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INTELLECTUALPROPERTYSTRATEGYFOR  
SMALLANDMEDIUM -SIZEDENTERPRISES(SMES)**

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**EFFECTIVEUSEOFIP ASSETSBY,ANDPRACTICALISSUES  
INDEVELOPINGBUSINESSPLANSFOR,SMES**

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**EFFECTIVE USE OF IP ASSETS BY SMEs**  
**&**  
**PRACTICAL ISSUES IN DEVELOPING  
BUSINESS PLANS FOR SMEs**

**Intellectual Property: An underestimated asset**

**WIPO Asian Regional Seminar on an IP Strategy for SMEs,  
Daeduk, Republic of Korea**

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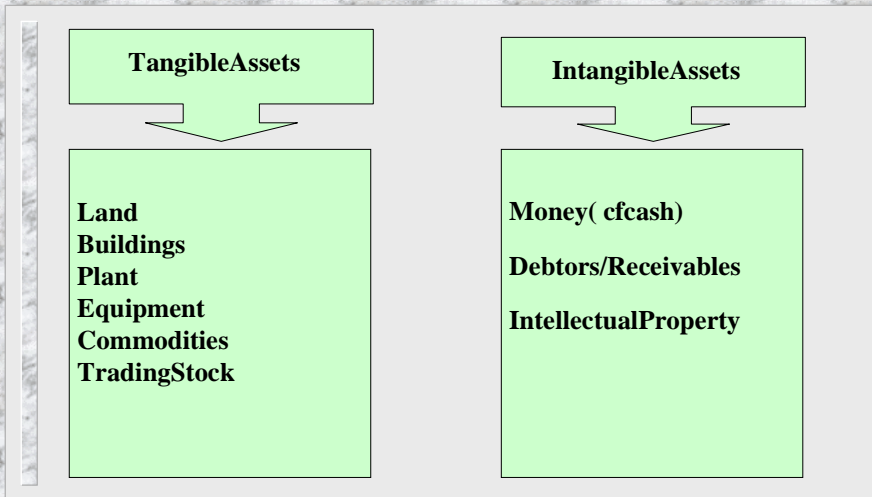
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**Overview**

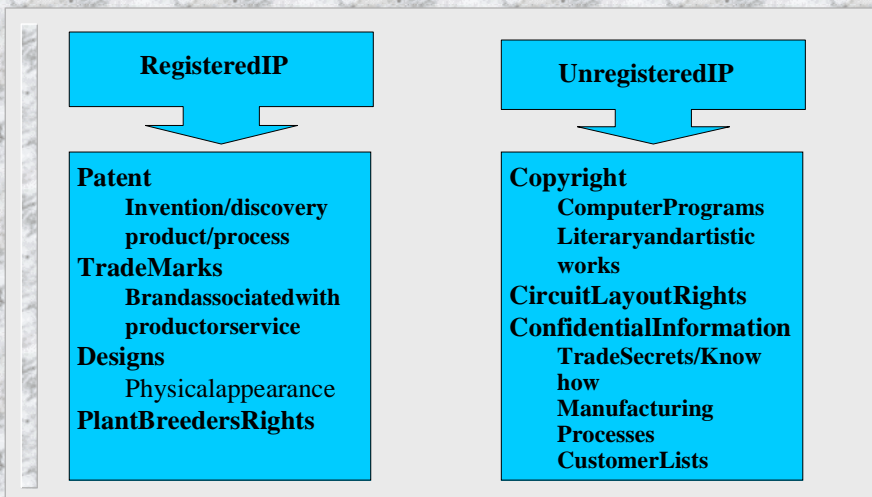
- How is intellectual property an underestimated asset?
- Balance Sheet
  - Showing IP Asset on a balance sheet
  - The financing/borrowing power of IP Assets
- Profit and Loss accounts
  - Direct revenue – income from Intellectual Property
  - Indirect Revenue – sales that would not have occurred but for the SME's IP

