



## **Maximizing Value: The Role Of Intellectual Property Valuation In Corporate Restructuring**



## Introduction

The process of calculating the worth of Intellectual Property (IP) assets, such as patents, trademarks, copyrights, and trade secrets, is known as intellectual property Valuation (IP Valuation). The assessment of IP aids companies in identifying the actual worth of their operations and taking advantage of resources they might not have realised they owned. Shifts in global business environments have driven the evolution of business strategies where IP is a fundamental component in generating value for prospective business expansion. Alongside these shifts, global accounting standards require companies to acknowledge and appraise all discernible intangible assets as part of a transaction, particularly in corporate restructuring such as mergers and acquisitions. Due to these advancements, accurate IP Valuation, coupled with efforts to safeguard that value, has emerged as a crucial factor in maximizing the prosperity of a company.

Over the past several decades, the significance of intangible assets and their procurement has contributed to over half of the augmented output in developed economies. In this context, the valuation of IP plays a pivotal role. As the value of companies continues to transition from tangible to intangible assets, the accurate valuation of IP becomes crucial.<sup>2</sup> IP rights that are registered and granted, such as patents, trademark registrations, and copyright registrations, obtained through applications to intellectual property offices, offer legal proof of an entity's ownership of intangible assets. They also grant the entity the right to prevent others from using these rights. This implies several things: owners can protect themselves against competitors' infringements; owners can license assets profitably and sell them to others, granting them rights they would not otherwise have; and there is an increase in the gross value of an entity's business.

IP Valuation methods such as cost, market, and income approaches are employed to ascertain the worth of these intangible assets. This valuation is integral to accessing liquidity, making informed decisions during mergers, acquisitions, or bankruptcy proceedings, and ultimately, maximising the value derived from corporate restructuring.

<sup>1</sup> <https://www.heerlaw.com/determining-value-intellectual-property> accessed on January 28, 2020

<sup>2</sup> [https://www.wipo.int/export/sites/www/meetings/en/2005/smes\\_qtc/presentations/wipo\\_smes\\_qtc\\_05\\_king.pdf](https://www.wipo.int/export/sites/www/meetings/en/2005/smes_qtc/presentations/wipo_smes_qtc_05_king.pdf) Accessed May 27, 2024

<sup>3</sup> [https://www.wipo.int/sme/en/ip\\_asset/business\\_assets.htm](https://www.wipo.int/sme/en/ip_asset/business_assets.htm) accessed on May 27, 2024

# The Strategic Role of Intellectual Property Valuation in Corporate Restructuring and Its Impact on Business Success

Corporate Restructuring is a significant strategic maneuver that realigns the financial and operational aspects of a company to enhance competitiveness, unlock value, and position the company for sustained success. Corporate Restructuring becomes imperative when businesses struggle with finances, alterations in market trends, or the requirement to recalibrate their operational strategies. This strategic initiative is designed to streamline operations, bolster efficiency, and aid organizations towards enduring expansion. Corporate Restructuring options, either external or internal options, deal more directly with tangible assets than intangible ones. This is primarily because tangible assets including infrastructure, financial assets, property and equipment have a physical presence and can be readily valued and liquidated if necessary. For instance, in mergers and acquisitions, the value of tangible assets like buildings and equipment often plays a significant role in the transaction<sup>5</sup>. In the case of bankruptcy, tangible assets may be sold off to pay creditors. Even in debt restructuring, tangible assets often come into play as they can be used as collateral.

The increased rate of corporate restructuring options meeting the increasing desire for expansion of businesses and development in the corporate world has previously undermined the pivotal role of IP in the contemporary global economic landscape.

However, it is important to note that the increasing importance of intangible assets in today's digital economy is changing this dynamic, and companies are now paying more attention to the value of their intangible assets during corporate restructuring. This can be attributed to the progressive revolution in information technology and the expansion of a service-based economy, corporations now realise that their goodwill holds more value than their tangible assets.<sup>6</sup>

On a global scale, IP is now acknowledged as a crucial asset of the world's most substantial and influential companies; it is exceedingly vital for maintaining market supremacy and the ongoing profitability of top corporations. It frequently serves as a primary objective in mergers and acquisitions. In Nigeria however, the significance of IP in business operations is not adequately comprehended; it is either poorly managed, undervalued, or underutilised.

