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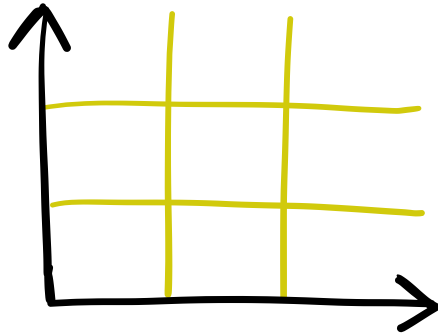
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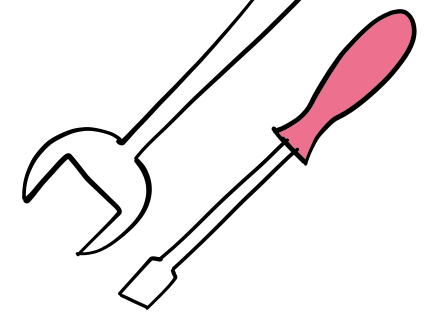
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OPEN INNOVATION

Henry Chesbrough propagated the concept of Open Innovation, something that has been around for ages, but had found new applicability and increased importance. He described that 'Open Innovation is how a company can use its business model to identify a more enlightened role for Research & Development (R&D) in a world of abundant information, better manage and access IP, advance its current business, and grow its future business'.³ In plain terms, it is the process of tapping in to ideas and resources outside your business or organization, not just to advance your own innovation but to benefit the partner business or organization in some way.

There are different degrees of openness in innovation, as we will later see in some examples.

In a closed setting, organizations create ideas and innovate on their own. They often protect their knowledge and rights by keeping them secret, protecting them and/or vesting IP rights on them, such as patents, copyrights, or models. In such a closed set-up, excluding others is key, and such an approach is primarily defensive. The degree of openness in working together or complementarily determines whether the innovation occurs in a closed or more open setting. This degree of openness also influences the way companies handle knowledge management and treat IP.

IP AS A TOOL FOR OPEN INNOVATION

A more open innovation model assumes a great pool of useful ideas outside the walls of the company. In this case, IP is not only used to protect ideas in order to generate revenues: the company collaborates to develop ideas, innovating together. When an organization applies this more open model—protecting IP as well as selling, sharing, or buying it—the IP portfolio will not only be used as an asset, but also as a strategic tool. As a result, the company profits when other parties use their IP and the other way around. This way, IP can be used proactively rather than just defensively.

Definition

INTELLECTUAL PROPERTY

Any product of the human intellect, recognized to be protectable by law.

Examples

- Physical products and processes using them
- Written or recorded material
- Special product design
- Hardware, software, website or architectural materials
- Proprietary information that gives advantage over your competitors
- Unique name
- People with expertise
- Unique/heritage industrial knowledge

WAYS TO USE IP AS A TOOL



"JOINT INNOVATION;
COST SHARING
OR DREAM SHARING?"

—Patrick de Jager

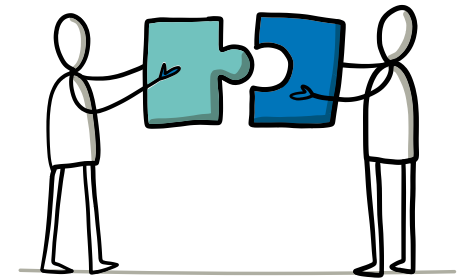
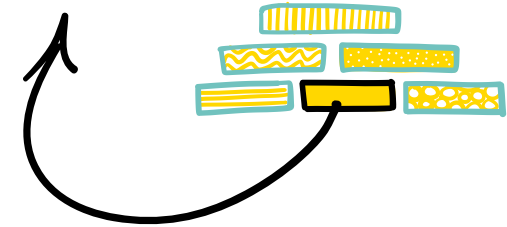
Block 2

CONTRIBUTION

In order to determine the value of an innovation project, or estimate the return on investment, etc., first consider what the parties involved each brought in at the start of the project and will bring in during the collaboration. This can serve as a starting point to negotiate on what each party gets out of the collaboration in the end.

Tip

Contributions to look at are, for example: investments made in the past on the same effort and how much of it is brought into the present work, the value of IP or know-how brought in, or other inputs like in-kind contributions, expertise, hours of R&D work, etc. Access to markets, distribution channels, and networks are also indispensable input to an organization.



