ assessment, a piece of IP, such as a patent, is studied to determine how it is connected or linked to each of the four key attributes. Whether or not a patent is linked to each of the four key attributes is the variable and the linkage or non-linkage of the patent to each of the four key attributes yields eight objective IP data points with respect to any patent. Which of the eight objective IP data points the patent is linked to (*i.e.*, which of the four key indicators the patent is or is not linked to) has been found to be an indicator of whether or not and how that patent is positioned for driving corporate profitability. The raw eight objective IP data points provide *an unstructured IP data set* for use in the Heart of the Company℠ assessment.

Step Two: Structuring to Unlock Further Information from the Fourth and other Order Assessments

In order to unlock meaningful information about the positioning of a patent to drive profitability from the fourth order assessment, it is necessary to structure the unstructured data set in a way that provides a principled tool for assessing the heart of the company. More specifically, understanding how the links of a patent to the existence or non-existence of these four key attributes *are related to each other* provides *a structured objective IP data set* that provides even deeper insight into how the patents are positioned to drive corporate profitability.

In order to construct a structured IP data set, it is important to understand the relationship of the four key attributes to each other. The four key attributes of a company are really made up of two types of attributes. The first type of attribute pertains to attributes that generally are *internal drivers* of profitability. The second type of attribute pertains to attributes that generally are *external drivers* of profitability. In the novel methodology of the Heart of the Company℠ assessment, the key features of "core competency" and "business strategy" are grouped together as *internal drivers* of profitability because these attributes are largely influenced by dynamics internal to the company. On the other hand, the key features of product availability and market readiness are grouped together as *external drivers* of profitability because they may be largely influenced by dynamics external to the company. With this understanding, patents can now be linked both to the existence or non-existence of the four key attributes (*i.e.*, the business attributes used to generate the eight objective IP data points), but the patents also can be linked to the relationship that the four key attributes hold to the company, *i.e.*, as internal or external drivers of the company.

From the linkage of patents to both key attributes and the relationship of those key attributes to the company, structured IP data sets can be constructed to provide more meaningful information about how a patent is positioned to drive profitability.

In one structured IP data set, patents are linked to the *internal drivers of profitability* of core competency and business strategy. Because only internal drivers are used in this Heart of the Company℠ assessment example, the assessment of the positioning of the patent with respect to corporate profitability in this model is a function of only two variables of core competency and strategy, which means that the structured IP data set created by this model is a second order assessment. In this model, the existence or non-existence of a link of a patent to the internal drivers provides four objective criteria for use in defining the alignment of IP with the internal driver attributes of the company. These four objective criteria are:

1. the patent aligns with the core competency of the company;
2. the patent does not align with the core competency of the company (*i.e.*, the patent aligns with a non-core competency);
3. the patent aligns with the business strategy of the company (*i.e.*, the patent is strategic); or
4. the patent does not align with the business strategy of the company (*i.e.*, the patent is non-strategic).

These four objective criteria can be mapped into a grid as shown in Exhibit 1 in which the alignment or non-alignment of a patent to core competency of the company is mapped against the alignment or non-alignment of a patent to the business strategy of the company. The result of the mapping yields a 2X2 matrix of attribute criteria as shown in Exhibit 1.

Exhibit 1

In a first plane, an analysis is done to establish the relevance of the patents to the core competency and business strategy of the company. In short, what business strategy and company competency does the patent pertain to? This unstructured objective data is structured into the following 2X2 matrix to generate a *second order structured internal driver data set*

	CORE Competency (Business or services that a company is good at providing)	**NON-CORE** Competency (Business or services that a company is not so good at providing)
STRATEGIC Business (Business central to driving revenue, market share, margins, etc.)	Injunctive Value	Injunctive Value or Strategic License Value?
NON-STRATEGIC Business (Business not central to driving revenue, market share, margins, etc.)	Injunctive Value or License?	License Value?

For any patent studied, completion of this matrix requires the determination of how a patent is linked to one of these internal driver attributes of the company, which boils down to two inquiries: (1) Does the patent pertain to a core or non-core competency of the company?, and (2) Does the patent advance or not advance the business strategy of the company?

