

The Role of Intellectual Property, Intellectual Property Valuation In Vietnam

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Abstract:

The objective of the article is to analyze and synthesize the benefits of intellectual property, the role of intellectual property valuation. Analyze the contributions of intellectual property after being priced. After being assessed, intellectual property is used for many different purposes, which can contribute capital, franchise, and be used as collateral Intellectual property has a very important role in the development of organizations and businesses. Therefore, organizations should invest in developing intellectual property.

Keywords: Intellectual property, intellectual property valuation, Vietnam.

1. Introduction

Intellectual property is an intangible asset which cannot be determined by its own physical characteristics but has great value and is capable of making a profit. Intellectual property is a measure of business efficiency, competitiveness and development ability of enterprises both in the immediate future and in the future. However, up to now, intellectual property has not been fully realized, one of the important reasons is that the valuation of this type of asset still faces some shortcomings.

Vietnam's economy is increasingly integrated and deeply affected by the globalization trend, the competitive pressure on enterprises is increasingly fierce. Increasing investment in technology innovation, raising the contribution of intangible assets in the growth structure has become the basic solution to help businesses survive and develop when competing with foreign enterprises. . The report below will go into research on the role of intellectual property, the case of using the results of valuation of intellectual property to build and improve the law on intellectual property valuation.

World practices have proven that there are valuable intellectual property, brands worth tens of billions of dollars such as Coca Cola (nearly 78 billion dollars), Apple (more than 76 billion dollars).) ...

However, at present, the valuation of intellectual property in Vietnam is still difficult and inadequate. The Intellectual Property Law, which came into effect on July 1, 2006, does not yet contain regulations on valuation of intellectual property. In Vietnam, there are currently no separate legal documents for intellectual property valuation. For the same system of valuation standards, the State has only issued standards for tangible assets. Moreover, organizations that perform really professional valuation are capable of valuing intangible assets in general, including intellectual property in particular. Appraisers are not well-trained, the training, curriculum for valuation of intellectual property assets are currently not available.

Difficulties in valuation of intellectual property are one of the important causes affecting equitization of enterprises, capital contribution to joint ventures, transfer, transfer of assets, merger of enterprises, settlement. disputes and compensation for infringement of intellectual property rights. Because there is no general standard, the valuation method of valuation companies is also very different, so it is only the same type of asset, each has a different method and will often produce results. Different fruits. When the results vary greatly, the choice of which results is a problem. That partly reduces the reputation of the valuation organization to customers.

2. Literature review

2.1. Identify intellectual property

According to the provisions of the Intellectual Property Law and other relevant legal documents on intellectual property, intellectual property is understood as intellectual products created by humans through thought activities, creativity in the fields of industry, science, literature and the arts.

Intellectual property includes:

- Objects of copyright and related rights: literary, artistic and scientific works; cavalcade; audio recordings, video records, broadcasts, encrypted satellite signals of the program.

- Objects of industrial property: inventions, industrial designs, semi-conductor integrated circuit layout designs, trademarks, trade names, geographical indications, business secrets.

- Type of tree.

According to the provisions of the legal documents on finance and enterprise accounting: intellectual property is identified in the concept of intangible fixed assets, including: trademarks, distribution rights and software. computer; licenses and franchises; Copyright, patents; formulas and methods of preparation, models, designs and specimens; Intangible fixed assets under development.

2.2. Intellectual property characteristics:

Intellectual property is a form of intangible property, so it has all the basic characteristics of this type of property:

- Intangibility: intellectual property exists mainly in the form of information and knowledge, so it is difficult to perceive the existence of this property by human senses but only by perception. Intellectual property is usually realized when applied to produce or attach to goods and services in the course of production and business;

- Determination: Intellectual property is a type of intangible asset that is identifiable. Intellectual property is usually expressed in defined physical forms (descriptions, lists, formulas, drawings, etc.), so that humans have the ability to recognize and spread without. limited and may be owned by more than one person.

