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Introduction
The year it all changed

A study published by the World Intellectual Property Organisation (WIPO) in mid-November 2011 reported that the global IP market is now worth $180 billion a year. According to the *World Intellectual Property Report 2011 – The Changing Face of Innovation,* royalty and licensing fee revenue rose from $2.8 billion in 1970 to $27 billion in 1990, and hit $180 billion in 2009. This is faster than global gross domestic product rose over a similar period. In fact, because the statistics recorded by WIPO only went up to the end of 2009, it is possible that two years later the total may now have hit the $200 billion mark.

Given that the WIPO report was released just weeks after another study, which claimed that the value of intellectual capital – including patents, trademarks, copyrights and other forms of intellectual property – owned by publicly quoted US companies exceeded $8 trillion, the case for intellectual property as a lever for growth and innovation has never been stronger. "For firms operating in global markets, profitability depends to an increasing degree on the depth and quality of their intellectual capital, rather than merely on relative costs and sunk tangible investments. Firms with the most valuable intellectual capital are more likely to succeed in intensely competitive global markets and, therefore, are also more likely to have high market values," stated the authors of *What Ideas Are Worth: The Value of Intellectual Capital and Intangible Assets in the American Economy*.

Looking at events during 2011, it is hard to avoid the conclusion that at long last, both investors and senior corporate executives are starting to look at the kinds of figures revealed in the two reports mentioned above and are concluding that intellectual property is a vital – and valuable – business asset. Over the last 12 months, it seems that intellectual property really has become a boardroom issue.

The Nortel boost

If in future years people look back at 2011 as the tipping point for perceptions of intellectual property, the auction of the patent portfolio owned by bankrupt Canadian telecommunications giant Nortel will no doubt be seen as a pivotal event. For four days at the end of June 2011, representatives of some of the world's biggest players in the mobile communications sector set up camp in the New York offices of law firm Cleary Gottlieb as they vied for the 6,000 patents and related rights that Nortel had put on the table. At the end of a bidding process that lasted for more than 25 rounds, a consortium of companies made up of Microsoft, Apple, Research In Motion (RIM), EMC, Ericsson and Sony emerged victorious, having tabled an astonishing offer of $4.5 billion. Of the six, Apple paid by far the largest proportion in a successful effort to prevent Google, developer of the Android platform and the original stalking-horse bidder, from obtaining intellectual property that would have bolstered its ability to help Android manufacturers fight litigation attacks launched by Apple in the ongoing smartphone wars.

The setback was a serious blow to Google, which until then had – perhaps naively – shown little inclination to build up a patent portfolio. However, the company did not take its defeat lying down. Instead, it paid $12.5 billion for Motorola Mobility and its arsenal of 17,000 patents, and also did a couple of deals with IBM, netting 2,000 more.

This flurry of activity not only made the front pages of business publications across the world, but also caught the attention of investors and C-suites alike. Both Kodak and InterDigital have confirmed that they are interested in selling off parts of their patent portfolios in the hope of raising considerable sums of money; while others, including RIM and Nokia, are rumoured to be looking at their options.

Beyond the bubble

Lest anyone think that the activity is limited to the telecommunications and mobile communications sectors, speaking in October 2011 Peter Holden, who runs Coller Capital's IP investments business, stated that there is high demand for patents and growing sales values in areas as diverse as med-tech, e-commerce, LED and social networking. "Companies," he stated, "are voraciously buying up intellectual property" as they come to realise that they will need patents in order to build sustainable competitive positions. Moreover, the activity is not just centred on the United States – there is considerable interest in patents valid in Europe (especially Germany) and certain Asian countries, such as China.

As the amount of IP dealmaking has increased, there has been talk of a bubble – with some commentators stating that price levels are not sustainable. However, while it is true that current values are probably inflated, and that most patents are not worth the paper on which they are written, this does not mean that the patent marketplace has not reached a tipping point. Although the overall perception of the worth of patents may have become over-inflated and could be readjusted, the interest that has been sparked in them looks likely to last beyond the first disappointing sale results. And that is because they are likely only to become more important. As Holden observed in October 2011, the volume of patent-related deals is likely to increase because there are more parties than ever interested in acquisitions. For large companies, intellectual property is now a driver in strategic decisionmaking in areas such as mergers and acquisitions, as well as being a revenue generator and a profit centre; further down the scale, for start-ups and SMEs, intellectual property is increasingly being seen as an important constituent of value in the overall determination of ongoing viability. Meanwhile, mainstream investors are beginning to see intellectual property as an asset with a proven ability to generate significant returns.

In the end, it boils down to a simple truth: patents – and other forms of intellectual property– are attractive assets because they generate real money, underpin entire industries and give their owners the flexibility to do deals or to exclude. That is why people will always want to own intellectual property. For too long, it has been hidden away, but in 2011 that began to change. Intellectual property's time, it seems, has finally come.

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