



IP ASSURANCE: Managing risk in IP- centric transactions





Introduction

Cubicibuc Limited established in 2015 as an independent technical consulting firm specializing in matters relating to Intellectual Property.

Cubicibuc is built on experience from over 20 years' providing technical and commercial IP services to clients in a range of sectors and geographies.

We believe good IP management allows business to protect its competitive advantage; to generate returns on R&D investment and to secure investment and finance. Modern businesses neglect their IP assets at their risk as poor IP management gives away value and reduces barriers to entry for competitors compromising the organization's capabilities.

To manage IP well business must adopt a combination of commercial, legal and technical expertise – but always with a pragmatic focus to actively manage and exploit the IP in a manner that brings benefits to the business.

What We Do

We work with businesses ranging from smaller start-ups to mature multinationals; from early stage invention capture through to exploitation and monetization of IP assets.

We have direct experience of the full IP lifecycle from early stage R&D and IP creation to post-grant management and exploitation, including licensing, enforcement and transactions.

Cubicibuc provides IP Audit and IP Health-check services to transactions to enable clients to maximise the value of their investment in technology. By understanding the true state of IP they are about to import, clients are empowered to make informed decisions about pricing and risk.

Cubicibuc also provides technical subject matter experts to act as expert witnesses in patent litigations and other disputes.

For more information regarding Cubicibuc and our thinking, please visit our website: www.cubicibuc.com



Independent expertise in IP management and exploitation

Strategic IP Management

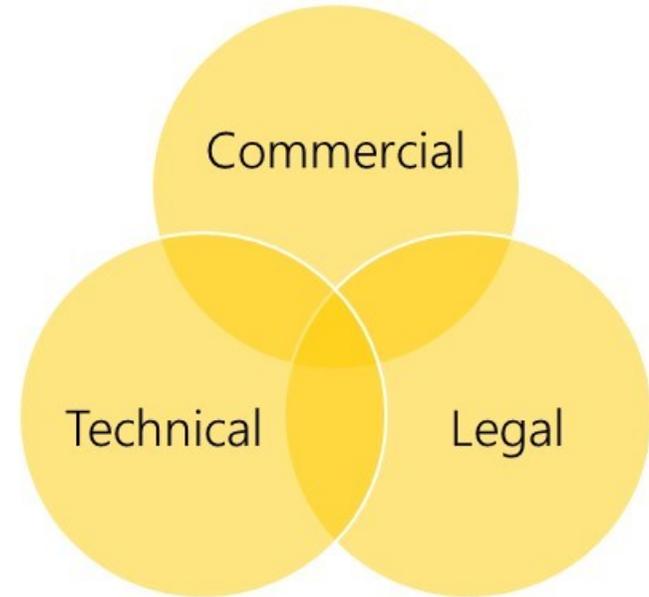
IP is at the heart of modern life. Without the ability to create, protect and exploit IP, modern businesses would not survive and R&D efforts would be compromised.

IP is the building block of modern commerce. Organisations that do not control their IP, and the IP they import risk building deliverables that are not commercially attractive to potential exploitation.

With an increasingly developed global pool of IP, organisations are increasingly recognising the value of their own intangible assets and seeking to develop partnerships with others. Clear IP strategies are of vital importance.

IP must no longer be an afterthought of the product development department. It is a board-level issue with huge consequences for shareholder value.

Successful management and exploitation of IP requires a tricky combination of legal, commercial and technical expertise.



“For many, Intellectual Property is an obscure and distant domain – its laws shrouded in jargon and technical mystery, its applications relevant only to a specialist audience. And yet Intellectual Property is everywhere... In the modern world, knowledge capital, more than physical capital, drives the UK economy. Against the backdrop of the increasing importance of ideas, IP rights, which protect their value, are more vital than ever.”

Gowers Review of intellectual property - Dec 2006



Measuring and qualifying the claims for IP in transactions

Caveat Emptor – Buyer Beware

With IP being one of the key areas of growth for companies, transaction activity becomes increasingly dependent on identifying value-adding IP and then importing it.

A typical M&A deal has several points at which IP should be of importance, from initial IP audit to identify acquisition value, through IP packaging to transfer of assets.

However it is well known that a high proportion of transactions fail and post-transfer disputes or recovery projects add significant cost to the exercise.

Where technology gaps exist integration into intended systems and products is difficult or impossible. Where knowledge gaps exist acquirers may require a further stage of reverse engineering before integration can begin.

