



The Registration of Intellectual Property (IP) Is Not Where IP Ends

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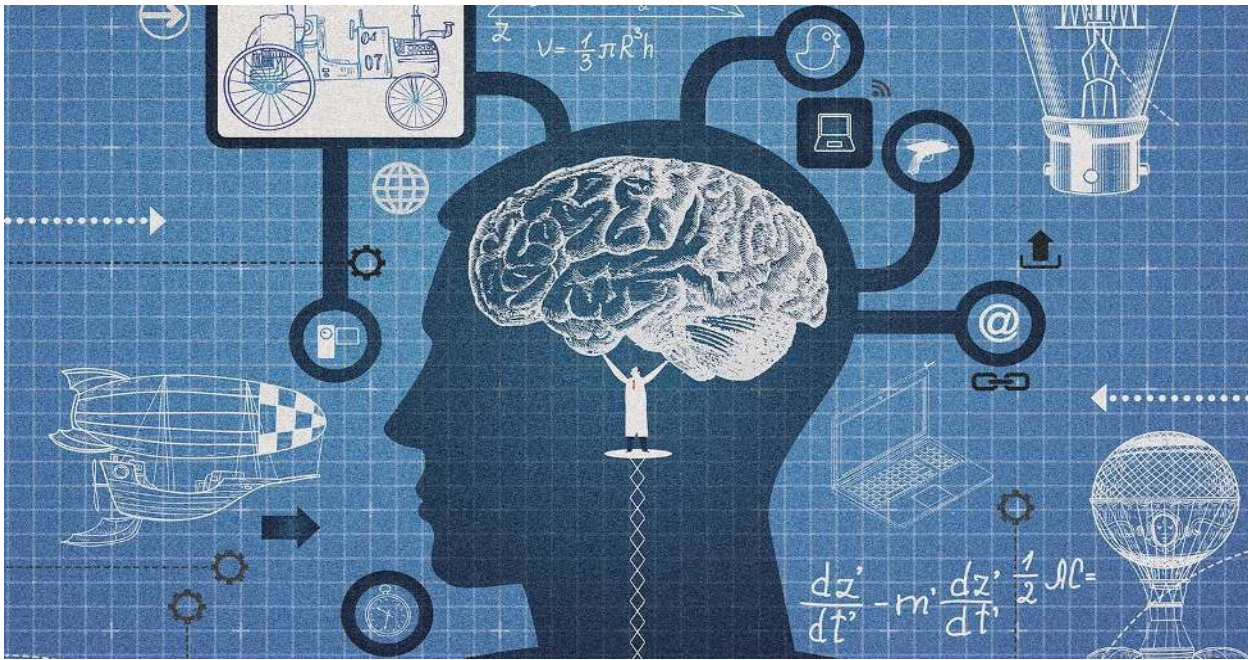


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Largely driven by advancement in technology, the global economy continues to evolve and grow in new and unanticipated ways. From the invention of personal computers to mobile technology; from the Internet to Nano robots and Artificial Intelligence (AI); and from 3D printing to the Internet of Things (IoT), technology is constantly changing the way we live and the way we work.¹

¹ Professional-services Profile, Infusion Lawyers—Your Partner in Innovation, 2017, 1



The economy is shifting from physical, tangible assets, and capital towards knowledge-based, intangible asset, and capital. Over the last few decades, intellectual property such as databases, brand goodwill, and software source codes have overtaken—both in value and importance—physical property such as buildings and heavy equipment. A comparison of Standard & Poors 500 companies shows that in 1978, the asset distribution of corporations was 95% tangible assets and 5% intangible assets. Fast-forward to 2015 and tangible assets now account for a meager 13% while intangible assets account for a whopping 87%!²

Streams of bit are fast replacing stacks of paper.

Please note that ‘intangible assets’ as used in this article refer in essence to intellectual property, which by definition, encompasses such items as brand goodwill, business methodologies, copyrights, databases, methodologies, trademarks, operations manual, and patents.

Intellectual property has emerged as the leading asset class and the dominant source of value in the modern economy. It’s why Coke locks its secret recipe in a vault; why Syria, Russia, and China have legions of cyber-warriors trained to hack into industrial computer systems; and why worldwide patent application were up to 1.9 million last year alone. It’s why an ordinary brand name is worth

² *The Law and the Ultimate Intellectual asset*, Lindsay Moore, published in IAM Magazine, November 2012 and cited in Davies Cave, [The future of manufacturing—embracing "intangible" assets](https://www.lexology.com/library/detail.aspx?g=59c36800-4a33-466e-9c3e-ea22d7c60cac), <https://www.lexology.com/library/detail.aspx?g=59c36800-4a33-466e-9c3e-ea22d7c60cac> accessed 10 October 2017



almost \$80 billion; why revenues from patents' rights' licensing have skyrocketed from \$15 billion in 1990 to more than \$110 billion today; and why experts think that this revenues could top a half trillion dollars annually in 10 years.³

IP's role in the global economy is becoming, increasingly, more significant as, the most innovative companies are those that trade not in goods, but services, ideas, technology, and data.

