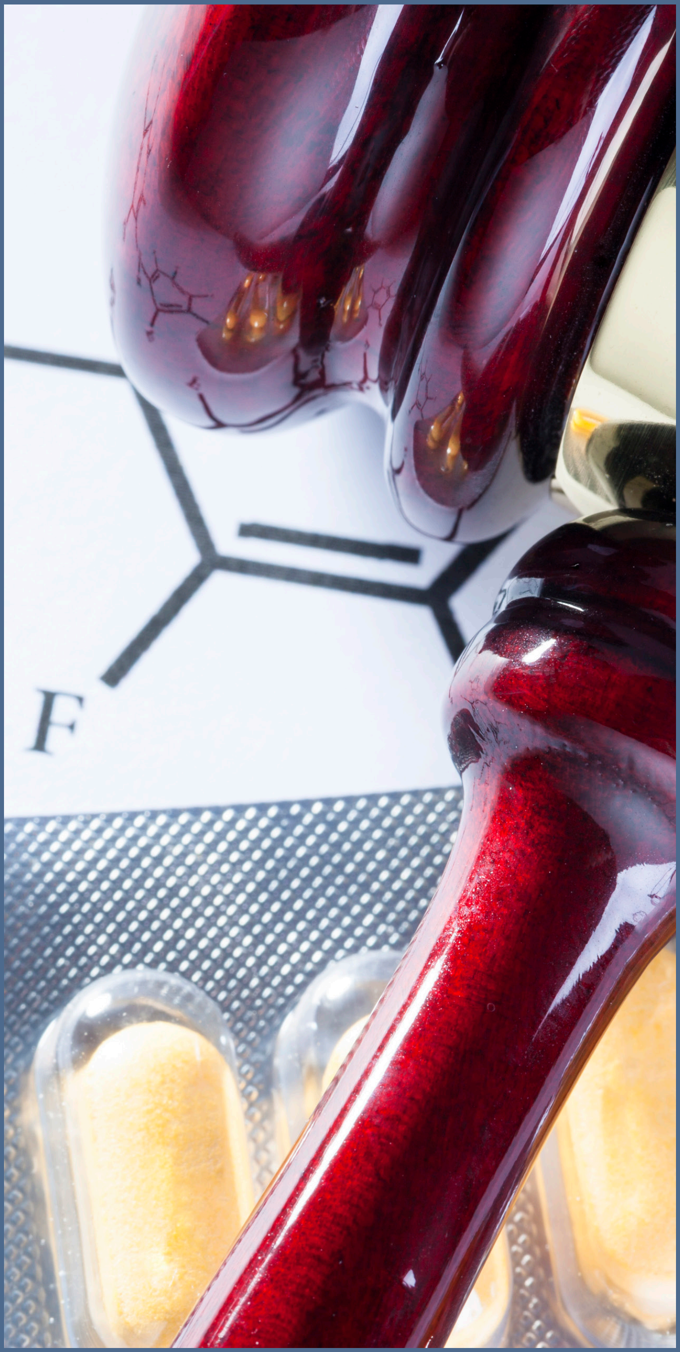

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PERSPECTIVES

Inside the Healthcare Industry: The Growing Importance of Intellectual Property Valuations

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

Intellectual Property (IP) has always been important to healthcare and life sciences companies as they develop new therapies, products, and / or processes. But knowing how to value, manage, and protect their IP is a growing issue as healthcare companies think about their brands, strategic growth initiatives, investments, and how to license data.

In this Q&A conversation, Healthcare expert Magi Curtis, and IP Valuation experts Noor Al-Banna, and Greg Campanella discuss how the changing landscape of protecting, managing, and most importantly, valuing intangible assets affects companies in the healthcare and life sciences industry.

Magi: I understand Ocean Tomo conducted an intangible asset market study, where your team looked at the companies that make up the S&P 500 and concluded that approximately 90% of those companies' value comes from their intangible assets. And we know that brand is a key contributor to patient loyalty, talent acquisition and retention, and an organization's ability to grow.

