Intellectual Capital: Unlock the Unexploited Value of Your Company's IC Assets

November 18, 2020
Intellectual Capital Components

**Value Creation**

Human Capital
- Experience
- Know-how
- Skills
- Creativity

**Value Extraction**

Intellectual Assets
- Programs
- Inventions
- Processes
- Databases
- Methodologies
- Documents
- Drawings
- Designs

Intellectual Property
- Patents
- Copyrights
- Trademarks
- Trade secrets
A Model of the IC Company

Intellectual Capital (unique)
- Human Capital
- Intellectual Assets
  - Intellectual Property

Complementary Business Assets (differentiated)
- Manufacturing Facilities
- Distribution Capabilities
- Sales Force

Structural Capital (generic)
Intellectual Capital Value Components

MOVE AS MANY OF YOUR INTELLECTUAL ASSETS HERE

<table>
<thead>
<tr>
<th>Knowledge</th>
<th>Codified Knowledge</th>
<th>Codified &amp; Shared Knowledge</th>
<th>Codified, Shared, &amp; Protected Knowledge</th>
</tr>
</thead>
<tbody>
<tr>
<td>“A smart idea”</td>
<td>“A smart idea that can be repeated”</td>
<td>“A smart idea that others can repeat”</td>
<td>“A smart idea that gives the organization a protected competitive advantage”</td>
</tr>
</tbody>
</table>

Value potential to Organization

How do you increase the value potential of your IA:
- Inventory your assets.
- Understand the business purpose and current level of use of the assets.
- Devise strategies to codify, share and protect.
Gillian M. Fenton, Esq., CLP
Senior Counsel, Vaccines Legal Operations – Innovation, Business Development and Strategic Alliances
GSK Vaccines

- IP-driven R&D Transactions for the Vaccines Pipeline
- Global Health Transactions
- External Funding ~ HHS/BARDA, DoD/DARPA

- Formerly Chief IP Counsel, Emergent BioSolutions Inc.
  - 2006-2015

Views expressed are personal and do not reflect the policies or positions of my current or prior employers.
WHAT IS INTELLECTUAL CAPITAL (IC)?
All of the following and more.

- Contractual Rights/Exclusivities
- Know-How
- Regulatory Exclusivities
- Rights in Data
- Rights in Confidential Information
- Rights in Trade Secrets
- Trademarks
- Copyright
- Patents
- Branding

ICM Graphic
LS IC Management

Best Practices

- Interrelated Oversight of Assets, Risks, Opportunities
- Align with Company business model and priorities
- Think broadly about commercially meaningful exclusivities
- Budget and Timing of significant activities (launch, FTO)
- Workforce training and outreach
- Policies and procedures
  - development, oversight, audit, enforcement
- Functional Adjacencies and Overlaps ~ Not Just R&D!
  - Finance / HR / IT / Security / Corp Strategy / Risk & Insurance
- Strategy Requires Implementation
  - Operational Plan with Timeframe, Resources, KPIs
Using Patents As A Source of IC

Inventor Recommendation

Innovation is core to the culture of Google. Almost all innovation is collaborative, and often the strongest new ideas come from cross-team collaboration. The Inventor Recommendation app is a Google-Inventor recommendation engine that is designed to facilitate cross-team collaboration. Use the app to find Google-Inventors for collaboration on your next big idea or find mentors as you invent in your field of interest here at Google. The app leverages inventors’ past patent publications to calculate similarities and provide recommendations.

How to use the app? Start by entering an LDAP or a Search Query in the cards on the right -->

LDAP SEARCH

KEYWORDS SEARCH

Inventor Recommendation - Keywords Search

Enter keywords or short phrases of your idea below and hit Search to find relevant inventors. For example, to find inventors with inventions in reinforcement learning, enter Reinforcement Learning and click Search.

Enter keywords to search for inventors

SEARCH
**Intellectual Capital**

Sum of everything everybody in an enterprise knows and has created and is capable of creating that gives an enterprise a competitive edge.

Knowledge, skill and know-how that employees "take with them when they leave at night" stays with the firm "after the staff leaves at night", and comprises organizational routines, procedures, systems, cultures, and databases.

Resources arising from the external relationships of the firm with customers, suppliers and R&D partners.
## Intellectual Assets – Sample Menu