A patent that both pertains to a core competency of the company and that advances the business strategy of the company would fall into the cell appearing in the first row and first column on the matrix shown in Exhibit 1. Given the alignment of this patent to the internal drivers of company profitability this patent may potentially have significant injunctive value. In contrast, a patent that aligns with neither internal driver would fall into the cell appearing in the second row and second column. As shown in Exhibit 1, the best way to monetize this patent may be through generation of revenues such as licensing or sale of the patent. A patent that pertains to a core competency but does not advance the business strategy of the company would fall into the cell appearing in the second row but first column of the matrix whereas a patent that pertains to a non-core competency but advances the business strategy of the company would fall into the cell appearing in the first row but second column of the matrix. Each of these patents may have potentially more limited injunctive or licensing value to a company as shown in Exhibit 1. In this manner, each piece of IP can be mapped against the *internal drivers* of profitability to provide a *second order structured IP data set* of meaningful information about the patent as a driver of profitability.

In a second structured IP data set, patents are linked to the *external drivers of profitability* of product availability and market readiness. Because only external drivers are used in this Heart of the Company℠ assessment example, the assessment of the positioning of the patent with respect to corporate profitability in this model is a function of only two variables of product availability and market readiness, which means that the structured IP data set created by this model is a second order assessment structured similarly to the structure used in the first structured IP data set shown in Exhibit 1. In this model, the existence or non-existence of a link of a patent to the external drivers provides four objective criteria for use in defining the alignment of IP with the external driver attributes of the company. These four objective criteria are:

1. the patent covers a product that is available or road mapped;
2. the patent covers a product that is not available or is not road mapped;
3. the patent covers a market that is ready or is road mapped; or
4. the patent does not cover a market that is ready or is road mapped.

These four objective criteria can be mapped into a grid as shown in Exhibit 2 in which the two attribute

Exhibit 2

In a second plane, an analysis is done to establish the relevance of the patents to the availability of product and market readiness. In short, is there product availability and a market available for this patent? This unstructured objective data is structured into the following 2X2 matrix to generate a *second order structured external driver data set*

	EXISTING/ADEQUATE PRODUCT SUPPLY	**NON-EXISTING/ NOT-ADEQUATE PRODUCT SUPPLY** (Product does not yet exist OR PRODUCT EXISTS BUT NOT IN NEEDED VOLUMES)
EXISTING MARKET	Injunctive Value	Injunctive Value or License Value?
NON-EXISTING MARKET	Injunctive Value or License?	License Value?

criteria associated with the product of the company, namely, a patent's alignment or non-alignment with available or road mapped product, are mapped against the two attribute criteria pertaining to market readiness, namely, a patent's alignment or non-alignment with an existing or planned market, to yield a 2X2 matrix of attribute criteria as shown in Exhibit 2. With this matrix the determination of how a patent is linked to one of the external driver attributes of the company boils down to two inquiries: (1) Does the patent pertain to the availability or non-availability of a product of the company?, and (2) Does the patent pertain to the readiness or non-readiness of a market of the company?

A patent that pertains to an available product and a market that is ready would fall into the cell appearing in the first row and first column on the matrix. As shown in Exhibit 2, given the alignment of this patent to the external drivers of company profitability this patent may have potentially significant injunctive value. In contrast, a patent that does neither would fall into the cell appearing in the second row and second column. As shown in Exhibit 2, the best way to monetize this patent may be through a license. A patent that pertains to available product but not ready market would fall into the cell appearing in the second row but first column of the matrix whereas a patent that pertains to a non-available product but an existing market would fall into the cell appearing in the first row but second column of the matrix. Each of these patents may potentially have more limited injunctive or licensing value to a company as shown in Exhibit 2. In this manner, each piece of IP can be mapped against the *external drivers* of profitability to provide a *second order structured IP data set* of meaningful information about the patent as a driver of profitability.

