



HARDMAN & CO.

Recognising the value of Intellectual Property

By Christopher Robertson from Robertson IP Limited

Introduction

We are most grateful to Christopher Robertson, from Robertson IP, for providing this article on Intellectual Property, or IP.

It is a complex subject, but it is vital to address this important, commercially relevant topic that, in the past, has not necessarily been scrutinised by many investors.

However, this may now be changing, as investors become more risk-averse, and as the availability of capital for knowledge-intensive businesses, in particular, has become less readily available.

As operating momentum has faltered and investment horizons have shortened, market participants now recognise the growing significance of the balance sheet. IP is an intangible asset that is attracting more attention, as investors look to understand its underlying value to a business.

There is a very real possibility at present that investors may fear that companies with significant proprietary know-how may be denied the commercial opportunity to exploit their potential for no other reason than a lack of funding – which was not typically the case pre-COVID-19. Hence it is incumbent on managements to articulate their options.

Well-funded, well-informed corporates and private equity (PE) may see this as an appropriate time to capitalise on such an opportunity; other investors may be well-advised to raise their awareness of such activity.

We hope you find Christopher's article useful. I have recorded two interviews with him discussing IP as part of our Hardman Talks series (links below), which may be of further interest. As always, we welcome any feedback.

Richard Angus, Head of Business Development at Hardman & Co

Hardman Talks | The importance of intellectual property

<https://hardmanandco.com/hardman-talks-the-importance-of-intellectual-property>

Hardman Talks | How do you value intellectual property?

<https://hardmanandco.com/hardman-talks-how-do-you-value-intellectual-property>

IP rights – always intangible, often inscrutable, but never inconsequential

Intellectual Property (IP) assets

Intellectual Property (IP) assets are intangible, and are often not well-understood by the majority of stakeholders, but their potential value and vulnerabilities mean that investors cannot afford to ignore them when making decisions on where to put their money. IP rights protect innovation and reputation – two of the most essential tools for honing a competitive edge in any sector. If managed well, they can secure market share, foster long-term growth and attract investment. But what should investors look for in an IP portfolio when making high-value business decisions, and what new and upcoming risks should they be aware of?

This article will cover some of the basics of IP from the point of view of investors, and will explore current developments on the European patent scene that are worthy of ongoing attention by all those keen to keep abreast of the risks associated with investing in IP-intensive companies.

The “rights holders”

Fundamentally, IP is an umbrella term for a range of rights afforded by law to the creators of original works, the owners of brands, and the keepers of industrial secrets. The legal framework around IP has ancient origins, and is designed to encourage innovation, promote creativity, and ensure fair competition in the marketplace, providing a balance between the interests of the owners of IP rights (the “rights holders”) and the wider public.

IP rights

There are several types of IP rights that businesses might own, including:

- ▶ **Patents**, which protect inventions, granting the rights holders a monopoly that lasts up to 20 years.
- ▶ **Trade marks**, which protect brand names, logos and other distinctive signs that represent a business.
- ▶ **Design rights**, which protect the visual appearance of products and packaging.
- ▶ **Copyright**, which protects original literary, dramatic and artistic works.
- ▶ **Trade secrets**, which provide statutory protection to essential business information, if adequate measures are taken to keep it secret.

Investors should carefully review the IP rights, risks, agreements and processes of businesses they consider with the help of an IP specialist lawyer or consultant. Some of the relevant information can be obtained by searching public databases, such as the Patents Register, maintained by the Patent Office, and the WHOIS database. The business under consideration will need to provide other relevant information, typically in response to a questionnaire. Business owners may choose to have an IP professional conduct an IP audit of their business in order to attract investors, and

the resulting report can be a useful tool for the investors to aid, but not replace, their own due diligence.

IP value – three methodologies

Once an investor has identified relevant IP rights within a business under scrutiny, it is time to think about their value. Calculating the value of an intangible asset is not straightforward, and should not be attempted without professional assistance. One of three methodologies is usually applied and selected according to the maturity of the IP right in question:

- ▶ **The cost approach**, which estimates the value of an IP asset based on the costs incurred in creating or replacing it.
- ▶ **The market approach**, which values an IP asset based on the prices of comparable IP assets in the open market, where the relevant data are available.
- ▶ **The income approach**, which estimates the value of an IP asset based on the future economic benefits that it is expected to generate.