Given all of this, and the healthcare work we've been doing together the last few months, I thought it would be timely to talk about IP trends that our healthcare clients should be considering as they navigate the increasingly important task of managing and valuing their IP as a part of their overall corporate strategy.

My first question – are there any hot issues that each of you are seeing across the IP landscape that most impact our healthcare and life sciences clients?

Noor: There are two big trends for healthcare companies that I'll point out. The first is the use of IP to access capital. To provide some historical context, we started seeing this trend pre-COVID, but it ramped up during the pandemic and continues today.

For us, the increase in the trend of using IP to access capital started in 2020 when a lot of companies that were struggling to access financing and stay afloat began using their IP assets as collateral for loans that they would then use to support their businesses.

The fact that intangible assets are driving the value of both healthcare companies and the S&P 500 is leading companies to leverage IP assets in their efforts to raise capital. Obviously, when 90% of the value of a company resides in assets such as the brands, technology, patents, data, and software, the only way borrowers will be able to achieve their borrowing targets is by going beyond real estate and traditional fixed assets as collateral.

Delving a bit deeper, the class of IP assets that is most often used in these valuations is the brand. Brand is a consistently valuable asset across healthcare and life sciences companies. For healthcare institutions, the brand is often a sign of trust that the institution can and should leverage to achieve its business goals. For example, patients rely on the brand to make buying decisions, and it can be used as a recruiting tool. The brand also helps healthcare institutions negotiate partnerships and joint ventures. So, there is a lot of value and versatility that makes brands excellent collateral for lenders. In addition to the brand, other IP assets that healthcare companies can and should leverage include technology, patents, data, and software.

The second trend we're seeing is an increase in academic medical centers (AMCs) wanting to understand the value of their faculty-developed IP and medical device companies looking for the same. They increasingly want to understand the value of IP for licensing and planning purposes.

We're seeing a big rise in demand, not just for quantitative monetary valuations,but also for technical IP analyses. For example, if we are being asked to look at a patent portfolio for radiology technology, the obvious application is in radiological testing. But maybe there are also other non-obvious applications in different fields. In these situations, we have patent and subject matter experts that can map the patents to other technologies in other industries to identify where there are additional opportunities for use. These analyses are then used to support the quantitative valuation of the IP.

Greg: From my perspective, healthcare organizations are taking a more thoughtful approach to the management of their intellectual property. In the past you would have IP assets, but there was very little active management of those assets. Remember, our intangible asset market value study shows that 90% of the value of the S&P 500 is captured by intangible rather than tangible assets.

So, if you're going to manage an asset you need to be able to measure improvements in value. We're seeing IP analyses being used not simply for accessing capital, but also to provide a baseline for management to help companies understand the incremental value that's being generated by different strategic approaches. When our clients understand value, they can then establish performance metrics around those assets.

We're also seeing an increase in AI platform development technology being used across healthcare, life sciences, and medical device industries. We're seeing everything from AI engines for therapeutic development to AI diagnostics and report preparation technologies. AI adoption is moving extremely fast, and many healthcare companies see it as an opportunity to not only increase productivity but also simultaneously to reduce costs.

Magi: Are there areas that healthcare organizations don't typically think about for IP valuation and management that they should?

Greg: Data really is an area that healthcare organizations haven't traditionally thought of as a leverageable IP asset. While there are privacy restrictions imposed by HIPAA (the Health Insurance Portability and Accountability Act) on patient specific data; information that has been anonymized, as well as technical data related to processes, procedures, and methodologies have significant value that healthcare organizations can license or sell to healthcare technology, life science, and medical device companies seeking opportunities to develop new therapies, protocols, and products.

This goes back to the original discussion of AI. We are seeing anonymized healthcare data being used by companies to train AI. For example, if you are developing a radiological imaging technology, you need to use radiological images to train your AI. Therefore, that data has significant value in the development of a diagnostic AI platform.