- Most objects of intellectual property are creative. Intellectual property is the result of human creative labor, which is constantly innovated and developed along with practical activities and due to practical needs that govern the research and trade process.

- Intellectual property is usually of great value and potentially profitable. According to the International Federation of Accountants (IFAC), in 1998, about 50% to 90% of the value created by a company is due to the management of intangible assets.

- Determining the value of intellectual property is often very complicated. Valuations are often difficult and cannot provide the exact value of the assets being priced.

The role of intellectual property:

- Intellectual property is a decisive factor in increasing the value of products and services as well as the value of enterprises and the entire economy of a country. Intellectual property accounts for an increasing share in the value structure of enterprises. In 1982, about 62% of assets in US businesses were physical assets, but by 2000, this number had fallen to 30%. Microsoft has an estimated market value of approximately US \$ 270 billion, of which about VND 180 billion is considered to originate from its intellectual properties, including trademarks, patents, patents and technical know-how. technology, copyright ... Intangible assets are now recognized as an important asset in the enterprise, contributing to increasing profits for investors. A study by Interband, a leading global brand consulting firm, in collaboration with J.P.Morgan in 2002 concluded that the brand average accounted for at least one third of the value of the stock; There are very high cases such as McDonal's (71%), Disney (68%), Coca-Cola and Nokia (and 51%).

- Intellectual property is a capital of the production cycle. If capital and natural resources are finite resources, intellectual property is an infinite resource and increasingly plays an important part in the group of factors contributing to economic growth. In the context of the knowledge economy, when the elements of capital and resources are limited resources and increasingly exhausted, the intellectual property derived from labor (intellectual activity) is constantly developing. Development, which is an unlimited element, plays an increasingly important role in the factors affecting the development of enterprises.

Because of the importance of intellectual property for businesses, the value of this type of asset is even more important.

3. Use of intellectual property valuation results

The value of intellectual property is generally understood as the value of future economic benefits of intellectual property determined at the present time, expressed in the form of price. Valuation of intellectual property can be interpreted as evaluating intellectual property in terms of its morphological value, i.e. conducting an evaluation and evaluation of the price of the intellectual property.

There are many reasons for the need for valuation of intellectual property such as commercial activities, including loan and deposit mortgages, insurance, corporate restructuring (dissolution, merger and acquisition). , litigation and dispute resolution, accounting of the company's financial balance sheet, pricing

and methods of intellectual property transactions, management information and business planning, etc. It is important to note that the valuation approach has its own approach, issues, and concerns, although it is possible to use the same valuation methods.

From commercial and legal practices, intellectual property valuation is mainly applied in the following cases:

3.1. Commercialization of intellectual property

Transfer, license, franchise, ..

Firstly, intellectual property transactions require businesses to conduct valuation of their intellectual properties. At present, intellectual property transactions have reached nearly half of the total global transaction value.

As a form of property, intellectual property may be transferred in whole or in part, through transactions such as buying, selling, licensing, joint ventures, business cooperation, in contacts within the business or with other businesses. In most of these situations an understanding of the value of intellectual property is required. In order to set a reasonable transfer fee, intellectual property needs to be priced. The intellectual property owner wishes to have the necessary income level based on the calculation of past expenses spent on building intellectual property, and opportunity costs for exploitation of intellectual property. The assignee wishes to find out how much the value of the intellectual property can create benefits for production and business activities. When the transfer value is related to cross-border payments, tax problems often arise.

Research and development ventures often create new technology and are related to intellectual property rights. After the end of the cooperation agreement, the joint venture is dissolved or sold, when property valuation and transfer values are required.

In Vietnam, many businesses also have intangible assets that are much bigger than the value of tangible assets. Nearly ten years ago, Phuong Dong company in Ho Chi Minh City. HCM sold the brand of PS toothpaste to Unilever Group for \$ 5 million, while all the land, factories, machinery and equipment were only \$ 3 million.