“What Are We Acquiring?”

The success or failure of an acquisition lies in the nuts and bolts of integration. To foresee how integration will play out, we must be able to describe exactly what we are buying.”

Harvard Business Review – March 2011





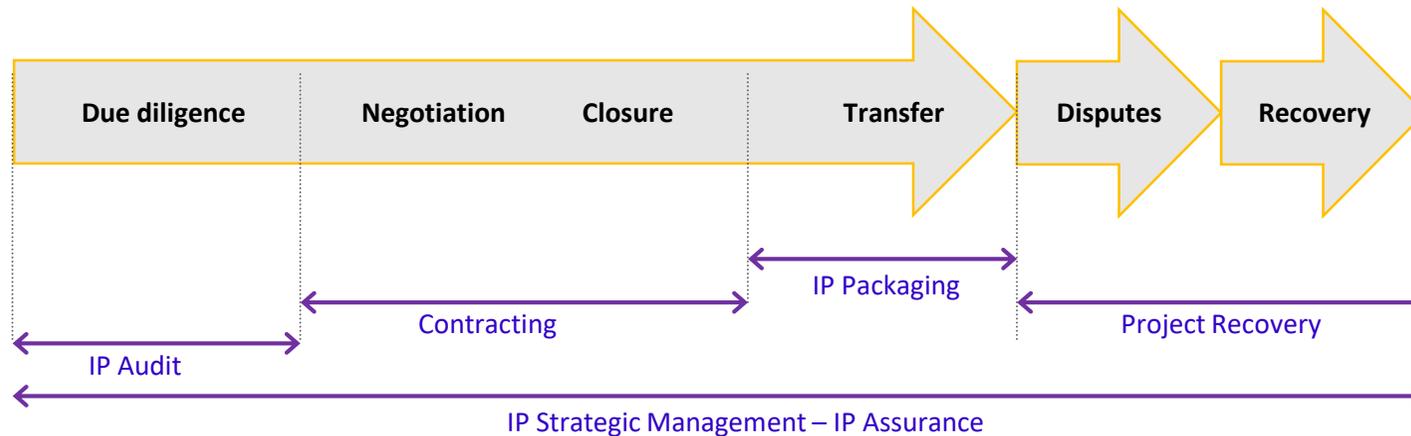
Maximise investment value by reducing the risks in transferring IP

While legal contract of tech transfer or M&As seeks to provide protection and certainty over IP transfer using reps and warranties, importing IP must not be limited to a simple legal transfer of title – without a complete understanding of what is been acquired it is likely the transaction will fail. Success requires a number of other factors:

- A solid experience in technology and product development able to recognise 'good' or sufficient IP as well as being able to identify 'bad' or incomplete IP
- Stakeholder management skills as the key IP is often the underlying 'know-how' in peoples' heads
- A pragmatic approach to prioritise key elements of the IP in order to understand the associated risks

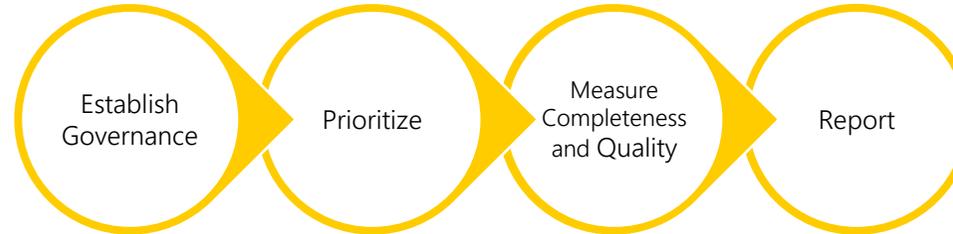
Cubicubus's independent IP Assurance focuses on these areas to make sure that the acquirer is able to take on the IP in all its forms and benefit from it as quickly as possible post-transaction.

IP Assurance must be seen as an element of on-going IP Strategic Management, which spans the due diligence process and can directly influence all aspects of the transactions process to ensure that the embodiment of the IP, and the best way to transfer it, is captured and included in the contract.





IP Assurance applied to tech transfer and acquisitions



Establishing Governance

IP assurance seeks to create a two-way dialogue between acquirer and target to deliver benefit for both parties. Establishing a governance structure allows both parties to explore needs and address concerns throughout the process. Core elements of the IP covering the components, products and background knowledge are identified and examined to construct a complete picture of the necessary IP upon which the transaction discussion can proceed. All of the necessary and sufficient IP must be catalogued to ensure efficient integration by the acquirer, while ensuring the target does not over-deliver, or include unnecessary, out of scope IP.