This is particularly noteworthy when these non-physical assets constitute a substantial fraction of their total valuation. Intangible assets, such as patents, trademarks, industrial designs, and trade secrets do not have a physical presence, however, they can significantly contribute to a company's value.

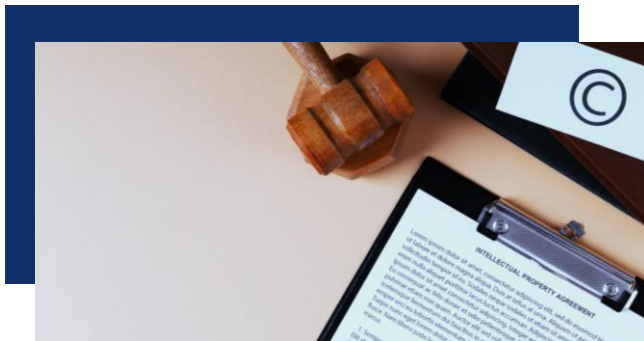
<sup>4</sup><https://www.alphavaluations.com/newsletters/2024/corporate-restructuring-and-valuations-the-strategic-connection/> assessed 27th May 2024

<sup>5</sup> Tangible Assets vs. Intangible Assets: What's the Difference? (investopedia.com) Assessed 27th May 2024

<sup>6</sup> Ibid.

A typical case study of the importance of IP Valuation can be seen in Facebook's purchase of Instagram in 2012. While the high price tag for a free platform seems unusual, Facebook strategically invested in intangible assets. A major factor was Instagram's massive and engaged user base. This can be viewed as a form of customer goodwill, a valuable intangible asset. Acquiring Instagram granted Facebook instant access to a large pool of potential customers, expanding its reach and influence in social media<sup>7</sup>.

Furthermore, accurately valuing IP presents a myriad of challenges that can complicate corporate strategies and transactions. These challenges arise from the inherent complexities of IP itself, such as its intangible nature, the rapid pace of technological advancement, and the diverse legal frameworks governing IP rights across different jurisdictions.



## The Role of Legal Practitioners in Intellectual Property Valuation

IP Valuation is a complex and multifaceted process that requires a deep understanding of legal, financial, and market dynamics. Legal practitioners play a pivotal role in this process, leveraging their expertise to ensure that IP assets are accurately assessed and effectively managed. Their contributions are essential in several key areas:

1

### Legal Due Diligence

Legal practitioners conduct comprehensive due diligence to identify and evaluate IP assets. This involves verifying ownership, assessing the validity and enforceability of IP rights, and identifying potential legal risks. By ensuring that all IP assets are properly documented and protected, legal practitioners help establish a solid foundation for accurate valuation.

2

### Navigating Regulatory Frameworks

IP laws vary significantly across jurisdictions. Legal practitioners provide critical insights into these legal landscapes, helping businesses understand the implications of different IP regulations. This knowledge is crucial for valuing IP assets in a global context, where varying degrees of protection and enforcement can impact the perceived value.

3

### Structuring IP Transactions

In transactions such as mergers and acquisitions, licensing agreements, and joint ventures, legal practitioners play a crucial role in structuring deals to maximize the value of IP assets. They negotiate terms, draft agreements, and ensure compliance with relevant laws and regulations. Their expertise helps in crafting strategies that align with the business objectives and enhance the overall value derived from IP assets.

4

### Litigation and Dispute Resolution

Legal practitioners are essential in managing IP litigation and dispute resolution. They represent clients in IP infringement cases, negotiate settlements, and provide strategic advice on enforcement actions. Successful resolution of disputes can significantly affect the valuation of IP assets, either by securing their protection or by mitigating potential liabilities.