In a third structured IP data set, patents are linked to *both* the internal drivers of profitability of core competency and business strategy *and* the external drivers of product availability and market readiness. Because both internal and external drivers are used in this model, the assessment of the positioning of the patent with respect to corporate profitability is a function of all four variables of core competency, strategic alliance, product availability, and market readiness, which means that the structured IP data set created by this model is a fourth order assessment. In this model, the methodology preferably links the internal and external drivers of profitability for the company by merging the 2X2 matrix of the structured internal driver data set of the first structured IP data set shown in Exhibit 1 and the 2X2 matrix of the structured external driver data set of the second structured IP data set shown in Exhibit 2 together into a 4X4 matrix of structured data set as shown in Exhibits 3 and 4.

The merger of internal and external drivers can be done in several ways. In Exhibit 3, the 2X2 matrix of the structured internal driver data set shown in Exhibit 1 provides the matrix for the merger and the 2X2 matrix of the structured external driver data set shown in Exhibit 2 is merged into each cell of the 2X2 matrix structured internal driver set as shown in Exhibit 3 to create four external driver data points for each cell of the 2X2 structured internal driver matrix.

The result is that the 2X2 structured internal driver matrix now displays 16 objective data points, namely, four external driver data points that make up the 2X2

Exhibit 3

The Novel Methodology draws on the four attributes mapped out in each of the two planes of information shown in Exhibits 1 and 2, namely, the connectivity between a patent and the existence or nonexistence of the core competency, strategy, product availability, and market readiness attributes of a company, to generate a fourth order 16 point structured IP data set referred to as a 4X4 structured *external matrix embedded internal driver data set* for use in the principled identification of the injunctive or licensing value of IP

	CORE Competency (Business generated using key competencies of the company)		**NON-CORE** Competency (Business generated using non-key competencies of the company)	
STRATEGIC Business (Business central to driving revenue, market share, margins, etc.)	**EXISTING/ ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** Injunctive Value	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** Injunctive Value or Strategic License Value?	**EXISTING/ ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** Injunctive Value or Strategic License Value?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** Injunctive or License?
	EXISTING/ ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET* Injunctive Value or Strategic License Value?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET*** Injuntctive Value or Strategic License Value?	**EXISTING/ ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET*** Injunctive Value or Strategic License Value?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET*** Injunctive or License?
NON-STRATEGIC Business (Business not central to driving revenue, market share, margins, etc.)	**EXISTING/ ADEQUATE PRODUCT SUPPLY — *EXISTING MARKET*** Injunctive or License?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** Injunctive or License?	**EXISTING/ ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** License Value?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET*** License Value?
	EXISTING/ ADEQUATE PRODUCT SUPPLY — *NON-EXISTING MARKET* Injunctive or License?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET*** Injunctive or License?	**EXISTING/ ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET*** License Value?	**NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET*** License Value?

Exhibit 4

The Novel Methodology draws on the four attributes mapped out in each of the two planes of information shown in Exhibits 1 and 2, namely, the connectivity between a patent and the existence or nonexistence of the core competency, strategy, product availability, and marketplace attributes of a company, to generate a 16 point IP data set referred to as a 4X4 structured *internal matrix embedded external driver data set* for use in the principled identification of the injunctive or licensing value of IP

	EXISTING/ADQUATE PRODUCT		**NON-EXISTING/NOT ADQUATE PRODUCT SUPPLY**	
EXISTING MARKET	**CORE COMPETENCY // *STRATEGIC*** Injunctive Value	**NON-CORE COMPETENCY // *STRATEGIC*** Injunctive Value or Strategic License Value?	**CORE COMPETENCY // *STRATEGIC*** Injunctive Value or Strategic License Value?	**NON-CORE COMPETENCY // *STRATEGIC*** Injunctive or License?
	CORE COMPETENCY // NON-*STRATEGIC* Injunctive Value or Strategic License Value?	**NON-CORE COMPETENCY // NON-*STRATEGIC*** Injunctive Value or Strategic License Value?	**CORE COMPETENCY // NON-*STRATEGIC*** Injunctive Value or Strategic License Value?	**NON-CORE COMPETENCY // NON-*STRATEGIC*** Injunctive or License?
NON-EXISTING MARKET	**CORE COMPETENCY // *STRATEGIC*** Injunctive or License?	**NON-CORE COMPETENCY // *STRATEGIC*** Injunctive or License?	**CORE COMPETENCY // *STRATEGIC*** License Value?	**NON-CORE COMPETENCY // *STRATEGIC*** License Value?
	CORE COMPETENCY // NON-*STRATEGIC* Injunctive or License?	**NON-CORE COMPETENCY // NON-*STRATEGIC*** Injunctive or License?	**CORE COMPETENCY // NON-*STRATEGIC*** License Value?	**NON-CORE COMPETENCY // NON-*STRATEGIC*** License Value?