3.2. Contributing capital to establish, restructure and manage corporate assets

Contributing capital to establish enterprises, valuing enterprises when participating in the stock market, restructuring enterprises, equitization ...

The Investment Law and the Enterprise Law all recognize the right to contribute capital and invest by the value of intellectual property of enterprises, but there is no specific document guiding how to exercise those rights.

When using intellectual property to enter the stock market, businesses need to conduct valuation of those assets. In many countries, businesses conduct intellectual property valuations to calculate the value of businesses when they enter the stock market. For example, energy-saving technology in a water supply system that has been patented by the Beijing Technical Development Company of the Marine Power Zone is valued at up to 64,720,000 yuan, accounting for 99.57% of the company's registered capital when participating in the stock market.

Business restructuring also requires valuation of intellectual property. Businesses often perform restructuring through activities such as mergers, acquisitions or dissolution. A lack of understanding of "value" factors can lead to undesirable outcomes, such as selling at a discount or buying at a price that does not bring expected benefits. Effective valuation of intellectual property may find specific values that can be exploited, thus changing the nature or transaction price.

Equitization of businesses in Vietnam: Any business often owns one, some intellectual property. These assets, if exploited and effectively used, will create great value for the business. An important activity in the process of equitisation of an enterprise is to determine the value of the enterprise's assets to calculate into the equity value of shareholders upon equitization. Therefore, the valuation of intangible assets in general, intellectual property of enterprises in particular is very necessary. However, most Vietnamese businesses in the process of valuing assets for equitization often do not pay much attention to their intellectual properties. In most of the company's financial statistics tables, tangible assets (factories, machines, equipment, etc.) are clearly defined, but very few businesses list the value of their rights. Intellectual property on its property list. Therefore, enterprises can overlook their huge assets when equitizing. Kem Tien Tien Joint Stock Company

when it was equitized (in 2000), people only calculated the tangible value of the old factory, machinery, equipment which was not worth much while Kem brand Trang Tien does not need any advertising and it is too famous for its nearly 50-year development history. However, the company's asset value is only determined at 3.2 billion. This is a figure that caused a lot of controversy at the time. In addition to the issue of land use right value, the issue of Trang Tien trademark and trade name is also an issue with many different points of view, when the enterprise does not focus on determining the value of these assets but only lists list in the "enterprise advantage" section. The case of equitization of Vinaphone is also facing the problem of valuing assets of enterprises for equitization. According to the preliminary assessment from Vietnam, the value of Vinaphone is about 1 billion USD, while according to the evaluation of the international post and telecommunication, the value of Vinaphone is currently at least about 3 billion USD. This large disparity is thought to be the cause of the slow equitization in Vinaphone although it was initiated in early 2005. Nearly ten years ago, Colgate (USA) assessed and acquired the ice cream brand. The "Da Lan" tooth of the Son Hai Complex (Ho Chi Minh City) costs US \$ 2.5 million, higher than the value of the tangible property of this Complex. These examples show that if we do not properly value and value the intellectual property rights of the business and put it into the common property to be equitized, we may miss large assets. how. Therefore, the advice for businesses is to not "omit" intellectual property assets while equitizing asset statistics.

Decree 187/2004 / ND-CP and Circular 126 / TT-BTC guiding the implementation of Decree 187 provide methods to identify intangible fixed assets, especially how to determine the advantages of enterprises on the basis of Government bond yield and interest rate. Circular No. 146/2007 / TT-BTC dated 6.12.2007 of the Ministry of Finance guiding the implementation of the Government's Decree No. 109/2007 / ND-CP on the conversion of wholly state-owned companies into joint-stock companies has added the determination of business advantages based on advantages of geographical location and brand value. The determination of brand value is determined on the basis of actual expenses for the creation, construction and protection of trademarks and trade names of enterprises for 10 years (including advertising and declaration costs). transmitting domestically and internationally to promote and introduce products, companies, build websites ...). With this calculation, it is clear that the value of the intellectual property of the enterprise is not fully calculated, especially for businesses with a large number of intellectual properties and high income streams.

