Valuing Intangible Assets: The Role and Value of IP in Business Growth and Strategic Decisions

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Understanding Intangible Assets

An intangible asset is an identifiable non-monetary asset (non-determinable), without physical substance.

Understanding Intangible Assets

- this term means such property as has no intrinsic and marketable value, but is merely the representative or evidence of value
- Such values as accrue to a going business as good will, trademarks, copyrights, franchises, or the like. It exists only in connection with something else

Since there is no determinable value, understanding the value is important for any business or strategic decision

BLACK'S LAW DICTIONARY

Types of Intangible Assets

Patent

Trademark

Copyright

Brand Equity

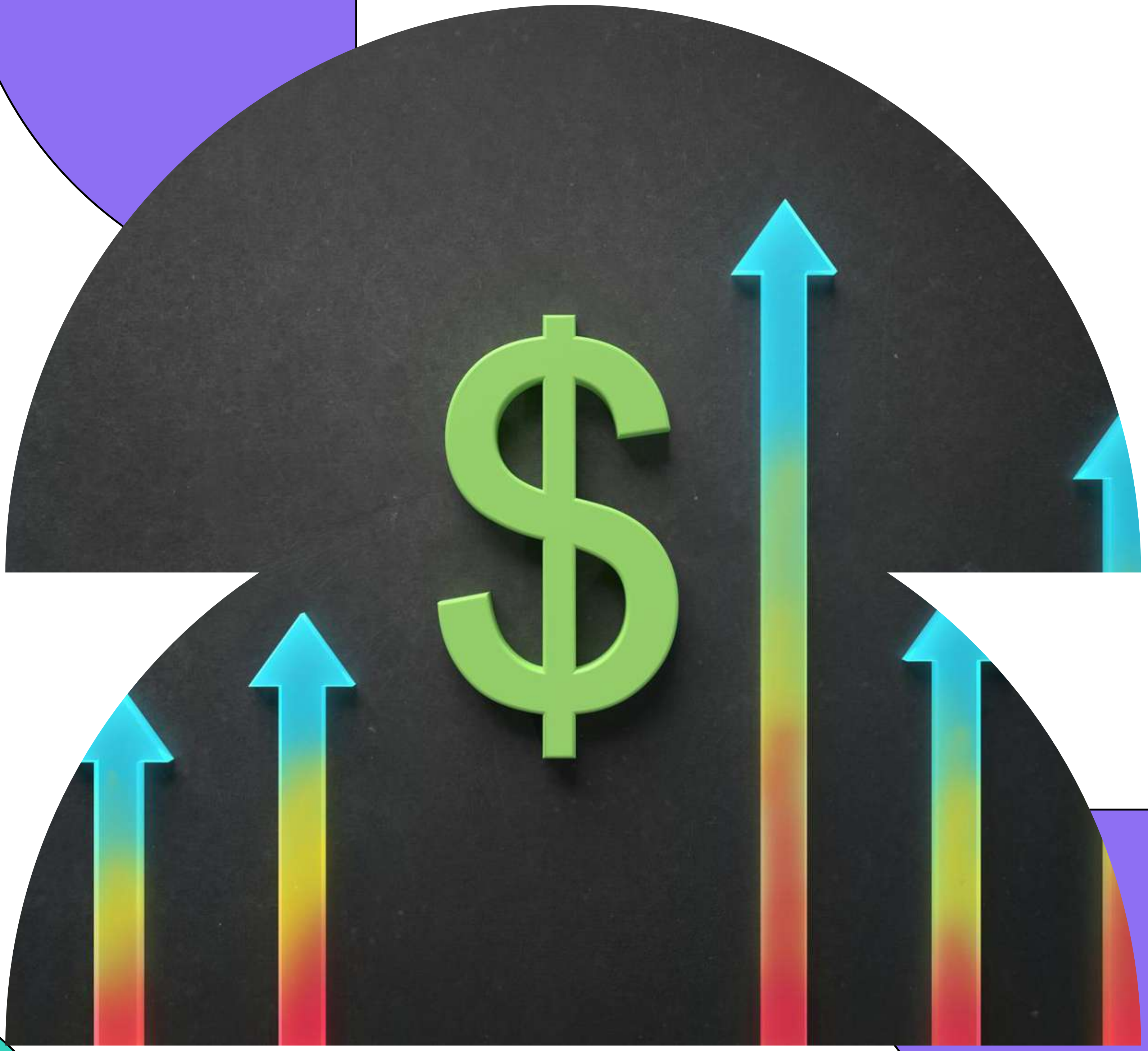
License
s

Goodwil
l

Software

R&D

Business Models/ Trade Secrets



Intangible Assets Are Increasingly the Main Driver of Value Creation

Intangible assets now constitute approximately 90% of the total market value of S&P 500 companies, a significant increase from just 15% in 1975

Leveraging Intangible Assets for Business Value Creation & Growth

Licensing

Wang Lao Ji - Licensee's later forming goodwill

- *Guangzhou Pharmaceutical Holding (GPH)* v. *Dongguan Jia Duo Bao Drink & Food Co., Ltd.*

- *The "Wang Lao Ji" trademark was licensed to Jia Duo Bao Group (JDB Group) for a specific period*
- *Non-conventional marketing approaches of JDB Group- brand rose to national prominence.*
- *Introduction of the RED CAN from the traditional green tin made it a well-known product of tremendous economic value*

- *In 2011, Licensor terminated license*
- *Licensee proceeded to use a fresh trademark affixed on a RED CAN and sued the Licensor for using the RED CAN.*
- *December 2014- the Guangdong High Court found that the RED CAN packaging cannot be separated Wang Lao Ji trademark and that the RED CAN belongs to the Licensor.*
- *July 2017- Supreme People's Court reversed the decision of the Guangdong High Court and declared that both parties were entitled to use the RED CAN container*