structured external driver matrix are displayed in each cell of the four cells of the 2X2 structured internal driver data set. The result is a "structured external driver set embedded structured internal driver set matrix" in which each piece of IP can be mapped against both the internal drivers *and* the external drivers of profitability. The structured external driver data set embedded structured internal driver data set matrix provides a fourth order structured IP data set of 16 objective IP data points that provide a powerful tool for management to use in understanding how the patent is positioned as a driver of profitability. The 16 point data set in this model is structured to emphasize the positioning of the patents with respect to the internal drivers of profitability.

In a second way to merge the internal and external drivers as shown in Exhibit 4, the 2X2 matrix of the structured external driver data set shown in Exhibit 2 provides the matrix for the merger and the 2X2 matrix of the structured internal driver data set shown in Exhibit 1 is merged into each cell of the 2X2 matrix structured external driver data set as shown in Exhibit 4 to create four internal driver data points for each cell of the 2X2 structured external driver data set matrix.

The result is that the 2X2 structured external driver matrix now displays 16 objective data points, namely, four internal driver data points that make up the 2X2 structured internal driver matrix are displayed in each of the four cells of the 2X2 structured external driver data set. The result is a "structured internal driver data set embedded structured external driver data set matrix" in which each piece of IP can be mapped against both the internal drivers *and* the external drivers of profitability. The structured internal driver embedded structured external driver matrix provides a fourth order structured IP data set of 16 objective IP data points that provide a powerful tool for management to use in understanding how the patent is positioned as a driver of profitability. The 16 point data set in this model is structured to emphasize the positioning of the patents with respect to the external drivers of profitability.

When taken together, Exhibits 3 and 4 can provide even more information about how a patent appears to be positioned for profitability because they show how a patent is positioned for profitability *both* when viewed from the internal drivers of profitability in the structured external driver embedded internal driver matrix *and* when viewed from the external drivers of profitability in the structured internal driver embedded external driver matrix. These are powerful tools that give management insight to the positioning of a patent that is deeper than is typically provided by conventional methodologies.

Exhibit 5 simplifies the Exhibit 3 Structured Internal Driver Matrix. As shown in Exhibit 5, cell 1:1 contains IP that aligns with all four attributes of core competency of the company, the business strategy of the company, the availability of product, and the market readiness. Cell 1:1 typically is the sweet spot where IP preferably should lie on the 4X4 matrix because a patent that falls into this cell aligns with both internal and external drivers of corporate profitability. If a piece of IP lies in cells 1:2, 2:1, 2:2, then the IP still aligns with the core competency and business strategy of the company but is otherwise lacking in alignment with one or both of available product or market readiness.

At the other extreme is cell 4:4 where the IP does not align with any of the attributes of the company. IP that falls into this cell shows more potential for generating revenues through license or sale of the patent because it does not link to any of the attributes of the company. Cells 3:4, 4:3, and 3:3 likewise do not align with the core competency or strategic business of the company but may align with one of both of the product availability or market readiness attributes of the company. Cells falling in the lower left and upper right quadrants (*i.e.*, cells 1:3, 2:3, 1:4, 2:4, and cells 3:1, 3:2, 4:1, 4:2) contain IP that aligns with different combinations of the four attributes of the company and have more limited injunctive and/or licensing potential depending on the company. In this way, the 16 objective IP data points reflected by the 16 cells can be used in the principled identification of the potential injunctive or revenue generating value of a patent or other IP.