Transformation of business model: In recent years, Vietnam has had policies to build and develop science and technology enterprises system. Science and technology enterprises may be newly established, transformed from ordinary enterprises or transformed from a division of S&T organizations. In case of transformation from a part or the whole of a S&T organization to the establishment of a S&T enterprise, the transfer of state-owned intellectual property to the S&T organization to establish a S&T enterprise must also be value confirmation. Accordingly, the value of state-owned intellectual property is decided by the state agency competent to deliver intellectual properties but at least equal to the state budget invested. Even for enterprises registering for certification of S&T enterprises, in their production and business projects, the process of incubating and commercializing technologies is analyzed in detail but often "forgotten". determining the value of technology that we own.

Intellectual property valuation is also used in corporate finance accounting. Accounting for corporate finance must be conducted in accordance with accounting standards, including the accounting of intangible assets such as intellectual property. The valuation of intellectual property is difficult to achieve accuracy and changes frequently, thus leading to the instability of the balance sheet, even when a certain discount rate is applied. Failure to adequately reflect such factors will create unrealistic values, i.e., announcements of the financial situation of the company to the tax authorities and the shareholders of the business will not be accurate. The US Federal Accounting Standard (FAS) 141 and 142 were issued in 2001 and apply to all forms of intangible assets that give rise to rights protected by laws and regulations. contractual rights. The impact of these standards is enormous, for example, Boing, which applied FAS 142 in the first quarter of 2002, required a record value of US \$ 2.4 billion for those subject to this standard. The International Accounting Standard (IAS) 38 of Europe for the accounting of intangible assets was issued in 1998, the British financial reporting standard is FRS 10 on "reputation and intangible assets". 1997 all required intangible asset valuation. Vietnamese Accounting Standard No. 04 deals with intangible fixed assets,

guides the principles and methods of accounting for intangible fixed assets as a basis for making accounting books and preparing financial statements. Intellectual property is a type of intangible property and is identified in the concept of intangible assets including: computer software, patents, patents, copyrights, franchises, copyrights, trademarks, formulas and methods of preparation, models, designs and samples, intangible fixed assets being implemented.

Intangible fixed assets are accounted for using the cost method: all costs that an enterprise must have to acquire intangible fixed assets by the time they are put to use as planned. ant. "Trademarks, distribution rights, customer lists and similar items formed within an enterprise are not recognized as intangible fixed assets."

3.3. Activities of mortgage loan, insurance, deposit

Third, when using intellectual property as collateral for loans, companies need to go through the valuation of those assets. Article 79 of China's Guarantee Law states that intellectual property rights such as rights to inventions, trademarks and copyrights, etc., can be used as collateral for a loan. In the lending and lending activities between the rights owner and the bank, there must be an objective and accurate assessment of asset valuation organizations. In 1993, Calvin Klein used its brand to borrow a loan of \$ 58 million over a seven-year period with interest and interest payments on royalties received from the sale of perfume products. In order to carry out the loan transaction, collaterals must be at a level that is sufficient to recover the lender's capital. Therefore, the value of intellectual property must be priced objectively and independently.

Usually, mortgages of intellectual property for borrowing also require intellectual property to be insured. Determining the value of the intellectual property can be complex and insurers cannot quantify the risk without knowing the value of the insured property. Actual operation of Zurich International Insurance Company (UK) providing brand value insurance services shows that in order to develop an appropriate insurance policy for intellectual property, the valuation of intellectual property As well as identifying the likely risks that affect the value of intellectual property, it is essential that the long-term effectiveness of the products be insured.