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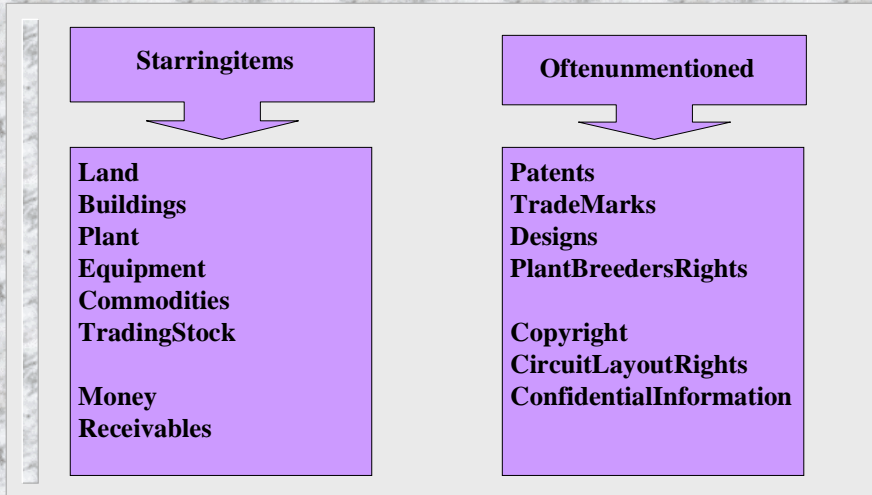
## Balance Sheet: IP and other types of assets



## Types of IP



## Company's balance sheet



## Is that a fair assessment of how companies regard their IP?

- Australian top 100 industrial/public companies:

Top 100 Industrial Companies	
Companies that have intangible assets	77%
Companies separately record identifiable intangibles	69%
Amount separately identifiable intangible recorded	\$56.7 billion
Identifiable intangibles recorded as brand names	69%
Identifiable intangibles other than brand names	31%
Source: IP Toolbox paragraph 17.4.1	

## High profile companies: value of IP represented on their balance sheet

- Microsoft
  - Software programs
  - Value of its Trade Marks
- Coca Cola
  - Value of its Trade Mark
- Kia
  - Patents in motor vehicle components
  - Trade Mark
- Daewoo
  - Patents in motor vehicle components
  - Trade Mark

## Changing patterns of corporate wealth

- A company's wealth used to be measured by "hard" tangible assets
  - Plant and equipment
  - The number of trucks on the road
  - The number of large machines it operated
  - The number of warehouses it owned and what was in those warehouses contained
- That was in the industrial era.
- But today in the era of cleverness:
  - a company's wealth is measured by the cleverness of its ideas, and its innovation, but only if it has protected them, and only if they are exploited
  - No protection, or no exploitation, ideas have no value

## Why put IP on the balance sheet?

- Recognise existence of the asset
- Record its value, and properly record the value of the company
- Can use the value of the IP asset as security for loans
- Can attract:
  - venture capital investment
  - SME expansion investment

## Using IP Assets to leverage finance

- Banks once did not recognise intangible IP assets as assets against which they were prepared to lend
- Odd, since banks were prepared to lend against goodwill
- Goodwill is the reputation of a business – the present capital value of the anticipated future earnings and profits of a business
- Banks are prepared to lend against goodwill
- Why aren't they prepared to lend on IP assets?
- Comparison:

## Comparison: Goodwill & IP Assets

Goodwill	IP Assets
Banks will lend	Banks will not lend
Intangible—you can't see it	Intangible—you can't see it
What is it worth? Present capital value of anticipated earnings	What is it worth? Present capital value of anticipated earnings
Not capable of protection	Is capable of protection
Banks continue to lend	Banks are starting to lend

## Profit and Loss Account

- IP is usually thought of on the expenses side of the profit and loss account
- This is because
  - protection of IP is an expense—and it can be expensive—depending on the number of countries, and which countries, in which IP is sought to be protected
  - IP does not confer a monopoly—it confers the right to exclude others, and this can also be an expensive exercise
- As a result, sometimes not enough focus is given to IP and its impact on the revenue/profit making side of the profit and loss account

## Sales of unique products

- A patent protects a new product
- If there is no patent, anyone can reverse engineer, or copy a new product, and put a copycat product on the market
- A patent entitles its ownert to produce and sell that product, and no one else
- Copycat competitors can be shut down
- This ensures that the patent owner is the only one that enjoys revenues from that new product
- Perceived defect in that analysis: for those patent benefits to be realised there needs to be expensive litigation to shut down the copycats, so it's on the expense side of the Profit and Loss account, and not on the revenue side at all

## Perceived defects and myths

- But that perceived defect is a myth
- While true that a patent owner may have to resort to litigation:
  - It rarely happens – the presence of the patent has a deterrent effect – a copycat will rarely copy the product of a patent holder, reasoning that if a patent holder went to the trouble of patenting, the patent owner will protect the patent
  - Copycats are more likely to copy the product of someone who has no patent to protect their product, since there is no risk of litigation
  - This accounts for the very small ratio of number of disputes to the number of patents granted.
- In IP deals spanning 14 years, only one has concerned infringement/litigation
- Conclusion: Benefit of patents is sales of a product that no one else may produce



