



Intellectual property strategy in Japanese and UK companies: patent licensing decisions and learning opportunities

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Abstract

Intellectual Property (IP) management of explicit knowledge encapsulated in and managed by Intellectual Property Rights (IPRs) is discussed using the first comparative study of UK and Japanese IP management. IP's role in both licensing and continuous learning, whether through licensing or patent information management (PIM), is illustrated. Japanese companies actively search for technology to license in to a greater extent than in the UK where attitudes to IP are more static even though active marketing of technology to license out is similar. It is shown that IP strategy occurs in a space defined by time, techno-legal scope and technological advantage and that licensing decisions need consideration from licensee and licensor viewpoints and a dynamic not static viewpoint. © 2001 Elsevier Science B.V. All rights reserved.

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1. Introduction

Considerable attention has been paid of late to “knowledge management” (Nonaka and Takeuchi, 1995; Teece, 1998). However, many definitions of this exist. To some it represents just management of IT systems and databases or of personnel who possess and create knowledge. To others it means the management of knowledge creation processes (Nonaka and Takeuchi, 1995) and the management of not just stocks but flows of knowledge (Fahey and Prusak, 1998). Such definitions generally look at processes inside a firm and can thus be linked to a

view of knowledge as an underlying firm resource to be managed within a resource-based view of the firm¹ (Grant, 1996).

Knowledge Management though with its generally inward emphasis is but one form of intangible resource management. Other terms describing intangible resources exist such as Intellectual Capital, Invisible Assets and Intellectual Assets, some of which overlap with the term “knowledge”. Polanyi (1966) distinguishes between tacit and explicit knowledge (Polanyi, 1966) and whilst management of intra-company and largely tacit knowledge is important, managing explicit knowledge or intellectual

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¹ Foss (1997) provides an excellent collection of writing on the resource-based view.

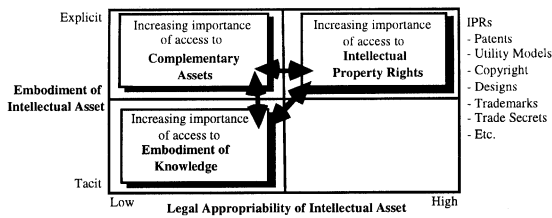


Fig. 1. Embodiment and appropriability of intellectual assets.

assets involved in inter-company dealings is equally important. Whether knowledge is tacit or explicit though, a key factor involved in determining what should be managed to control the knowledge or intellectual asset is the extent to which a firm can appropriate the knowledge or resource concerned (Grant, 1991) using some form of isolating mechanism (Rumelt, 1984). The combination of the tacit/explicit embodiment of the intellectual asset and its appropriability will determine whether one should concentrate on controlling the particular embodiment of the intellectual asset or whether it is more important to control intellectual property rights (IPRs) protecting it (Fig. 1).

As knowledge becomes more explicit and more protectable using IPRs, controlling access to the physical embodiment of the knowledge — (which might be a particular expert or group of experts²) becomes less important and controlling access to and managing the IPRs concerned more important. Thus, not just knowledge management but also intellectual property (IP) management forms part of a resource-based view of the firm. This is emphasised indirectly by Peteraf (1993) who mentions that “A resource based perspective may also help a firm in deciding whether to license a new technology or whether to develop it internally”.

Of course if no IPRs are available and the knowledge is explicit, then only an advantageous strategic position, especially, as Teece (1986) has suggested, in relation to appropriate complementary assets, will enable some degree of appropriation. However,

wherever some form of legal appropriability is possible, IP management is going to be critical to obtaining the maximum benefit possible from the underlying asset, whatever the position regarding complementary assets. Consequently, “Knowledge Management” or “Intellectual Property Management” at least so far as explicit knowledge and inter-company dealings are concerned, mean management not just of Knowledge or IP per se but of the legal rights that define them in those dealings — the IPRs that a company controls. IPRs thus form the focus of this study, with the primary focus being on patents³, the most important High Technology IPR.

2. IP management and strategy

IP management can be divided into two areas. The first concerns internal management of IPRs. This largely concerns the running of the IP department and managing its interaction with other departments. The second concerns external management of IPRs, primarily how a firm interacts with other firms’ IPRs and vice versa.

The concept of Intellectual Property Strategy also requires definition. Though it involves issues of both Intellectual Property Law and Business Strategy it can be defined generally as “The use of IP, either alone or in combination with other resources of the firm, to achieve the firm’s strategic objectives”. This encompasses both a firm’s external dealings involving IP, in which the IP is treated as an extra resource of the company to be used in its overall strategy, as well as internal resource management within a firm aimed at managing the creation and preservation of the company’s IP resources. However, just as IP Strategy can be split into internal and external functions, so IP Management can be split into Tactical and Strategic issues, the former largely the concern of IP lawyers, the latter of senior IP managers (Fig. 2).

The external and strategic aspect of IP management which we are concerned with here comprises three main elements, one reactive, the others proac-

² Interestingly the Japanese Government has designated certain artists in Japan as literally “Important intangible cultural assets” (Jyuyomukeibunkazai) or more colloquially “Human national treasures” (Ningenkokuhō).

³ A discussion of each of such rights can be found in any introductory IP textbook (Bainbridge, 1994).

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