

Generating positive financial result from IP exploitation

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Abstract: IP objects are valuable intangible assets which can generate positive financial result. The means for this are: practicing the rights, sale, license, litigation and deterring of third parties. Each of these means has its advantages and disadvantages. For the company, to derive maximum advantage from each of the IP objects owned or in use, it is necessary to pay attention to the estimation of usage and the realization of which object in what manner to be used and decide which method is mostly appropriate to be applied,

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I. Introduction

The main purpose of the activities in each economic unit is realizing positive results, leading in one way or another to a financial result. To achieve this aim, all the assets and resources should be used optimally, no matter whether we talk about a small or a big enterprise and what its sphere of activity is. When it is a matter of tangible assets and resources, the optimization of their use concerns their practical applicability. But when it is a matter of intangible assets, often it is difficult for the entities to realize their financial full potential. The reasons for this are several: difficulties in determining those intangible assets, lack of physical expression of those assets, difficulties in evaluation, difficulties in making decisions for the specific way of realizing positive financial result through exploitation. This mostly applies to valuable assets and exceptional sources of value.

The purpose of this article is to analyze the ways for accomplishing a positive financial result through direct or indirect exploitation of the IP objects in their role of intangible assets, as well as to point out their characteristics, alongside with the specific advantages, disadvantages and the ways of their application. At the beginning of the article the reason for IP turning into important intangible asset is considered. The second part of the material concerns the two ways of IP protection, ways which are pointed as important factors for making decision for the choice of method for revenue generating. The next parts of the article focus on sale, license, deterring, litigation and donation as methods of realizing positive financial result from IP.

Importance of IP objects in their role of intangible assets: Due to global and significant economic changes, with each passing day, the IP objects in economic and legal aspects are turning into a more and more important factor for the activity of the entities. IP objects are no longer just a tool for creating a competitive privilege. They have turned into something more – an exclusive asset for revenue, a tool for creating and measuring success, a factor for marketing valuation, a leading factor for success and a valuable source of finance.

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More and more often, in all parts of the economy, on all the levels, the IP objects are starting to be actively used not only in their main purpose, but as objects of securitization, economic and financial intangible assets of big importance and not infrequently - as highly valuable assets. For their owners, IP assets are a small hidden treasure, which has to be esteemed, protected and by chance - utilized in the best positive manner. May be for this reason and not only, the tendencies lead more and more often, for the IP objects to be considered not as just an intangible asset but in their more significant role - the role of the so called intellectual capital. The intellectual capital includes 4 main types of capital - consumer capital, human capital, structural capital and intellectual property. According to Business Dictionary [1], it is 'collective knowledge (documented or not) of separate units of the society organisation. This knowledge can be used to produce wealth, multiply output of physical assets, gain competitive advantage, and/or enhance value of other types of capital. Intellectual capital is now beginning to be classified as a true capital cost because (1) investment in (and replacement of) people is considered equivalent to investment in machines and plants, and (2) expenses incurred in education and training (to maintain the shelf life of intellectual assets) are equivalent to depreciation costs of physical assets'.

Defining the IP objects as capital and including them in the ranks of capital, turns them into a vital asset for each company and puts them at the heart of the existence and activity of the economic units. The specific characteristics of the IP objects, such as lack of tangible form, difficulty in value determination, relativity concerning the issue of the return of investments made for creating those assets, time-labor-resource consumption handling them, puts the entities in difficult situation. Often, it comes to a scenario in which the entities own valuable IP assets, but they cannot succeed in valuing them, appreciating them by importance, generating return of the investments and accordingly making advantage of the positive financial results generated from the IP assets in the most adequate way.

This requires the entities to understand not only the importance of the IP itself as asset and capital, but also the importance of the proper actions that should be taken for the exploitation of the IP, aiming at a financial result to be provided. Those actions should be compliant with all the positive and negative aspects of the characteristics of each IP object and should be undertaken paying attention to the type of protection, the different methods for generating revenue from them and the specific characteristics accompanying each way of realization of those objects.