- *The SPC acknowledged both parties' contributions to the value of the packaging and affirmed that the packaging, due to its reputation and uniqueness, had generated independent rights from the trademark itself*

Auctioning of IP

Ocean Tomo Live Auctions

- Market-ready IP portfolios are presented to a network buyers in a live open-cry auction format

- Closed hundreds of IP sale transactions with a cumulative transaction value well in excess of $1 billion

Securitization

Bowie Bonds- Use of IP as Collateral

- Asset backed securities of current and future revenues/ royalties of the 25 albums (287 songs) that David Bowie recorded before 1990

- Raised $55 million

- Then used to buy rights to his music from his former manager- which in turn generated more royalties to bondholders

Marvel Film Rights Securitization

- 2006- Marvel Entertainment's film rights securitization for credit facility.
- Marvel used 10 films to be produced by Marvel Studios and its IP to raise $465 million
- The credit facility was used to partially finance Marvel Studios' production costs for the initial 10 film slate and be a revolving credit facility over a seven-year period

Miramax Securitization

- 2011- Miramax did securitization of standalone film library
- Generated about US$550m, to refinance its outstanding debt.
- Leveraged movies like "Pulp Fiction", "Good Will Hunting", "Reservoir Dogs", and "No Country for Old Men

Yale-Patent Monetization Deal

- 2000- Yale University gave royalty rights to anti-HIV drug for an upfront payment of $115-million
- Used it for capital projects on its campus, including a new medical complex
- In a monetizing deal, a third party steps in, estimates the value of the royalties over several years, and then pays that amount to the institution that owns the patent

India Perspective

National Intellectual Property Rights (IPR) Policy, 2016

- Objective 5 Commercialization of IPR - Get value for IPRs through commercialization
- Provide a platform for IPR owners to be connected with potential users, buyers and funding agencies
- Enabling valuation of IP rights as intangible assets by application of appropriate methodologies and guidelines
- Facilitating securitization of IP rights and their use as collateral by creation of enabling legislative, administrative and market framework

