Intellectual property: soon a firm's most valuable asset

IP column published in *The Lawyers Weekly* April 14, 2000

Edward Hore
Hazzard & Hore
141 Adelaide Street West, Suite 1002
Toronto, ON M5H 3L5
(416) 868-1340
edhore@ hazzardandhore.com

IP lawyers having doubts that they chose the right of practice should read an article in the influential Harvard Business Review.

The article is entitled "Discovering New Value in Intellectual Property" by Kevin G. Rivette and David Kline, and appears in the January/February issue.

The authors say intellectual property will soon become the most valuable asset of almost any business. Vast fortunes will be made in the future by those who understand the value of intellectual property.

This change is still in its infancy, they say. They estimate that US businesses are failing to realize as much as $1 trillion dollars in revenues by letting intellectual property opportunities slip between their fingers.

According to Rivette and Kline, American business leaders generally speaking don't understand the value of IP. They regard it as an arcane detail to be delegated to some in-house lawyer. Mergers and acquisition firms rarely have any expertise in assessing patent or other intellectual property portfolios. Neither do money managers, yet they must assess companies whose value increasingly turns on the economic value of intangible assets such as intellectual property, rather than fixed assets such as plant and equipment.

But some companies are starting to catch on, say the authors. They mention IBM, Xerox, Microsoft, Lucent, Dow Chemical and Gillette. The CEOs of those companies, say Rivette and Kline, "recognise that the knowledge economy has given rise to a new ecology of competition in which intellectual assets rather than physical assets are the principal wellsprings of shareholder wealth and competitive advantage."

The possibilities for realizing wealth from intellectual property go well beyond protecting a firm's own products from competitors, the authors point out, although today's business leaders almost never realize it.

For example, innovative business methods, rather than innovative products, may be at the core of a company's competitive advantage, and can be patented. Dell Computers has many patents on aspects of its on-line ordering system (As to business method patents, see my earlier column "Will business methods soon be patentable?" in the April 30, 1999 Lawyers Weekly, available at hazzardandhore.com).

Often, the authors say, businesses don't bother getting such patents. As well, they don't license to others intellectual property they are not using themselves. Systematic exploitation of existing intellectual property rights, if it happens at all, may happen only when a company is faced with bankruptcy and must scramble for every dollar. IBM began to mine its patent portfolio for license revenues only in the early 1990s when it nearly went broke and had to restructure. It now makes nearly a billion dollars a year from license fees. Texas Instruments also began patent portfolio mining in the mid-1980s when it faced bankruptcy. It has since earned about 4 billion from royalties. These revenues go straight to the bottom line.

IBM and Texas Instruments, the authors say, are the exception. Most companies let their patent portfolios to gather dust, or fail to get patent protection when they could.

The authors figure vast amounts of revenues are lost to US business as a result. They cite a 1998 survey that found that 67% of US companies own technology that they fail to exploit. On average, 37% of companies let patented technologies go to waste because those technologies were of no immediate use in the company's own products. The survey estimated the value of wasted technology assets in the US economy as a whole at more than $115 billion.

Rivette and Kline claim that this figure is too conservative; studies show that a dollar spent on R&D yields about $10 in return. They conclude that the true figure is therefore closer to $1 trillion in underutilized assets. "…[T]his underutilization of technology assets represents either a stinging indictment of corporate myopia regarding intellectual property or the greatest opportunity to be handed to chief financial officers in a generation…. [P]atent rewards may be as great as the rewards the leveraged buy-out obtained 20 years ago when they capitalized on the undervalued real estate and pension holdings of corporate America."

I therefore extend my congratulations to all readers of this Intellectual Property focus issue. If Rivette and Kline are right, by paying some attention to intellectual property, you may become not only smarter, but richer too.