The type of protection of IP objects - a main factor in choosing the method of their realization: Generating positive financial result from realization of IP objects depends on a couple of factors - the type of the object itself, the form of the property and the type of protection. In regard to the type of the object, we can talk about copyright, patents, trademark, industrial design, know-how and trade secret [According to the World Intellectual Property Organization's classification, IP includes also related rights and geographical indications, which however will not be considered in the present work due to objective reasons]. Concerning the form of property conditionally the IP objects can be divided into internal and external. Internal assets are created by R&D from the company or an individual, while external ones are created on the basis of contractual relations - sale, license, merchandise, franchise and others. The main factor, however, which most perceptibly influences the choice of the way for generating positive financial results, is the form of protection, provided to IP objects. The importance of this factor is determined by the fact that different protection forms enable application of different tools and devices for value generation. Provisionally the protection is divided into formal and informal.

Formal protection is bound with registration regime and all the administrative procedures emanating from it. Protection does not emerge automatically, but after due observation of all procedural requirements and after a number of proofs from the authorities. Main advantages of the formal protection are: more secure protection which provides documentary evidence of protection and in most cases - the wide scope of the protection, which is due and in detail described in the enactment concerning this protection. Main disadvantage of this form of protection is that there are time and territory limits. In addition to this, it is necessary for an investment to be made in obtaining and maintaining the protection - i.e. paying taxes, representation fees, periodical maintenance charges. Formal protection is mainly applied to trademarks, industrial designs and patents.

Informal protection, on the other hand, is not bound with procedures and administrative actions. Generally speaking, the protection emerges automatically, as a consequence of specific circumstances or acts. Disadvantage of the informal protection is that it is not regulated documentary. In this case the protection depends entirely on the acts of the right owner, who has to protect them himself in one or another manner (like keeping a secret, privacy, watching out for violations from third parties). The consequence of the lack of documentary ground of the rights is that in some violation cases it is hard to be proved. Another disadvantage of the informal protection is that it mainly covers the direct copy and use of the IP objects. Whereas a big advantage of this type of protection is the lack of fees for acquiring and maintaining

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the protection and the protection itself does not have any time or territory limitations. Informal protection is used for trade secrets, know-how and copyrights. Yet it should be considered that in some countries there is registration regime of copyright- voluntary or compulsory. According to WIPO [2], registry regime is valid for USA, Canada, Kenya and United Kingdom.

Revenue generating through practicing: In a purely historic aspect, the IP objects have been used from the very beginning of IP protection occurrence with the purpose of being used by their creator-morally by putting his name on the IP object and economically by taking advantage from the ability of IP to generate financial income. Nowadays, the essence of IP is expressed in creating exclusivity on the basis of the rights acquired. This exclusivity includes primarily the right of practicing the rights, i.e. use of the IP. The use of patent consists of creating a unique product which others do not have the right to produce. The novelty and originality of the invention patented beget additional profit by higher sale price and is capable to increase the market share of the company. The use and practicing of trademark rights allow the distinctive sign to be put on goods, products and services and to create value via differentiation of the trademarked issues from the others on the market. When using industrial design, which only the right holder is allowed to implement in the products, the value is created by the fact that the design is able to attract new customers, accordingly to contribute in increase of sales and generating of higher profit. The revenue from use of IP objects and practicing the rights can be applied to all fields of IP without respect of the form, the type and the means of protection.

Revenue generating through licensing: the use of the IP from the right owner does not exclude the alongside and simultaneous use from third parties under the appropriate conditions, permission for use and payment. Indeed, one of the main characteristics of the IP objects is their simultaneous use from many users, at many places, without effect on the quality characteristics, value and worth of the IP objects. The simultaneous use commonly is about grant of rights from performing economic activity from third parties and is known as licensing. Licensing has its huge advantages both for the licensor and the licensee. The first one ensures for himself additional cash flow and the second one receives for a fee the opportunity to use an IP object, for whose creation or buy otherwise he will have to make a great investment, which will be time-labour-resource consuming. In the licencing case, the positive financial result is being generated by the single act of granting rights for using IP or for economic realization or implementation of the IP in a product.