## Export revenue

- Patent in Korea, but also identify other countries where it may become commercially prudent to patent,
- Copycats can reverse engineer or copy a product in another country
- Consider countries where the product may be successful, and patent there as well
- Doings so:
  - Two types of export revenue:
  - Export of product – product sales
  - Export of the technology – license technology for royalties
- Not doing so:
  - These two possible income streams do not appear on the profit and loss account

## Trademarks

- Trademarks are unique names and symbols that enable
  - You to differentiate your products from a competitor's
  - Your customer to identify your products, and to distinguish them from a competitor's
  - customer loyalty
- A pleased customer
  - does not want to buy a competitor's product
  - wants to buy your product
- A trademark assists your sales (and your P&L account) by
  - Enabling customer loyalty
  - Increasing sales to customers whom may otherwise have accidentally bought a competitor's product
  - Avoiding loss of sales by customers whom mistakenly purchase a competitor's product

## On the profits side of the P&L

Patent in Korea	Sales of Products
Patent in Other Countries	Exports sales of Products Export revenue-royalties
Trademark	Sales of Products Product identification, and therefore customer loyalty

## Short Case Study: Crystal Lake Beverages Pty Limited

- A Sydney soft drink manufacturer.
- Established 1973
- Sold June 2001
- Sale Price: \$ 330 million
- Its tangible assets (land, plant and equipment): \$35 million
- Its intangible assets : \$295 million
- Intangible assets comprised
  - Trademark, and goodwill associated with trademark

Source – IP toolbox Module 17 Case Study

## Short Case Study: ABC Company No Patent - Lost Opportunity

- ABC Company
- Manufacturer of chemicals for specialist industrial applications
- Developed a new formulation of chemical in that industrial application
- Did not patent.
- Sold chemical in its industry – prior use, patent precluded
- Came to the attention of a large multinational company which was impressed with the formulation, and wanted to put it into a household product, for sale in supermarkets throughout the world

## ABC Company No Patent - Lost Opportunity

- Multinational company:
  - Contracted ABC Co to manufacture for Australian market
  - reverse engineered formulation, and
  - outsourced other manufacturers throughout the world
- Today:
  - on supermarket shelves in many countries,
  - ABC Company gets no income from those sales
- What if:
  - there had been a patent?
  - patent had been obtained in countries where it prudently, on commercial grounds, should have been sought?
- ABC Company may have:
  - Sold patent for a significant lump sum amount
  - Licensed patent for significant royalties
  - Been at toll manufacturer for a larger market than just Australia

## Business planning

- Effective use of an IP Asset
  - is not fortuitous nor serendipitous
  - Very little done with luck
  - It is the result of careful, and considered business planning
- Crystal Lake Beverages
  - was not lucky
  - It carefully considered whether or not it should trademark
  - It decided to do so, and on the sale of its enterprise, it realised the benefits
- ABC Company
  - Had the same opportunity to make a carefully considered decision.
  - It decided not to patent when it had the opportunity.
  - It chose poorly

## Business Planning - considerations

- Identify IP Assets
- Protect IP Assets
- Carefully consider
  - what countries protections should be sought
  - the commercial strategy to be adopted
    - Exports sales
    - License for royalties
- Apply for protection where commercially prudent to do so
- Do not apply for protection where commercially imprudent to do so, and
- Save the expense of applying in countries where it is not commercially prudent to patent
- Pursue the commercial strategy that you have planned for: exports sales or license

## Business Planning-considerations

- Record each IP Asset on the balance sheet
- Record its value – its commercially realistic value
- An IP Asset not performing in the market should not be valued highly
- An IP Asset performing in the market should be valued fairly
- Value:
  - Historical Cost
  - Market value
  - Earnings Basis
- Essential for:
  - An accurate indication of the value of business
  - Financing with banks, venture capitalists, and other lenders
  - Selling the business

## Important business decision

- What to do with an IP Asset is an important business decision
  - Whether to seek IP protection
  - Extent to which to seek protection: scope/countries, etc
- ABC Company was badly informed, and made these decisions poorly
- Crystal Lakes Beverages was well informed, and made these decisions prudently
- Key is to be well informed – commercial decisions can't be made otherwise
- And that is what I urge you to be informed of the potential of IP Assets