3.4. Dispute settlement activities

Fourthly, when determining compensation costs in legal proceedings, it is necessary to conduct valuation of intellectual property. The value of intellectual property may be related to a tax-related case for the price of intellectual property transfer, disputes over contracts of intellectual property rights without regard to infringement of rights or matters. The subject matters of intellectual property rights. In the UK, sanctions for infringement of intellectual property rights can be determined by two methods: Analysis of lost profits or reasonable royalties to be used intellectual property from the perspective of declining actual income of the intellectual property owner, on the contrary, the approach of profit gained from the use of intellectual property by the infringer. The court can collect evidence and choose one of the above approaches.

3.5. Some other activities

- Fifth, for large technologies and technical chains, the owners of such intellectual property often need to seek investment partners. In order for investors to feel secure when investing in their production lines and technologies, the owners need to have a valuation report for the technology provided by professional organizations.

- Report information to serve management and business planning.

Determining the value of an intellectual property is first and foremost important for the business in that it helps the business know the value of their assets, thereby making appropriate business policies, strategies or plans, or simply manage the assets of the business to use effectively. For managers, intellectual property can be used as a way to promote investment, communicate information to shareholders, establish relationships with partners and transfer revenue to affiliates to avoid taxes. or enjoy tax exemption or reduction under preferential policies on science and technology.

4. Conclusion

The degree of standardization of valuation methods depends on the purpose of the valuation organization and what businesses want to solve the problem of valuation.

One of the important factors in determining intellectual property pricing is clearly determining the purpose of valuation of intellectual property. It is necessary to select a method of valuation that is suitable for the purpose of pricing. For example, for the use of valuation results for corporate finance accounting, the cost method is considered to be feasible and effective in both theory and procedure. For the determination of the transfer price of intellectual property, the cost and income method is often used in practice while the market method is difficult to apply in practice. For dispute resolution, the regular income method is used.

Therefore, in order to promote the development of intellectual property valuation activities in Vietnam, in parallel with the training of a team of experts on intellectual property valuation, the completion of the legal basis for valuation Intellectual property is also essential. The cases of applying the valuation results, the valuation methods and the value of valuation certificates in each case need to be defined by law to be able to carry out these activities in practice. Especially for intellectual property derived from the state budget, the provisions on valuation need to be specified in detail, avoiding the case of loss of state assets when transferring intellectual property. or equitize state-owned enterprises.

The issue of intellectual property valuation has not been implemented much in Vietnam. Most pricing depends largely on the dynamics of experts and the agreement between experts and investors. However, the parties can come up with a lot of different options, experts give a calculation, investors give a calculation. In case the scientist gave a research result of 10 billion but the investor only paid 1 billion ... is quite common. Therefore, it is necessary to have consultants, intermediaries that determine the value of the assets of scientists and investors determine that they buy the technology know-how is worth it.

In addition to the development and development of intermediaries for the valuation of intellectual property, the state should provide general provisions on mechanisms and policies as well as responsibilities for coordination between customers and valuation organizations. clearly the new and complete pricing process.

There is a need for a common standard in valuing intellectual property to have an agreement in the valuation process, returning the true value of intellectual property, helping to make the most appropriate decisions related to protection. , exploiting and commercializing intellectual property of research institutes, universities and enterprises as well as helping to well perform the relevant state management functions.

In the Science and Technology Development Strategy for the period 2011 - 2020 approved by the Prime Minister, it is stated that: Intellectual property valuation is one of the important works in the commercialization of assets. intellectual property, thereby facilitating the formation and development of science and technology market.

The issue of valuation of intellectual property today is of concern not only to businesses but also to legislators, policymakers and macroeconomic regulators, from businessmen to businesspeople. creative, those who manage creative activities at universities, research institutes ... And most importantly, it is necessary to raise the awareness of businesses and society about the economic significance of intellectual property. wisdom, from which there is a strategy to create, maintain and develop intellectual talent.

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