Prioritise

Working with the acquirer we seek to ensure effective and efficient post-transaction integration of the IP. For this we review the IP risk in light of the acquirer's own capability, and related criticality of the IP module. This allows us to prioritise IP based on an assessment of the risk of post-transaction failure.

For example, a critical IP component is likely to have a high priority, whilst a peripheral element may have a low. However after matching with internal capability it may be appropriate to prioritise an apparently unimportant module because it is little understood – perhaps being novel technology for the acquiring company. In such a scenario it may be important to identify key knowledge holders to ensure a smooth transfer or capture of critical know-how.

Measure Completeness and quality

As experienced engineers we understand what good IP looks like – be that software, hardware, design document, automation process or business functions.

For each element of IP involved in the transaction we independently assess the completeness against our expectations.

We also assess the quality of each element by reviewing the detail of the IP for each asset involved against our benchmark of what we expect to see for all forms of IP, and in all technical areas: software, hardware, mechanical design etc.

We then come to a conclusion as to the completeness and quality of the IP package – in our view as independent experts is the IP sufficient and complete.

Report

Having established a view of the IP modules involved in the transaction, their completeness and quality we report to both parties giving our independent view identifying the gaps and risks.

We also make recommendations for closing the gaps or actions to take to mitigate the risks.

Working with both parties ex ante means these issues can be addressed before the completion of the transaction – reducing the likelihood of expensive post-transaction project recovery or reliance on legal remedies.



Extending the benefits of strategic IP Assurance beyond M&A

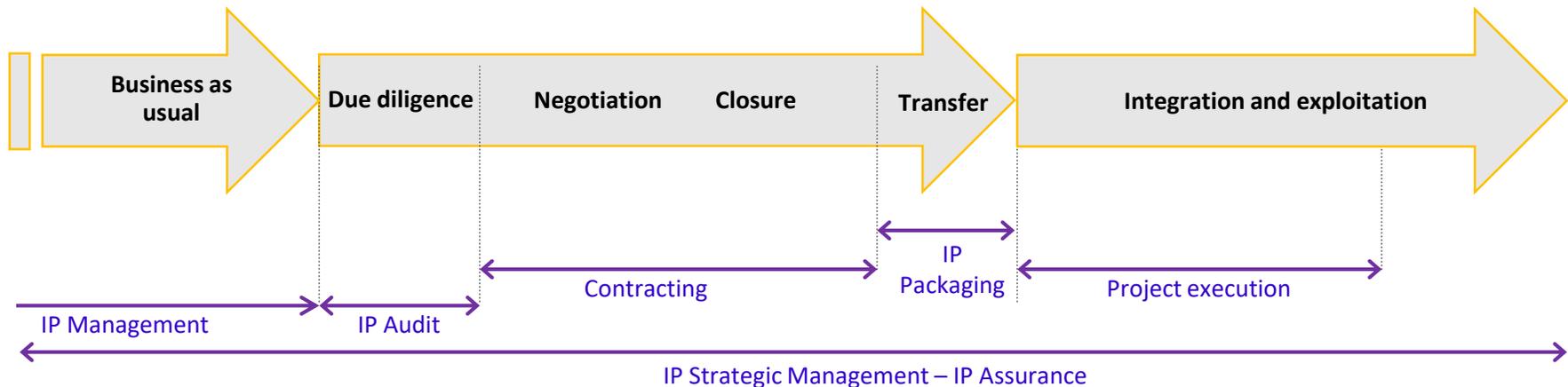
Strategic IP Management – Business As Usual

Approaching M&A with well understood, pre-packaged IP means initial due diligence is shortened, as is the post-contract packaging and transfer exercise. On-going strategic management of IP can be demonstrated to be necessary and sufficient, and be independently confirmed as present in the deal – reducing the risk of post-transaction disputes.

Common approaches to IP management should also allow for quicker integration and exploitation of imported IP, and potentially remove the need for expensive post-transaction recovery projects.

Managing IP within a framework that continually optimises portfolios with a view to exploitation means IP remains in pre-packaged and understandable structures. This reduces risks within M&A, but also allows for standardised approaches to valuations.

Cubicubus's approach provides clients the necessary tools IP due diligence for non-M&A purposes. As well as operating firms involved in M&A, our clients include banks offering collateralised loans and insurance companies offering IP insurance.





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