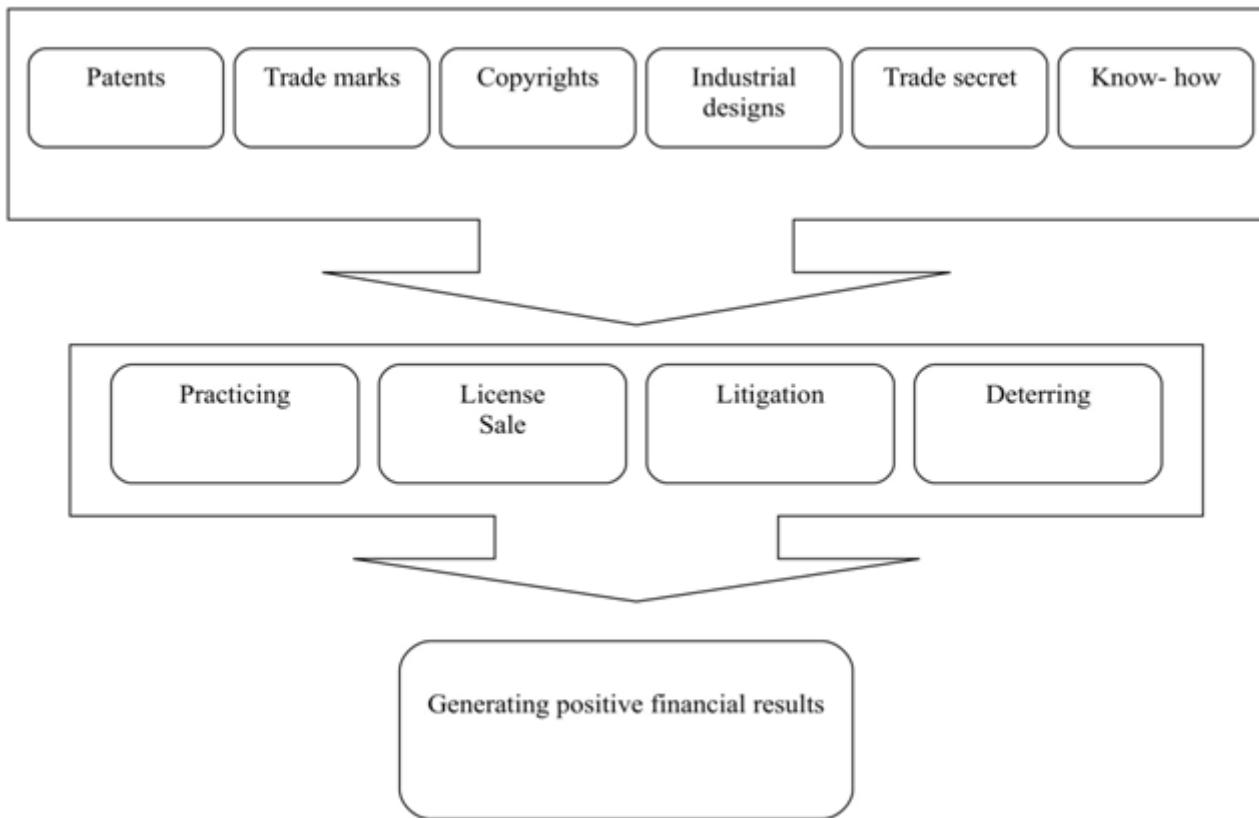
Revenue generating through sale: Usually sale is assumed as extreme measure for revenue generating. The reason for this is that the sale is irreversible and with the transfer of the property on the IP objects, the economic rights are being also transferred. I.e. with the sale all the opportunities for future profits from the object are washed out. For the creator of the IP only the moral rights are left. It is recommended the sale to be used as economic lever for financial income as last option. Prerequisite for a sale can be moral assertion of IP, economic inexpediency from the maintenance of the IP rights, options for good barter deal where the IP object to be exchanged for other necessities, profitable and with potential for company objects.

