

also collection and analysis of salient contextual data, it can be used, next to valuation, in order to integrate the respective asset into the overall business strategy, i.e. as an evaluation tool.

Moreover, the comprehensive data collection and analysis process helps control and reduce IP-specific risks and asymmetries of information to a minimum. This means that two central factors hindering the development of workable markets for IP are considerably mitigated. Manageability and tradability of the asset in question are substantially increased.

The SIM therefore contributes to a relatively recent development which is increasingly gaining momentum: the recognition and utilisation of intellectual property as an asset class. The way IP is perceived and employed is and will be changing fundamentally.

In this connection, there are and have been endeavours to create workable markets by means of online platforms and live auctions, mainly related to patents rather than brands.⁸³³ Such projects are commendable as they make IP more visible as an asset class. A number of transactions have been successfully closed. For instance, 26 of the 78 lots offered at *Ocean Tomo's* first IP auction of April 2006 were sold on the floor.⁸³⁴

However, even though these endeavours are steps in the right direction, they have so far failed to provide large-scale, sustainable success. One of the main issues online platforms and auctions face is failure to provide sufficient contextual information. Yet information is of central importance for proper valuation of intellectual property as such assets are, as discussed above, highly unique, complex and contextual in nature. Many prospective buyers will find the risk of acquiring something unknown and/or unwanted too high, that is in case they would use the acquired IP for “active” purposes such as producing goods and rendering services. Persons could be more prone to acquisitions via online platforms and live auctions in case the sole envisaged use of the IP is blocking competitors. In such a “passive” case, comprehensive collec-

833 Such online platforms include *yet2.com* (<http://www.yet2.com/app/about/home>), *Idea Trade Network* (<http://www.newideatrade.com/>), *MarkMarket* (<http://www.ipb.dk/en/561/buy-sell.trademarks/>) and *Rated Patent Exchange* (<https://rated-patent.com/>) (all last accessed February 27, 2008). Live intellectual property auctions were, for instance, held by *Ocean Tomo* (<http://www.oceantomo.com/auctions.html>) and *IP Auctions GmbH* (<http://www.ip-auction.eu/index.htm>) (both last accessed February 27, 2008).

834 Cf. *sine autore* (*Ocean Tomo*), *Ocean Tomo* releases results of world's first ever live patent auction.

tion of contextual data on the asset to be acquired is much less crucial as the complex, contextual nature of an IP asset and its interdependence with other assets are more important for its due “active” use than for a mere blocking use. Moreover, in many situations such as creation of spin-offs or joint ventures, valuation of the relevant IP equals a business process rather than an on-the-spot activity. The time and expertise needed for such processes is commonly neither provided by online platforms nor by IP auctions. A flexible yet comprehensive valuation methodology such as the SIM would be considerably more suitable.

Kapitel 7

Ausführliche Zusammenfassung in deutscher Sprache

7.1 Einführung in die Thematik

In heutigen global immer härter umkämpften Märkten wird eine wachsende Zahl an Produkten und Dienstleistungen zunehmend ähnlicher. Marken werden daher immer mehr zum entscheidenden Erfolgsfaktor, da sie oft das einzige den Zielgruppen eingängige Mittel zur Differenzierung darstellen. Marken spielen ebenfalls eine entscheidende Rolle in der Vermarktung von technischen Innovationen, für die entweder kein Patentschutz zu erlangen oder dieser Schutz schon abgelaufen ist, beispielsweise im Bereich der pharmazeutischen Generika. Jedoch auch für patentbasierte Produkte sind starke Marken eine wichtige Ergänzung und Möglichkeit der Stabilisierung und Stärkung des wirtschaftlichen Erfolgs, da sie zur Sicherung und Erhöhung der Rentabilität entlang der gesamten Wertschöpfungskette beitragen.

Der Strukturwandel vieler Industrienationen von einer Industriegesellschaft hin zu einer Dienstleistungs- und Hochtechnologiegesellschaft hat in den vergangenen Jahren zu einer steigenden Bedeutung immaterieller Werte geführt. Von zentraler Bedeutung sind in diesem Zusammenhang neben Arbeitskraft und Können der Mitarbeiter vor allem Patente und Marken. Laut einer Studie stieg der Anteil des Markenwerts am gesamten Unternehmenswert zwischen 1999 und 2005 von durchschnittlich ca. 56 auf ca. 67 Prozent.⁸³⁵ Entsprechend wichtig ist aus Sicht der befragten Führungskräfte auch eine korrekte Einschätzung des Markenwertes.

835 *PricewaterhouseCoopers/GfK/Sattler/Markenverband* (ed.), *Praxis von Markenbewertung und Markenmanagement in deutschen Unternehmen*, S. 8.