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A look into the future ...

The US has now joined a number of other major economies in reporting a return to positive economic growth. To paraphrase Sir Winston Churchill, this news may not mark the beginning of the end of the downturn but it may, if we are lucky, at least herald the end of the beginning. Should that be the case, what interests me is at what stage we will get a decent idea of how the last couple of years have affected the way in which IP is viewed in the real world outside the IP bubble. Will things go back to pretty much as they were in 2007 or have they now changed irrevocably?

At the LES meeting in San Francisco, held a couple of weeks back, many of the people I spoke to believed that what corporations and countries have lived through since the banking crisis began means that IP will never be the same again. Too much has happened, too many people have been burned, too many old assumptions have been torn asunder for everything to return to the way it was, they told me. Now some may see this as wishful thinking and I can understand that; after all, the kind of people that go to LES meetings have a lot invested in talking up the IP market as that is where they earn their livings. But, even so, I think there is something in at least parts of what I was being told. Here are the highlights:

• Quality, not quantity, is what counts. This will have an effect in two ways: it is now almost impossible to sell patents that are not gold-plated - why on earth would anyone risk their money on anything else?; and more companies are looking at their filing strategies to see how they can maximise their investment - one well written, rigorously prosecuted patent may just end up being worth a whole lot more than a bundle of poorly put together applications that just scrape through the examination process. Within many businesses, gone are the days of filing patents for their own sake; instead, patent procurement is going to become much more target-driven as companies realise they just do not need as many patents as they thought they did. If true, this could be bad news for patent offices, as well as some patent attorneys and intermediaries.

• Companies are paying much more attention to IP generally. During the recession they have had to be far more focused on what assets they own and how these create value. For the first time, this has meant engaging with intangibles, such as IP, and working out how important they are to on-going success. IP rights that are not needed are not going to be held onto for long. The good ones will be sold, maintenance fees will not be paid on the other ones - more bad news for patent offices. The whole assessment process has been even more acute at companies that have been forced to sell rights in order to generate cash to survive. Others have realised that it is actually far cheaper to buy IP in than it is to invest heavily in R&D from scratch.

• IP risk exposure will become much more of a live issue, both in boardrooms and, potentially, among shareholders. As boards begin to understand the value of what they have, so they will want to ensure that it is properly protected and enforced. On the other side of the equation, they will want to have much more certainty that they are not vulnerable to attack from third parties - either NPEs or other operating companies. This could give rise to much more interest in IP-related insurance products and to the services of defensive patent aggregators, such as RPX Corp. Moving on from that - and this could currently be more wishful thinking than reality based hypotheses - if shareholders do not see companies doing all they can to mitigate IP risk and something goes wrong as a result, they will take action; and this could mean a growing number of IP-related shareholder suits. Hmm, we'll see about that one, though if it does happen it will certainly be a major game changer.

• The Chinese are going to become enthusiastic acquirers of rights as they seek to close their current IP gap with the western world. We will also see much more litigation involving Chinese companies in foreign courts, especially in the United States. As they acquire IP, the Chinese will frequently be plaintiffs in cases. They will also look to develop their own standards, knowing that in many cases they will become *de facto* in certain industries, given the size of the Chinese market.

Other things got mentioned as well, but the above points are the ones I heard from more than one person and which made at least a modicum of sense. In general, I think the feeling was that there are going to be tremendous opportunities in the IP market for people, but that to be successful you will have to be very good at what you decide to do. It will be much harder to make a living anywhere other than at the top end.

On that basis, if I were going to advise one of my kids to get into IP, I would strongly recommend that they learn Chinese and/or immerse themselves in the defensive patent aggregation business. I would not mind seeing them working strategically inside an operating company either. If they decided to become patent attorneys (as opposed to litigators) or intermediaries, I might be a little concerned - though being a proud father I would assume they would be among the cream of the crop and so not affected as more companies take general prosecution and transactional work in-house.