Unitary Patent system

No matter which methodology is used, the legal strength and enforceability of the IP right is always an adjusting factor, and recent developments in the European patent system will most certainly affect these adjustments in the future. Investors and their professional advisers must get to grips with these changes, and understand how they will affect the value of European patents from June 2023, when the Unitary Patent system goes live across the European Union.

European Patent Office (EPO)

Historically, patents are jurisdictional, which means that each country grants its own patents, which only have effect within their respective territories. The European Patent Convention (EPC) established a European Patent Office (EPO), with the authority to grant patents that can be validated in more than 30 European countries. Validation in a particular country results in a standalone patent right in that country, which then proceeds independently of the corresponding patent rights in the other validating states. This means that, if a European patent is overturned by a court in, for example, Germany, the equivalent patent in the UK continues in force, unaffected. The UK remains a party to the EPC, despite Brexit, because it is not an EU convention.

From June 2023, the EPO will have the power to grant Unitary Patents, which are valid in the (currently 17) participating EU member states (not, therefore, including the UK). The Unitary Patent will be a single right with cross-border application, meaning that, if it is overturned once, it is overturned for all. This arguably means that a Unitary Patent is more vulnerable than a conventional European patent, since it is less robust in the face of opposition in the courts. We suggest that investors should pay attention, from the summer, to whether or not a business under examination has opted to use the Unitary Patent or the conventional EPC for European patent protection. Neither should be a deal-breaker, but the differences between the two are worthy of further study by those wishing to make better-informed business decisions.

By Christopher Robertson of Robertson IP Limited

About the authors



Christopher Robertson

Christopher Robertson is an IP specialist at Robertson IP Limited.

Christopher worked for the UK Patent Office for seven years, before establishing his consultancy business in 2019 in Cardiff. Christopher spends his days advising on all matters relating to IP, with as little jargon as possible, as well as filing and prosecuting patent, trademark and design applications at home and abroad.

Christopher has a Master's degree in physics from the University of Durham and a postgraduate diploma in IP law from the University of South Wales.



Richard Angus

Richard Angus is the Head of Business Development at Hardman & Co.

Richard has more than 30 years of City experience. His primary area of focus has been US equity capital markets, and he has been involved predominantly in the development of growth companies. Richard has experience on both the buy and sell sides. Having worked for M&G as a fund manager, Richard then worked for US investment banks Alex Brown & Sons and Furman Selz. Latterly, Richard was Managing Director and Head of Institutional Sales for Europe at FBR & Co. Besides being involved in many public flotations, Richard's experience includes pre-IPO capital raises.

Richard joined Hardman & Co in September 2014. He holds a BA (Hons) in Economics from the University of Liverpool, and is a Chartered Accountant.

Disclaimer

Hardman & Co provides professional independent research services and all information used in the publication of this report has been compiled from publicly available sources that are believed to be reliable. However, no guarantee, warranty or representation, express or implied, can be given by Hardman & Co as to the accuracy, adequacy or completeness of the information contained in this research and they are not responsible for any errors or omissions or results obtained from use of such information. Neither Hardman & Co, nor any affiliates, officers, directors or employees accept any liability or responsibility in respect of the information which is subject to change without notice and may only be correct at the stated date of their issue, except in the case of gross negligence, fraud or wilful misconduct. In no event will Hardman & Co, its affiliates or any such parties be liable to you for any direct, special, indirect, consequential, incidental damages or any other damages of any kind even if Hardman & Co has been advised of the possibility thereof.

This research has been prepared purely for information purposes, and nothing in this report should be construed as an offer, or the solicitation of an offer, to buy or sell any security, product, service or investment. The research reflects the objective views of the analyst(s) named on the front page and does not constitute investment advice. However, the companies or legal entities covered in this research may pay us a fixed fee in order for this research to be made available. A full list of companies or legal entities that have paid us for coverage within the past 12 months can be viewed at <http://www.hardmanandco.com/legals/research-disclosures>. Hardman may provide other investment banking services to the companies or legal entities mentioned in this report.