IP as Collateral in India

- Canara Bank vs N.G. Subbaraya Setty, AIR 2018 SC 3395
- N.G. Subbaraya Setty owed money to Canara Bank
- Difficulty in repayment- assigned the trademark "EENADU" to bank, by which bank had right to use the mark on its own or license and earn monies
- Bank subsequently cancelled the assignment citing banking regulations prohibiting it from dealing with property/ selling goods except to satisfy its claim.
- Virtually disallowed using IP as collateral

Auctioning of Fortis

- Daiichi Sankyo Company Limited v Malvinder Mohan Singh & Ors. COMM 6/2016, 29 October 2024
- Daiichi Sankyo acquisition of shares of Ranbaxy Laboratories - later allegations of fraud and banning by US FDA
- Daiichi initiated arbitration citing concealment of material information

- Arbitration panel ruled in favour of Daiichi awarding 4900 Crores
- Meanwhile, Singh brothers had used the proceeds from sale of Ranbaxy Laboratories to launch Fortis Healthcare
- Daiichi filed an application seeking to auction the FORTIS trademark (owned by RHC Healthcare Management Services, Judgement Debtor)
- Submission that approx 191.5 crore would be generated from sale of brand
- Delhi High Court allowed the auctioning. However, did not appoint auditor for valuing
- Reasoning-auction process itself would determine the optimal value

Valuation Methodologies

Excess Earnings Method

Identifying excess earnings which are those earnings beyond what is expected from the company's tangible assets

Market Approach

Uses market data to compare the business being valued to similar companies that have recently been sold or traded

Income Approach

Estimates future cash flows and discounting them to their present value

Replacement Cost Method

This method values goodwill by estimating how much it would cost to recreate the company's intangible assets from scratch

Examples

	Example	Steps	Final Valuation
Excess Earnings Method	• Tangible assets value at ₹10 crore. • The normal rate of return on tangible assets in the industry is 10%. • The firm's actual earnings are ₹1.8 crore annually.	• Expected Earnings = ₹10 crore * 10% = ₹1 crore • Excess Earnings = Actual Earnings – Expected Earnings = ₹1.8 crore – ₹1 crore = ₹0.8 crore • Assuming capitalisation of 20%- Goodwill = Excess Earnings / Capitalization Rate = ₹0.8 crore / 20% = ₹4 crore	₹4 crore, calculated based on its excess profitability beyond the return expected from tangible assets
Market Approach	The recent acquisition of similar companies in the same industry shows: • The average selling price of these companies is ₹15 crore. • The average book value of these companies is ₹9 crore. • Target company's book value is ₹12 crore.	• Goodwill Multiple = (Selling Price (₹15 crore) – Book Value (₹9 crore)) / ₹9 crore = 0.67 or 67% • Apply the multiple to the target company's book value • 0.67 * ₹12 crore = ₹8.04 crore	₹8.04 crore, based on market data from similar transactions

	Example	Steps	Final Valuation
Income Approach	Brand which expects to generate ₹5 crore annually in net cash flow for the next 5 years. Discount rate = 12% Assumed that without goodwill, Brand's expected net cash flow would only be ₹2 crore annually	• Estimated future cash flows from goodwill = (Projected cashflow) ₹5 crore – (Cashflow without goodwill) ₹2 crore = ₹3 crore annually for 5 years. • Discount future goodwill cash flows to present value and add: • ₹2.68 + ₹2.39 + ₹2.14 + ₹1.91 + ₹1.71 = ₹10.83 crore	The goodwill for the brand is valued at ₹10.83 crore using the income approach.
Replacement Cost Method	The estimate cost to develop and maintain these intangibles are: • R&D costs: ₹3 crore • Licensing fees: ₹1 crore • Training and recruitment of skilled professionals: ₹2 crore • Marketing and brand-building efforts: ₹1.5 crore	Replacement Cost = ₹3 crore + ₹1 crore + ₹2 crore + ₹1.5 crore = ₹7.5 crore	₹7.5 crore, which is the estimated cost to recreate its intangible assets

Key Takeaways

- IP Valuation is Essential
- Multiple Monetization Avenues Exists
- IP is a Business Enabler, Not Just a Legal Protection