Revenue generating trough litigation/lawsuit: Litigation, or more precisely, taking actions against third parties infringing an entity's IP rights, is one of the indirect ways of generating revenue. What is peculiar in this case is that the IP is created and the rights are acquired with the sole purpose to be used as stopper for the entering of competitors on the market. The objective is not this IP to be used or realized in other manners, but to be turned into a peculiar barrier for new players on the market. The secondary aim of this method and the IP created to serve it is IP to be used as a profit making tool. Ever since its inception, this IP is preordained to be owned and reserved in its protective function. This practice is known also as "patent trolling". The method is applied mainly with patents.

Revenue generating trough deterring: Deterring can rather be accepted as defensive strategy, which registers and obtains IP rights "just in case". That is, rights are being acquired for one prime IP which is being protected in order to be used and is of big importance for the entity and "just in case", for reinsurance, protection is acquired for a couple of other accompanying IP. This practice aims to deter the competitors from entering the market or to take actions against the entity. This method is mainly applied to patents and trademarks.

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Fig.1 [own figure of the author]



II. Advantages and disadvantages of different methods of generating positive financial result from IP

Licensing: exceptional advantage of profit generating through licensing is that there is opportunity for repeated license and unless there is exclusive license, there are no limits in the number, the territory and the form of the license. One IP object can repeatedly and simultaneously realize profit for the owner. It is a means of additional financing. The big disadvantage of licensing is that it is a complicated method as the formulating of the license from a legal perspective requires efforts, and also in some cases there is a need to provide additional help and support to the licensor.