The Heart of the Company℠ Assessment Is a Precursor to and Not a Substitute for the "Wet Finger to the Wind" Infringement Assessment

Exhibits 1 through 5 identify the results of the Heart of the Company℠ assessment showing the potential use of a patent for securing an injunction or generating revenues. Whether a patent has the potential to do so however depends on the infringement assessment that is still needed to complete an IP assessment on the value of a patent to a company. The infringement assessment is where the patent claims and specification and its file history are studied to determine the quality of a patent and then the patent is applied to a product, typically a competitor's product, often using the wet finger to the wind approach, that will give the company an assessment of the likelihood of the patent in securing an injunction or licensing revenues for the company. The wet finger to the wind approach will continue to play a role in these infringement assessments. Nonetheless, the Heart of the Company℠ assessment can make these infringement assessments more strategic because more objectivity and a greater understanding of a patent and its relationship to the corporate drivers of profitability can be brought to bear on these infringement assessments to give the infringement assessments and hence the overall IP assessment more objectivity and more meaning to a company.

Benefits of the New Methodology of The Heart of the Company℠ Assessment

Whether the objective IP data points is structured into a 2X2 or 4X4 structured data set or other data sets, the display of IP data points as a grid

Exhibit 5

This is a simplification of the table shown in Exhibit 3 showing the power of the 4X4 grid of the 4X4 structured *external matrix embedded internal driver data set* in the principled identification of the injunctive or licensing value of IP. The 16 point IP data set is shaded

	CORE Competency (Business generated using key competencies of the company)		**NON-CORE** Competency (Business generated using non-key competencies of the company)	
STRATEGIC Business (Business central to driving revenue, market share, margins, etc.)	CELL 1:1 **EXISTING/ ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***	CELL 2:1 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***	CELL 3:1 **EXISTING/ ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***	CELL 4:1 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***
	CELL 1:2 **EXISTING/ ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET***	CELL 2:2 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY //*NON-EXISTING MARKET***	CELL 3:2 **EXISTING/ ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET***	CELL 4:2 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET***
NON-STRATEGIC Business (Business not central to driving revenue, market share, margins, etc.)	CELL 1:3 **EXISTING/ ADEQUATE PRODUCT SUPPLY — *EXISTING MARKET***	CELL 2:3 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***	CELL 3:3 **EXISTING/ ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***	CELL 4:3 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *EXISTING MARKET***
	CELL 1:4 **EXISTING/ ADEQUATE PRODUCT SUPPLY — *NON-EXISTING MARKET***	CELL 2:4 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET***	CELL 3:4 **EXISTING/ ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET***	CELL 4:4 **NON-EXISTING/ NOT ADEQUATE PRODUCT SUPPLY // *NON-EXISTING MARKET***

provides highly understandable information about the relationship of the patent to the company profitability drivers when compared to typical conventional internal assessments. This is so because more IP data points or "IP pixels per inch" are used in the display of IP information in showing the relationship of the patent to the drivers than are used in the display of objective IP data using conventional internal assessment methodologies that typically relate the patent to a product of the company or to a market of the company and so provide only a single cell display of the patent-corporate profit driver relationship. A four-cell or preferably 16-cell display provides the company with a high definition display showing exactly where the links between IP and the corporate drivers of profitability lie, unlike typical conventional

internal assessments that often simply says the relationship exists. The high definition display of links between IP and corporate drivers gives a company greater insight into the potential value of the IP to the company. In short, the high definition picture provided by the Heart of the Company℠ assessment using the novel methodology described in this article gives a company more structured information about how its IP can drive company profitability than conventional methodologies used in typical internal company assessments.

In addition, the Heart of the Company℠ assessments become the roadmap for navigating any follow-on infringement assessments in that they define the range of paths for the infringement assessments to take. With either the 2X2 or 4X4 or other structured data sets generated using the novel methodology, the range of paths for the infringement assessments to take becomes clearer because the structured data sets provide a better understanding of which patents should be assessed for the desired purpose, *i.e.*, for the potential injunctive value of a patent to protect your technology space or the potential monetization of the patent through license or sale of the patent. This leads to more meaningful and objective infringement assessments and hence a more strategic overall IP assessment of the value of a patent to a business than is generally possible using typical conventional methodologies.