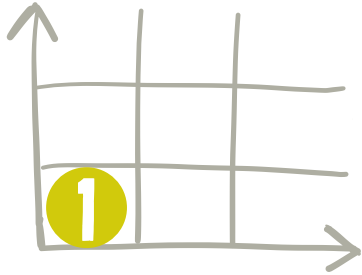
..... Bringing IP into play

→ IP law discusses **joint-ownership**, but says nothing about how to distribute IP and capture its value. Paying for an innovation does not automatically mean you can own the innovation's results and outcomes. Your contribution and how much that adds value to the innovation itself will greatly influence how you negotiate the IP distribution of the results and outcomes of the innovation with your partners. In case yours is the largest—or even the only—contribution to the innovation, it may be logical for you to own the results or outcomes of that innovation. If you bring in a network or channels to the market, even though you play no role in the actual development or innovation, you could still ask for user rights to capitalize on your channels or to earn a fee from any party who makes use of your channel.

EXAMPLE

FACEBOOK PARTNERS WITH PAYPAL

In late 2016, Facebook and PayPal announced a partnership wherein Facebook Messenger users can link to their PayPal accounts, to manage transactions without leaving the site⁴. While Facebook was adding a solution for its customers, it was also opening up PayPal to its 2 billion users. On the other hand, Facebook did not have to spend its resources on developing a new payment system.



CLASSIC R&D

In case of classic R&D, parties innovate on their own and keep their knowledge closely guarded.

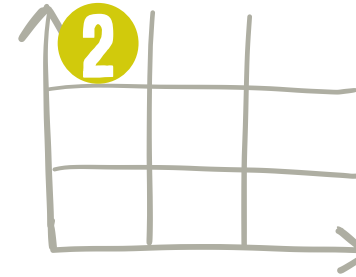
It may come as a surprise, but Apple—one of the world’s most popular innovators—practices this classic closed innovation strategy¹. The best people work for Apple, they do not engage in open forum or press discussions, there is very little or no information available about the product they are working on until its release. Apple is also very sceptic about sharing their IP.

Bringing IP into play

→ You can think of many Building Blocks that come into play here. We assume some of the key elements are Apple’s technology, innovation culture (organization) and, more importantly, the chosen business model for their products. At the same time, it offers a great deal of potential for open innovation through their App Store. This is a playground for several developers who function in their own ecosystem. Here, they seem to have taken into account the interests of users and developers, ascribing more importance to their contributions. They tap into the distributed knowledge of others, as you will also see in some cases below. Apple, thus, spreads across two boxes: Classical R&D and the Creators’ Platform.

EXAMPLE SKUNK WORKS

Most defence and military organizations worldwide adopt a closed R&D approach for their innovation, but within that closed set-up, they may get creative. The USA’s Defense Advanced Research Projects Agency (DARPA) and Lockheed Martin’s Skunk Works are great examples. These closed innovators work on high-security and high-priority projects for their internal customers, which may later be brought out into the public. DARPA’s ARPANET preceded the Internet as we know it today, and Skunk Work’s aircraft systems can be found in most USA military aircraft. Although they adopt the classic R&D approach, they are no less in terms of innovations. Skunk Work’s founder Kelly Johnson famously quoted ‘We are defined not by the technologies we create, but by the process in which we create them.’



FREE FOR THE PUBLIC

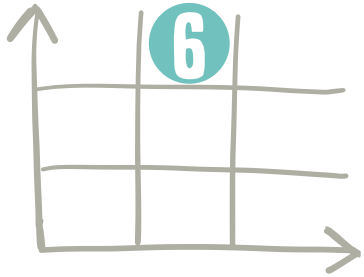
This is one of the strategies where innovation happens in a classic R&D set-up, and yet the results are made freely available to the public². In 2015, Toyota opened up their patents on hydrogen technology for others until 2020 without a royalty fee. While this is free, it is not open to all. Toyota wants to let others develop hydrogen cells, hybrid car products, etc. to boost the ecosystem. Car manufacturers, engineering companies and such can apply for access and on a case-by-case basis; Toyota decides who receives the free IP.

Bringing IP into play

→ Companies often choose this strategy in order to boost another part of the business or even the whole ecosystem with IP that is in a later phase of the technology life cycle. This approach is often applied in case of common or joint interests between the parties involved or within the ecosystem. Time influences IP and its connection to the ecosystem; IP that was developed in a classical environment by one party may over time be used in new applications or become of renewed importance due to new reasoning, trends, or third-party motives. Interestingly enough, some organizations freely give away what they do, but not always how they do it.