Kodak is out. Phone camera is in.

The world's largest taxi company, Uber, does not even own a single vehicle!

Razer—a computer gaming hardware company—is valued at 1.5 billion US dollars, yet Razer owns no land, no factories, and no inventory. What it does have is a portfolio of over 1,000 IPs—designs, trademarks, and patents.

Whatever angle you look from, there's no debating the fact that IPs can be the most valuable part of any organization, and that it can bulletproof literally any business, whether it be start-up, spinout, or an innovation group. More compellingly and somewhat counter-intuitively, IPs can be used in the most powerful way to grow business—and create wealth—by protecting and maximally exploiting the rights in those properties.

So, What Exactly is Intellectual Property?

³ <https://hbr.org/2000/01/discovering-new-value-in-intellectual-property> accessed 10 October 2017



Well, Intellectual Property (IP) is a somewhat nebulous term encompassing just about all creations of the human mind. These creations, otherwise referred to as knowledge-based assets, are protected by laws that confer exclusive legal rights in their owners. Laws protecting intellectual property also bar other persons from exploiting or using a protected asset without the owner's prior consent.

For the sake of clarity, and just so everything I've just written doesn't sound like a bunch of mumbo jumbo, let me quickly demonstrate: If you write a song or publish a poem, the lyrics and the wording—so far as they are products of your intellect—are your intellectual property. And they are protected under the copyright laws which essentially bar the rest of the world from using your song or poem without your express consent/authorization.

Over the past 600 years, these IP laws and the rights they create have—rather artificially and for the sake of convenience—been split by lawmakers, lawyers, and writers into neat categories:

- Patent (for original technical inventions or improvement on existing inventions e.g. a new form of jet engines);
- Trademark (for original brands, names, and logos);
- Designs (for original designs e.g. the shape of a soft drinks bottle)
- Copyright (for original artistic, literary or musical creations)



There is also, of course, the somewhat sinister step-uncle that sits in the corner with the tiny Santa hat called trade secrets.⁴

While it is true that more and more people are beginning to see that understanding intellectual property (IP) could mean the difference between building a successful business and going bust, most holders of IP rights and IP attorneys seem to believe—and erroneously too—that registering IP is where IP starts and ends. This is why IP owners in developing countries have not been able to create wealth with their IP as their counterparts do in other parts of the world.

This mentality couldn't be wronger!

There's so much more to IP than mere registration. IP gives exclusive rights to owners/inventors and increase their chances to recover the upfront investments they need to make to generate innovations and to bring them to market. For instance, the guy who invented the can-opening method obtained 148,000 pounds a day on royalties for licensing the system to Coca-Cola during the currency of his patent. IP rights also encourage innovators to disclose their knowledge so that future innovators can build on it, thereby helping to accelerate the rate of innovation.

Again, IP assets may generate income for businesses through licensing, sale, or franchising and it may significantly improve an enterprise's market share

⁴ <https://www.businessnews.com.au/article/The-Extreme-Value-of-Intellectual-Property> accessed 11 October 2017



or raise its profit margins. IP assets can also enhance the value of a business in the eyes of investors and financing institutions. In the event of a sale, merger or acquisition, IP assets may significantly raise the value of an enterprise, and at times may be the primary or only true assets of value.

As an IP owner, understanding what IP is great; taking steps to acquire adequate protection is even greater; but perhaps the greatest thing is figuring out how you can monetize your IP by exploiting your intellectual property assets.

Exploiting Intellectual Property Asset

The notion that an organization must have full control of its intellectual property in order to prevent competitors profiting from its ideas is now antiquated, backward, and Neolithic. The current IP management practice is built on the notion that organizations can benefit from others' use of their intellectual property, and that they too can buy or license others' intellectual property whenever it advances their own business model.⁵

This current behavioral wave is apparently borne from the realization that obtaining legal rights over IP is hardly ever a goal in itself. IP assets are immensely valuable and everyone is beginning to understand that, but exploiting IP is an active process that developing countries—especially the ones in Africa—are yet to fully embrace. If nothing is done with intellectual property, i.e. if it is not licensed, marketed, or sold, then nothing will happen. It will just sit

⁵ *Intellectual Property Commercialization: Public Options and Practical Instruments*, United Nations, New York & Geneva, 2011, 59.



there. This is why it is so important for IP-intensive firms and businesses to adopt a comprehensive IP-management strategy that fits into their overall commercial objectives.