The net is that the novel methodology that defines the Heart of the Company℠ assessment is a powerful IP valuation tool that gives results having a simplicity that makes it understandable and having an objectivity that gives it a great deal of trustworthiness. The matrices of Exhibits 1 through 5 structure the alignment of IP with key attributes of the company to clearly indicate how the IP may best generate value for the company. But the power of the structured data set of the novel methodology does not end there. Any misalignment of IP from key attributes may provide management with a valuable tool for IP and/or business planning. For IP planning, any misalignment may be an indicator of the need to realign the company's IP program to better drive the key attributes of the company and hence profitability. For business planning, any misalignment may be an indicator of hidden attributes of the company that could be harnessed by management through, for example, revising what it perceives to be the key attributes of the company to include these hidden attributes.

In addition, trends revealed by the structured data sets provide yet other tools for further understanding the potential value of IP. For example, one trend may be gleaned from tracking how data points representing individual patents of a family of patents is evolving on the 4X4 grid over a period of time. An evolution of the scatter of data points represented by the patent family toward one or another corner of the 4X4 grid may provide clues as to whether the portfolio may best serve the company for its injunctive or licensing value. The general trend of how a patent may be positioned to drive corporate profitability based on which cell the patent may fall into in Exhibits 1 through 5 is shown in Exhibit 6. How a patent is ultimately positioned for profitability will vary from company to company depending on the mind-set and make-up of the company, *e.g.*, litigation averse, exposure of company products to infringement charges by other companies, etc.)

Implementation of this methodology into software allows computer monitoring of patents based on the Heart of the CompanySM assessment. For instance, the software may provide a method for assessing the value of a patent comprising these steps:

1. Defining a set of attributes for driving corporate value;
2. Collecting patent data on each attribute of said set of attributes;
3. Aggregating the patent data;
4. Correlating the patent data;
5. Storing the aggregated and correlated patent data; and then
6. Assessing the value of the patent to a company utilizing the aggregated and correlated patent data.

The software implemented methodology may further include these steps:

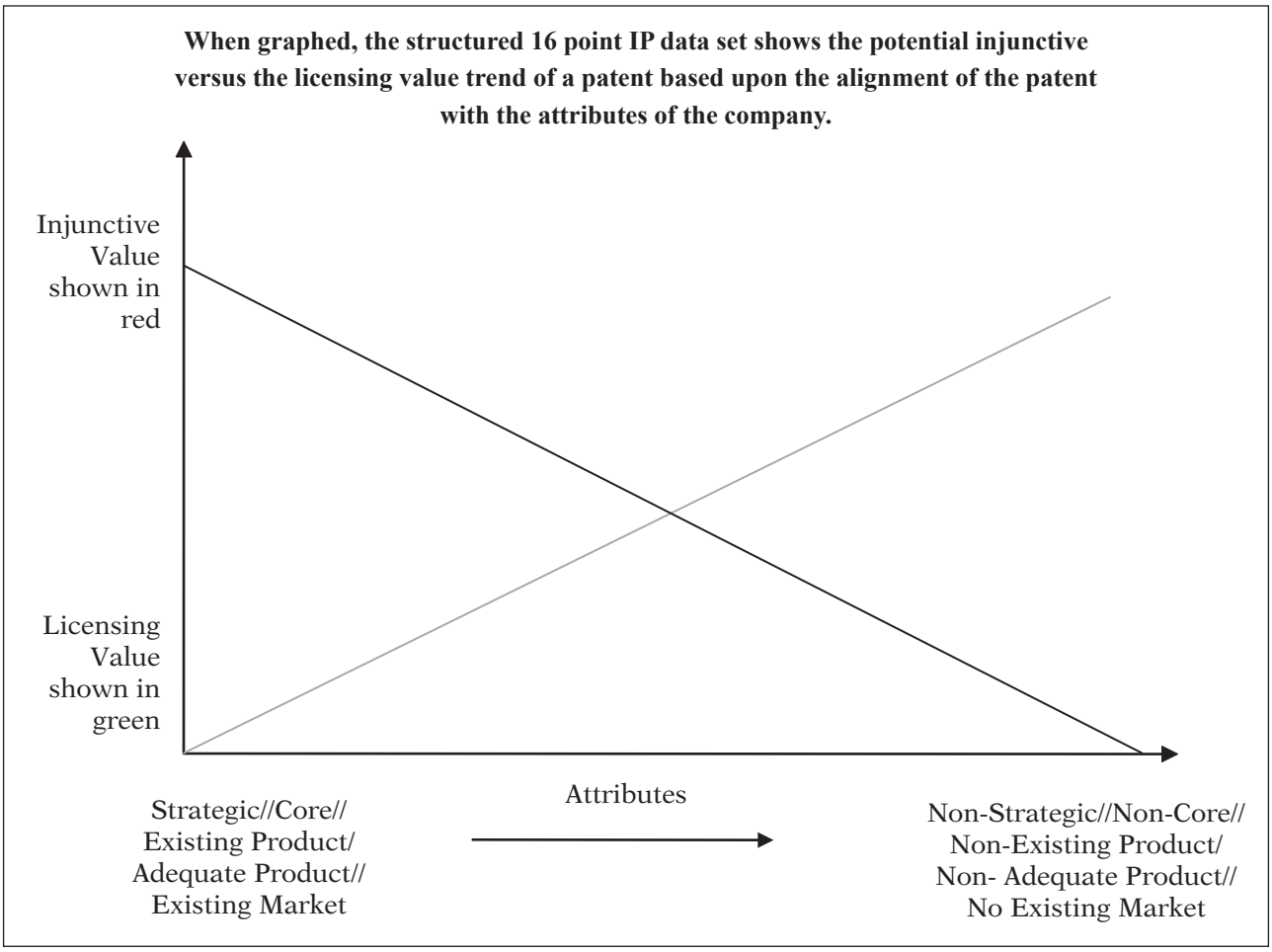
7. Generating metadata utilizing the aggregated and correlated patent data; and
8. Performing patent assessment profiling by generating an alert upon successfully comparing predetermined profiles with the aggregated and correlated patent data and results of monitoring the patent data.