<sup>7</sup> Proof That Instagram Was a Great Acquisition for Facebook | TIME Accessed June 2<sup>nd</sup> 2024





## Advisory on IP Management and Strategy

Legal practitioners advise businesses on effective IP management strategies, including portfolio management, IP audits, and risk assessment. They help in identifying under-utilized IP assets and recommend ways to monetize them through licensing, sale, or strategic partnerships. Their guidance ensures that businesses can fully leverage their IP assets for competitive advantage.



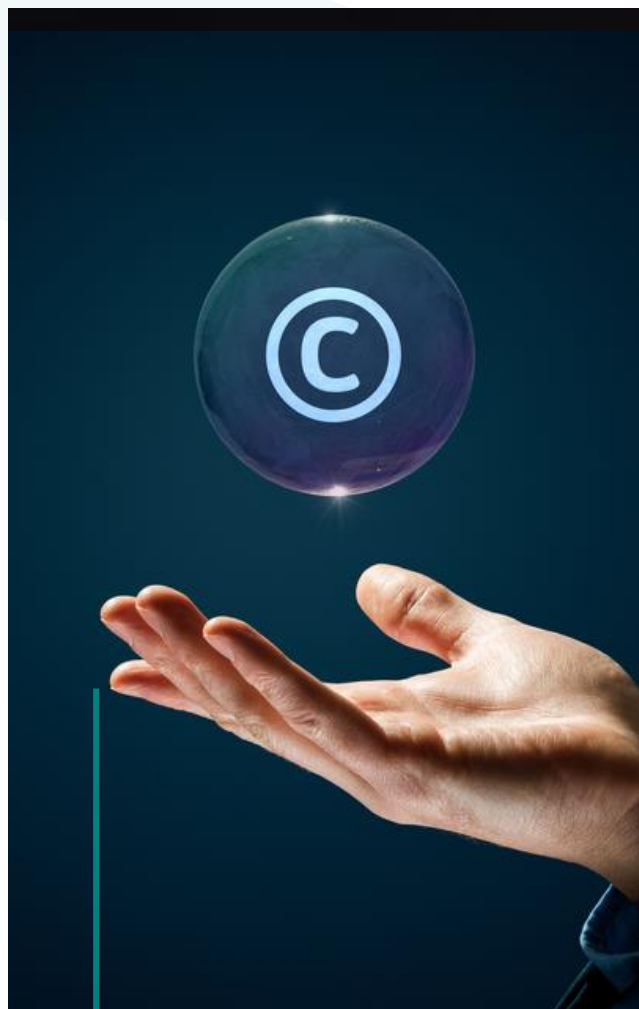
## Valuation Support and Expert Testimony

In instances where a formal valuation is required, such as in financial reporting, taxation, or litigation, legal practitioners work alongside financial experts to support the valuation process. They provide legal opinions, assist in the interpretation of IP-related financial data, and offer expert testimony in legal proceedings. Their input is vital in substantiating the value of IP assets and defending valuations in court.



## Conclusion

Generally, assigning a reasonable valuation to IP, enhances the total value of business as oftentimes the value of the resulting company is positively influenced<sup>8</sup>. All these increase companies' assets and assist in making informed decisions about the financial leverage strategy to be employed in corporate restructuring. Therefore, the valuation of IP is essential in maximizing growth and value. Regrettably, this aspect is often overlooked by companies unfamiliar with these types of deals, leading to transactions that are either overvalued, undervalued, or loss-making. With the growth of digital markets, one of the key determinants of a company's success or failure is the value attributed to the exploitation of IP. This understanding enables a deeper knowledge of the value to be assigned to the assets they manage. It is crucial for companies to understand the potential value of their Intellectual Property and to be aware of the commercial implications. Entities intending to value their IP are strongly encouraged to use quantitative methods and to hire professionals who adhere to the highest ethical standards and follow international best practices.



<sup>8</sup> IP Valuation: Everything you should know | Eqvista Assessed on 28<sup>th</sup> May 2024

## ABOUT STREN & BLAN PARTNERS

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