

COMMERCIAL STRATEGY



EXPLOITATION OF NON-CORE INTELLECTUAL PROPERTY RIGHTS

Assessing whether there is value in non-core aspects of IP requires careful thought. Theoretical opportunities to exploit IP may be constrained by commercial realities. Our client had patented potent computational neural networking processes that could be applied in many industry sectors. They were focussed on developing new drugs based on insights and design principles arising from their proprietary computational expertise. They intended licensing these to pharmaceutical companies. However, they suspected that many pharma and non-pharma companies were infringing their IP rights. We were asked to assess the potential to monetise the patents through assertive licensing to companies across the pharmaceutical industry, and companies in other industry sectors.

We examined the extent to which our client’s computation IP impinged on commercial activities in a number of sectors including the pharmaceutical industry. There were some challenges. First, it was difficult to demonstrate infringement was taking place, although there was sufficient circumstantial evidence to support this. Second, if pharma companies were targeted, there was the danger that future potential licensees (to our client’s drug candidates) would be alienated. Third, we identified one particular non-pharmaceutical industry as being a highly likely user of the technology (based on their industry publications).

We provided two separate reports: one for the pharmaceutical industry and one for the other major industry. Our recommendations were based on our direct findings and on our own commercial experience. Our conclusion was for our client to succeed in assertive licensing would require significant funds (litigation would almost certainly ensue). This would be a fundamental and high-risk change to their business model, at odds with their commercial goals. A middle way was to offer low cost FTO licences “for the avoidance of doubt”. Our client decided on balance to abandon this idea and remained focused on the drug candidate development aspect of their business.



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CASE STUDY NOTES

IP is a business tool. On occasion, certain uses of IP may not sit well with business practice and corporate goals. Our client had to balance an additional revenue opportunity versus maintaining a certain profile within their core market.