As another example, the software implemented methodology may also:

9. perform patent assessment predictions by generating a profile upon successfully comparing predetermined profiles with the aggregated and correlated patent data and results of monitoring the patent data.

The use of the patent valuation methodology for heuristics purposes may provide an even deeper

Exhibit 6



understanding of how to position patents for driving profitability. The attributes defined may be taken from a group of attributes of a company driving profitability such as the example group of core competency, strategic plan, product availability, and market readiness described in this article.

Conclusion

There is a need for better tools to understand the potential value of IP, such as a patent, to a business. The novel methodology known as the Heart of the Company℠ assessment identifies links of a patent to one of four key attributes of a company that over the years have been identified by this author as key drivers of corporate profitability: (1) core competency, (2) business strategy, (3) product availability, and (4) market readiness. IP data points are generated that are largely objective because they are based simply on the linkage or non-linkage of the patent with one of these drivers. The unstructured objective IP data points can then be structured into structured IP data sets for use in the principled identification of the potential injunctive or revenue generating value of IP.

When all four key attributes are used to create a fourth order assessment, the methodology generates eight IP data points based on the existence or non-existence of the attribute that the methodology structures into a 4X4 matrix. The 4X4 matrix provides a high definition 16 pixel display of how a patent may be used to drive the profitability of the company. When only the two internal driver attributes of core competency and strategy or two external driver attributes of product availability and market readiness are separately used to create a second order assessment using the model, four IP data points are generated based on the existence or non-existence of the attributes that the methodology structures into a 2X2 matrix.

Like the 4X4 matrix, the 2X2 matrices provide meaningful information about the value of a patent

in driving corporate profitability. But the power of the structured data set of the novel methodology does not end there. Any misalignment of a piece of IP from key attributes may provide management with a valuable tool for IP and/or business planning. For IP planning, any misalignment may be an indicator of the need to realign the company's IP program to better drive the key attributes of the company and hence profitability. For business planning, any misalignment may be an indicator of hidden attributes of the company that could be harnessed by management through, for example, management revising what it perceives to be the key attributes of the company to include these hidden attributes.

1. "Heart of the Company" is a service mark of PatEnable.

Reprinted from *The Licensing Journal,* August 2010, Volume 30, Number 7, pages 6–16,
with permission from Aspen Publishers, Inc., Wolters Kluwer Law & Business, New York, NY,
1-800-638-8437, www.aspenpublishers.com