Oftener, the dominant part of an IP strategy is the marketing strategy or what is commonly referred to as commercialization—commercialization being the successful exploitation of IP to gain financial return.

IP exploitation is one of the most vital places where the African continent is losing out big time. African businesses and firms need to wake up if they ever hope to catch up with the rest of the world. Intellectual property is big deal and how intellectual-property rights are managed and exploited—especially by innovators, tech entrepreneurs, and startups—may go a long way in determining how far and how fast the continent’s economy evolves and grows.

Let's look at some figures. In contrast to Africa’s businesses’ underutilization of IP, 40 percent of the EU’s total economic activity (4.7 trillion euros annually) and 35 percent of all employment in the EU (some 77 million jobs) are generated by IPR-intensive industries. In the United States alone, as of the mid-2000s, intellectual-property assets amounted to a staggering \$5.8 trillion, more than the GDP of any other sovereign state at the time.⁶

Since intellectual property is generally easy and inexpensive to duplicate, it’s a great candidate for creating streams of income. Being intangible assets, IP

⁶ In October 2013, the European Patent Office (EPO) and the Office for the Harmonization for the Internal Market (OHIM) released this World Intellectual Property Review results.



assets can be bought and sold or licensed out just like other assets. IP owners can deliver value—and make a lot of money—by simply copying and sharing some data or by lending out their names and images.

Here are some of the ways to exploit intellectual property:

Own Use

The original owners of IP may exploit the rights themselves by making or producing copies of the products and selling them, reproducing the works on different types of products and exhibiting the works in craft exhibitions, fairs, online catalogs, etc. This is suitable where a business is already well-established and has significant organizational and financial capacities. This is also great where a venture is confident that it can enter and capture a new, lucrative market before competition can develop sufficiently to challenge its dominance.⁷

Selling

Some IP holders may not want to, or cannot, exploit their IP assets themselves, and so they may choose to sell out to someone else who may be better placed to exploit them. This way, they will get paid for the time and energy that they have invested into the creation and development of the IP. A sale divests the original IP owners of all their rights—once the transaction is complete, the buyer is free to use the IP that it has acquired in whatever way it

⁷ <https://www.ipaustralia.gov.au/understanding-ip/commercialise-your-ip/finalise-your-commercialisation-plan> accessed 10 October 2017



chooses. In its intended consequences, the sale of IP is no different from the sale of other assets.

Franchising

This is a specialized license by which the franchisee is allowed by the franchisor to use a particular business model. In return for a fee, the franchisee is licensed a bundle of IP rights (copyrighted works, patents, trademarks, trade secrets, etc.) and supported by training, technical support, and mentoring. The franchisor retains the IP rights over the business system, service method, or special product and the franchisee is usually made to sign a Confidentiality Agreement to keep secret all information divulged to him.

This arrangement is ideal for the franchisor because it enables them to geographically expand its business by leveraging on the franchisee's expertise without taking financial risks. It is also good for the franchisee because the franchisee benefits from the franchisor's goodwill, trade secrets, know-how, and brand. For the sake of clarity, all franchisees are licensees but not all licensees are franchisees.

Licensing

Here, an IP holder (the licensor) grants another party (the licensee) the right to engage in one or more of the activities that patent, copyright, or trademark law would otherwise forbid. This approach is especially good if the IP owner intends to make additional income from IPs that they are not currently



using. The owner of the rights will usually receive payments in the form of royalties in return for their use. As I noted earlier, the guy who invented the can-opening method made a lot of money through licensing during the currency of his patent. The system is now used freely by many other drinks manufacturers.

Merchandising

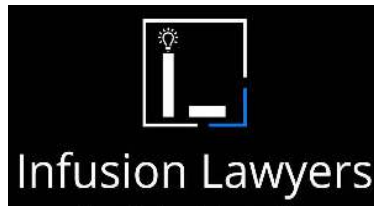
This is the commercial exploitation of a name, symbol, or distinctive sign which has acquired a certain brand recognition in a specific field for the purpose of selling goods or services in other fields. The names and images of a famous actor and singer (Elvis Presley), a famous real estate mogul and now the President of the United States (Donald J Trump), and sport celebrity (David Beckham) immediately come to mind.

Conclusion

Africa is notorious for underutilizing IP. No nation on the continent is among the top 20 countries for patent applications. And this is despite her increasingly strong economic growth and improving status as a competitive hub.

It is time for serious change.

In today's globally competitive environment, the protection, management, and exploitation—emphasis on 'exploitation'—of IP play a critical role in building wealth and sustaining smooth integration with the global economy. As



Africa moves forward in innovation, raising awareness about the critical role IP can play in building Africa's intellectual-property assets is vital.

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