Magi: Are there any regulatory issues or requirements newly enacted or coming down the pike, that our healthcare and life science clients should be watching?

Greg: They need to be wary of the potential for regulatory activity around AI uses and the data that it's trained on. There are already questions percolating and there are lawsuits that have been filed regarding the fair use of the copyrighted data that's being used to train AI and the data that's being used in their responses.

Healthcare and life science leaders should be aware that there are dangers and potential costs that people aren't necessarily internalizing into their models when they're developing these AI platforms that they need to be aware of and start thinking about now.

Magi: In your years of practice, what's one of the more interesting healthcare IP projects you have come across and how did you work with the client to successfully navigate the situation?

Greg: The most interesting project I worked on recently was a licensing deal for healthcare data. It required us to think creatively. We had to develop an innovative approach to answer a question that really hadn't been asked before.

We were asked by a healthcare services provider and an insurer to provide support in their negotiations with a healthcare technology company. That tech company was seeking to use the data collected by the services provider to accelerate clinical research and develop products and protocols to improve healthcare outcomes. The healthcare services company's data related to methods, practices, and outcomes. The tech company wanted to mine that data to develop these products and systems and, in exchange, pay the health services provider a royalty.

We hadn't seen anything like that before. There was no publicly available data for similar transactions that we could use to benchmark royalty rates. So, we had to establish pricing not by looking at prior transactions, but by developing estimates of performance and establishing the contribution of the data to the ultimate product.

We used similar methods when establishing the value of a patent portfolio. We noted that if the data is fungible, it's going to have very little value. But when the data is unique and instrumental in the development of a product, a licensee will be willing to share more of the ultimate profit in the form of a royalty.

As with so much of what we do, the facts drive the analysis. Valuation is not a mechanical exercise. Ultimately, the methodologies that we used and the approaches that we took were robust enough that our client – the healthcare company – was able to successfully negotiate a license with the technology company.

Magi: So, it's really important for our healthcare clients that have troves of data to understand not only how to think about leveraging the data to monetize it, but then figure out how to protect themselves and value the data appropriately.

Greg: Right. With any asset, it is incumbent on the owner to protect their rights.

Magi: Thinking back to our earlier discussion about the importance of brand for healthcare organizations, let's talk about the work that the Ocean Tomo team does to help healthcare organizations determine the value of their brand. Can you share a story of how a health system has benefitted from this work?

Greg: Healthcare organizations, like most companies, are taking a more deliberate approach to the management of their IP assets. Noor talked a little bit about how they're using their IP assets as a vehicle to generate or raise capital and to access liquidity. But what we're also seeing is that they're using our analyses to monetize the value that their brands bring to joint ventures and partnerships. We have been involved in a number of engagements where we were asked to help a healthcare organization establish not just the value of its brand, but also what we call a rate card. A rate card is simply a price list for the use of an organization's name for a specific type of service. It typically takes the form of a royalty on the revenues of that venture.

In two different situations, we reviewed the historical licensing arrangements that health systems had negotiated with different service providers. In both cases, they failed to take advantage of their brands' contribution to the success of these joint ventures. The health systems did not get any remuneration for the use of the brands. They believed that the exposure, by itself, was adequate compensation. But they should also have considered collecting a royalty for use of their brands.

They ignored the fact that the brands alone gave the joint ventures an advantage in the marketplace; and that while the other companies got a fee for managing the joint ventures, the health systems got nothing in return for the use of their brands besides the exposure.

Bottom line, health systems should negotiate license fees for the use of their brands. Those earnings could be reinvested into their system, their research, and more.

So, for each of the above engagements, we prepared rate cards that the systems could use to establish licensing fees with joint venture partners. We also developed valuation analyses that the health systems could use as a baseline of value for their brands. Going forward, using this valuation, the health systems had a baseline for comparison to determine whether each brand was increasing or decreasing in value based upon the activities they engaged in.