Hardman & Co has a personal dealing policy which restricts staff and consultants' dealing in shares, bonds or other related instruments of companies or legal entities which pay Hardman & Co for any services, including research. No Hardman & Co staff, consultants or officers are employed or engaged by the companies or legal entities covered by this document in any capacity other than through Hardman & Co.

Hardman & Co does not buy or sell shares, either for their own account or for other parties and neither do they undertake investment business. We may provide investment banking services to corporate clients. Hardman & Co does not make recommendations. Accordingly, they do not publish records of their past recommendations. Where a Fair Value price is given in a research note, such as a DCF or peer comparison, this is the theoretical result of a study of a range of possible outcomes, and not a forecast of a likely share price. Hardman & Co may publish further notes on these securities, companies and legal entities but has no scheduled commitment and may cease to follow these securities, companies and legal entities without notice.

The information provided in this document is not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Hardman & Co or its affiliates to any registration requirement within such jurisdiction or country.

Some or all alternative investments may not be suitable for certain investors. Investments in small and mid-cap corporations and foreign entities are speculative and involve a high degree of risk. An investor could lose all or a substantial amount of his or her investment. Investments may be leveraged and performance may be volatile; they may have high fees and expenses that reduce returns. Securities or legal entities mentioned in this document may not be suitable or appropriate for all investors. Where this document refers to a particular tax treatment, the tax treatment will depend on each investor's particular circumstances and may be subject to future change. Each investor's particular needs, investment objectives and financial situation were not taken into account in the preparation of this document and the material contained herein. Each investor must make his or her own independent decisions and obtain their own independent advice regarding any information, projects, securities, tax treatment or financial instruments mentioned herein. The fact that Hardman & Co has made available through this document various information constitutes neither a recommendation to enter into a particular transaction nor a representation that any financial instrument is suitable or appropriate for you. Each investor should consider whether an investment strategy of the purchase or sale of any product or security is appropriate for them in the light of their investment needs, objectives and financial circumstances.

This document constitutes a 'financial promotion' for the purposes of section 21 Financial Services and Markets Act 2000 (United Kingdom) ('FSMA') and accordingly has been approved by Capital Markets Strategy Ltd which is authorised and regulated by the Financial Conduct Authority (FCA).

No part of this document may be reproduced, stored in a retrieval system or transmitted in any form or by any means, mechanical, photocopying, recording or otherwise, without prior permission from Hardman & Co. By accepting this document, the recipient agrees to be bound by the limitations set out in this notice. This notice shall be governed and construed in accordance with English law. Hardman Research Ltd, trading as Hardman & Co, is an appointed representative of Capital Markets Strategy Ltd and is authorised and regulated by the FCA under registration number 600843. Hardman Research Ltd is registered at Companies House with number 8256259.

(Disclaimer Version 8 – Effective from August 2018)

Status of Hardman & Co's research under MiFID II

Some professional investors, who are subject to the new MiFID II rules from 3rd January, may be unclear about the status of Hardman & Co research and, specifically, whether it can be accepted without a commercial arrangement. Hardman & Co's research is paid for by the companies, legal entities and issuers about which we write and, as such, falls within the scope of 'minor non-monetary benefits', as defined in the Markets in Financial Instruments Directive II.

In particular, Article 12(3) of the Directive states: 'The following benefits shall qualify as acceptable minor non-monetary benefits only if they are: (b) 'written material from a third party that is commissioned and paid for by a corporate issuer or potential issuer to promote a new issuance by the company, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public...'

The fact that Hardman & Co is commissioned to write the research is disclosed in the disclaimer, and the research is widely available.

The full detail is on page 26 of the full directive, which can be accessed here: <http://ec.europa.eu/finance/docs/level-2-measures/mifid-delegated-regulation-2016-2031.pdf>

In addition, it should be noted that MiFID II's main aim is to ensure transparency in the relationship between fund managers and brokers/suppliers, and eliminate what is termed 'inducement', whereby free research is provided to fund managers to encourage them to deal with the broker. Hardman & Co is not inducing the reader of our research to trade through us, since we do not deal in any security or legal entity.