<table>
<thead>
<tr>
<th>Structural Capital Assets</th>
<th>Relationship Capital Assets</th>
<th>Human Capital Assets</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>“Secret Sauce”</strong> Film libraries</td>
<td>Advertising campaigns</td>
<td>Non-compete covenants</td>
</tr>
<tr>
<td>Apparatus Food flavorings and recipes</td>
<td>Processes/Methods</td>
<td>Advertising, construction,</td>
</tr>
<tr>
<td>Appraisal plant Franchise ordinance</td>
<td>Product or Service Placements</td>
<td>Non-competition agreements</td>
</tr>
<tr>
<td>Article of manufacture Goodwill</td>
<td>Production backlogs</td>
<td>Non-contractual customer</td>
</tr>
<tr>
<td>Audiovisual works</td>
<td>Goodwill Proposal outstanding</td>
<td>Books, magazines, newspapers,</td>
</tr>
<tr>
<td>Awards and judgments Goi ng concern</td>
<td>Proprietary computer software</td>
<td>Non-diversion agreements</td>
</tr>
<tr>
<td>Bank and credit card customers Historical documents</td>
<td>Proprietary processes</td>
<td>Buy-sell agreements</td>
</tr>
<tr>
<td>Blueprints</td>
<td>Proprietary products</td>
<td>Options, warrants, grants, rights</td>
</tr>
<tr>
<td>Book libraries</td>
<td>Insurance in force</td>
<td>Certificates of need</td>
</tr>
<tr>
<td>Business methods</td>
<td>Laboratory notebooks</td>
<td>Order or production backlogs</td>
</tr>
<tr>
<td>Chemical formulations</td>
<td>Leasehold estates</td>
<td>Cooperative agreements</td>
</tr>
<tr>
<td>Client, donor or trustee data</td>
<td>Lists of employees, customers,</td>
<td>Non-diversion agreements</td>
</tr>
<tr>
<td>Company strategy</td>
<td>Literary works</td>
<td>Customer contracts and related</td>
</tr>
<tr>
<td>Composition of matter</td>
<td>Litigations awards and damages</td>
<td>Product Shape</td>
</tr>
<tr>
<td>Computer software</td>
<td>Loan portfolios</td>
<td>Customer lists*</td>
</tr>
<tr>
<td>Computer software and mask</td>
<td>Schematic s and diagrams</td>
<td>Property use rights</td>
</tr>
<tr>
<td>Computerized databases</td>
<td>Securit is por t folios</td>
<td>Customer relationships</td>
</tr>
<tr>
<td>Confidential Business</td>
<td>Location value</td>
<td>Regulatory approvals</td>
</tr>
<tr>
<td>Confidential Business</td>
<td>Manuals</td>
<td>Design (logo, package)</td>
</tr>
<tr>
<td>Credit information files</td>
<td>Medical charts and records</td>
<td>Reput ation (prospect of future</td>
</tr>
<tr>
<td>Culture</td>
<td>Music al compositions</td>
<td>Distribution networks</td>
</tr>
<tr>
<td>Customer list</td>
<td>Natural resources</td>
<td>Royalty agreements</td>
</tr>
<tr>
<td>Data</td>
<td>Newspaper morgue files</td>
<td></td>
</tr>
<tr>
<td>Data compilation</td>
<td>Technical documentation</td>
<td></td>
</tr>
<tr>
<td>Databases, including title</td>
<td>Title plants (chain of title,</td>
<td>Trade dress (unique color,</td>
</tr>
<tr>
<td>Demonstration or Show-how</td>
<td>Personally Identifiable</td>
<td></td>
</tr>
<tr>
<td>Designs</td>
<td>Pictorial, Graphic (2D) works</td>
<td>Trade secrets, such as secret</td>
</tr>
<tr>
<td>Plans</td>
<td>Prescription drug files</td>
<td>Leasehold interests</td>
</tr>
<tr>
<td>Engineering drawings</td>
<td>Prizes and awards</td>
<td>Trademarks, tradenames,</td>
</tr>
<tr>
<td>Enrollment lists</td>
<td>Procedural manuals</td>
<td></td>
</tr>
</tbody>
</table>

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Corollaries

1. Some **Intellectual Assets (IA)** drive *material* value, yet not all material IA or **Intellectual Capital (IC)** is recognized by “Accounting”, C-suites or Board Directors; other times it is lumped into Good Will.
2. Some IA is recognized inconsistently: not if home-grown; but then are recognized only after a transaction.
3. Some IC also drives value, yet is often not recognized.
4. The material drivers of value can be considered Parent Assets/Capital that *may also be legally/IPR* protectable (some not), and these create Child assets, which themselves provide material value individually or in aggregate (by asset class/category).
5. Children can only come from Parents, but Children are not same as their Parents.
6. Children (and grandchildren) may separably exist from their Parents.
7. **Intellectual Capitals** are catalysts for extracting value from **Intellectual Assets**.
The Proposed Boardroom Standard

Board compliance in 5 Steps:

- **Step One (Agenda):** The Board Should Add IC-overight to its Strategy Agenda
- **Step Two (Baseline):** The Board Should Insure Baseline Awareness of Each Director on IC-related Language, Relevant Topics, & Liability
- **Step Three (Confer):** Directors Should Confer on IC-related Materiality and Risk Tolerance
- **Step Four (Determine):** The Board Should Determine Need/Benefits for Additional Planning re External (and Internal) IC-related Events
- **Step Five (Evaluate):** The Board Should Routinely Evaluate the Timing and Substance of Refreshing the Above Steps
Drivers Of Material Commercial Value (Or Potential)

**MENU OF POTENTIAL PARENTS**
- Intellectual Assets
- Intellectual Capital

**MENU OF POTENTIAL CHILDREN**
- Intellectual Property Rights
- Legal Protections
  - which themselves become
  - Intellectual Assets

**LEDGER OF EXISTING MATERIAL VALUE DRIVERS**
- Intellectual Assets
- Intellectual Capital

**Translation Matrix**

**IA/IC Ledger**

<table>
<thead>
<tr>
<th>Parents</th>
<th>Children</th>
<th>Grand-children</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Formulations</td>
<td>1 external patent, 1 aggregate of other patents (9)</td>
<td>1 Confidentiality Agreement (agg)</td>
</tr>
<tr>
<td>1 Know-How (aggregate)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Supply Relationships</td>
<td>1 exclusive; 1 non-exclusive</td>
<td></td>
</tr>
<tr>
<td>3 Rest Employees</td>
<td>2 Retention Agreements (need 4?)</td>
<td></td>
</tr>
<tr>
<td>1 Assembly Workforce (aggregate)</td>
<td>1 template Employee Agreement (500 employees in aggregate); Non-disclosure, Non-solicitation, Non-compete</td>
<td></td>
</tr>
<tr>
<td>2 Marketing Campaigns</td>
<td>1 Trademark, 1 Copyright</td>
<td></td>
</tr>
<tr>
<td>1 IAD Investment (aggregate)</td>
<td>2 brands + marketing</td>
<td>License options granted to JV partner...</td>
</tr>
</tbody>
</table>