A rate card simplifies the negotiation process. Through this work, each health system was able to increase the value of their brand and increase the immediate return generated from joint ventures.

Magi: Greg and Noor, when you help healthcare organizations establish the value of the brand and the rate cards for the use of the brand, is the rate card for their brand the same across different types of use or does it vary depending on how they give permissions to use their brand?

Greg: The rate will vary by use. An AMC, for example, might leverage their brand differently based on the type of partnerships they embark upon – the profitability and risk of the venture must be factored into the rate. And while there are infinite ways that the organization could use their brand, our team tries to identify the most likely uses and then establish royalty rates for those likely circumstances.

Typically, a specific transaction is the catalyst for this work, but not always. Some clients are looking to establish their brand rate cards as part of their strategic growth plans.

Magi: As IP valuation, management and protection is becoming more and more important to healthcare and life science organizations, how should they think about structuring and managing their IP internally?

Noor: That's a good question. The sophistication of the companies, especially from what we've seen in healthcare and life sciences, runs the gamut between companies and institutions that are very, very sophisticated in their creation, management, use, and monetization of IP. For those looking to advance how they structure and manage their IP, it should start with an examination of the company's goals – both monetary and altruistic.

Research and development (R&D) efforts that result in IP creation need to be aligned with organizational goals. Often, we're brought in to assess how the company structures and organizes its IP and provide recommendations that will enhance those efforts.

Enhancement starts with goal setting. The next step is conducting an IP audit to assess what types of IP assets the organization currently has and determining the location of the IP within the organization. It also includes determining what the different types of use cases are for the IP. Also important is the alignment of R&D efforts and patent prosecution with the organization's IP goals. We also examine whether there are IP management systems in place within the company.

Once the management is ironed out, then we can make sure that proper security procedures are in place, such as trade secret protection. Finally, once you have a streamlined mechanism by which IP is created and managed, then we have to determine whether the IP is being optimally used or monetized.

And then finally, does the company have a system in place by which to actually execute those goals? Do they have a licensing technology and transfer office in place or some kind of similar department that's responsible for actually going out into the market and licensing or monetizing that IP or alternatively using it in a nonprofit, altruistic fashion?

Magi: Where, out of curiosity, does IP management usually live within the organization?

Noor: Usually, there is an IP office that's often staffed, by default, exclusively with legal professionals. But more sophisticated organizations have an IP committee, with representatives from different parts of the organization who are actually responsible for creating IP and engaging with users and partners who can bring the market perspective. You want to manage it in a holistic way instead of just looking at it as an exercise for lawyers who are going to file patents.

Magi: What role does or should IP play in M&A and / or investment rounds for healthcare organizations and life science companies?

Greg: It depends. Some have a great deal of IP and others may not. If we're talking about a healthcare services provider, the portfolio of IP is very different than the portfolio of IP for a life science company that develops medical devices or therapeutics. The type of IP that a company has is going to really drive the approach.

If you look at a healthcare organization, the brand is often an important asset, and we spend our time doing due diligence around the brand asset. But if we're talking about a therapeutics and life sciences company, the brand is worthy of consideration but ultimately a secondary asset. The more important thing is going to be IP such as patents, R&D, data, trade secrets, approvals and licenses, and anything else that goes into the development of the company's products.

Magi: Finally, if you had an opportunity to counsel the C-suite for a healthcare or life science company, what would be the one piece of advice you would give them to protect, manage, and leverage their IP?

Noor: Healthcare and life sciences companies need to be proactive about effectively managing their internal IP organization. If a company has not been proactive historically with putting some deep thought into their IP organization, how it is tied to the broader organizational goals, and how the IP is ultimately benefiting the company, then management should put effort into that and understand the best way to structure and manage their IP.

Greg: Ultimately if you're going to manage your assets, you need a baseline to establish the value, especially as we start moving further into an information economy where IP is driving more and more value of every healthcare and life science organization.

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