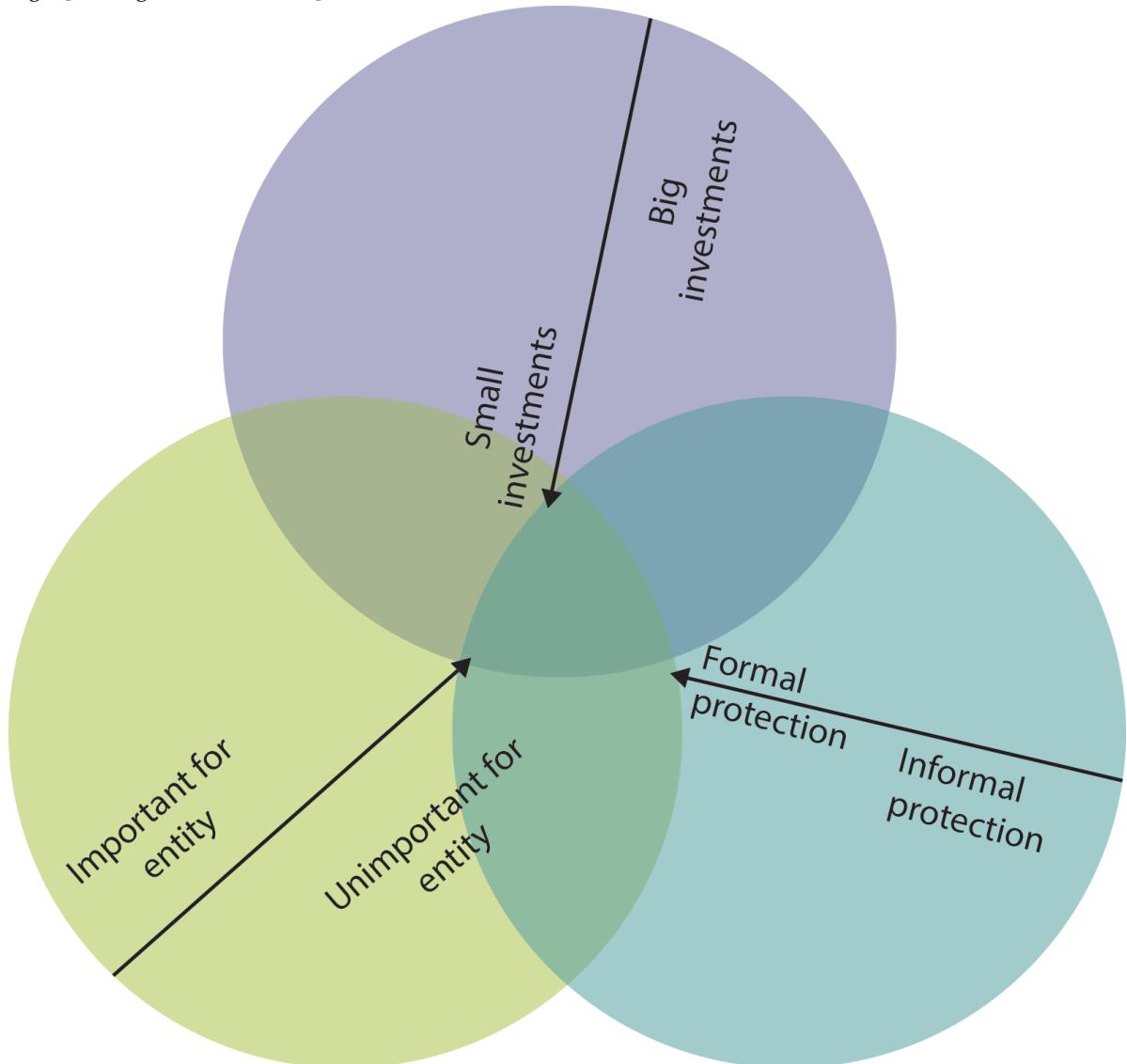
Donation: donation is a more specific case. When an IP object can not be realized through any other of the methods, this object can be donated. Through donation of IP there is a positive indirect result but it should be considered that not always this result is financial. Donation is not a reversible process which in some countries leads to tax reliefs. The non financial result of donation is expressed in the prerequisite of creating business contacts, realizing different opportunities, etc. Donation is also a good and effective PR approach.

Litigations: this method probably has more disadvantages than advantages. The main negative side of the litigation used for revenue generating is its uncertainty. Maintaining IP with the sole purpose of revenue generating through lawsuits can cost a lot and can be an idle investment. To use this possibility, the company should keep paying the fees. There is still a possibility, no circumstances of infringement to arise, respectively no need for lawsuits, and of course - no financial benefit to emerge. This leads to the conclusion that the investment in IP can be unprofitable.

Sale: the advantage of sale is that one-off all the investments done are recovered and with the moment of the sale, the company receives a fresh cash flow, which can be invested in something better and cost effective. Disadvantage of this method is that the sale is irreversible. The sale is recommended for example when the IP objects don't fit in the company's future plans for development, when there are more promising alternatives and the object is morally exhausted.

Conclusion

Fig.2 [own figure of the author]



As an important intangible asset, IP objects can generate enormous in amount and long-lasting in duration positive financial result. The realization of this financial result depends on three main factors - the very characteristics of the objects, the ways of protection and the goals of the entity. In the optimal case, as a tool for realizing revenue, the choice should be done in favour of IP objects which simultaneously are:

- insignificant for the company
- negligible investments are invested in them
- have formal protection

The intersection of the importance of the IP objects, the formal protection and the size of the investment made in them, are the point where the choice for the way of gaining revenue should be made. Respectively, for the objects in the periphery, it is recommended that the method of practicing be applied. With the movement toward the intersection, the other methods should be chosen as follows: licensing, litigation, deterring and sale.

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