EXAMPLE IBM’S FREE PATENTS

In 2005, IBM started a revolution by freely sharing 500 of their patents. IBM was not forsaking its lucrative technology licensing business or pulling back on new patent filings. Nor was the company giving away the technology for their core business, such as mainframe computers, their proprietary database software, and other complete products. Instead, it freely contributed the technological building blocks to foster broader communication about the technologies and their improvements across industry networks³. In the end, this comes back to IBM, through the revenue they earn from the community’s use of their core and non-core products.



OPEN ACCESS RESEARCH

With a common objective, parties come together to boost existing knowledge, share ideas, and engage in new development. Parties may sometimes be required to pay a fee for coming together and gaining access to each other's knowledge.

Bringing IP into play

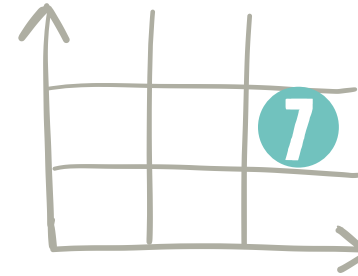
→ This strategy is used when organizations want to gain more insight into and/or influence on research agendas in order to learn about the progress and direction of the research, contribute to it, and reap the benefits. It is especially interesting to use this strategy in environments where innovation costs are high and/or the pace of innovation is high. If it is applied to a generic part of the technology life cycle, commercial organizations can build on these innovations for their more specific technology and product developments through a more classical R&D approach.

EXAMPLE

HORIZON EUROPE

Horizon 2020 is the biggest EU Research and Innovation programme ever, spanning seven years (2014 to 2020). Its aim is to engage the EU community in research and innovation to produce world-class science, remove barriers to innovation, and make it easier for the public and private sectors to innovate together. Funded by the EU, the programme contains contributions from private participants and works towards a common goal, with all involved pooling their expertise. All parties have access to each other's knowledge to fulfil the objectives. Parties are also obliged to share their findings or results openly with the EU community to promote further innovation and research. Should they want to commercialize the results of their innovation, there is guidance on how to allocate financially, contractually and technically between parties. This is a great example of how to promote innovation at an institutional level through open access research. However, in order to be able to define the best way forward regarding IP, parties will first need to analyze their situation and opportunities properly.

In terms of Building Blocks, the purpose of such regional initiatives—apart from shared interests—is to distribute knowledge in a field to positively influence and spur innovation both within the innovation collective and beyond it. Such a strategy may also be used to channel contributions. In that case, parties pool more than just money and subsidies; they also have a pool of knowledge at their disposal.



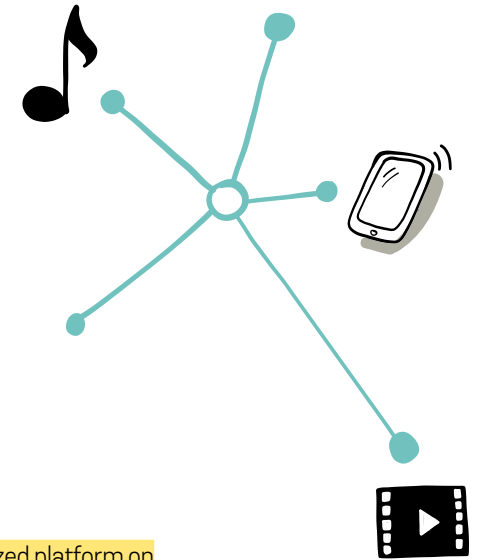
CREATORS' PLATFORM

In this model, parties provide access to a standardized platform on which other parties can develop and sell their own service/product. The platform owner gets a fee in return, and/or can use the platform as a market place.

Building Blocks at play here are the pace of innovation and contribution. By letting others add value to the organization's IP, the organization benefits from added value without huge investments— increase in sales, fees from developers and users, etc. In a way, this model allows app developers to expand the market for core product and services as well. Since the app developers have extensive expertise regarding end customers and user experiences, they also contribute to enhancing the marketing channel of a product, technology, and/or service.

Bringing IP into play

→ When they choose this option, innovators also become networkers: they connect two settings/categories of people through a platform. For example, you may be engaging in classical R&D within your organization, but see that different groups of people (students, developers, businesses) can make different contributions to what you have, or add more value through their use. The ideal way to capture value in such a case would be through a creators' platform. On the one hand, you protect what you have, but on the other, you make part of the process available to particular groups, so they can benefit from their value addition. This is smart use of the network effect.



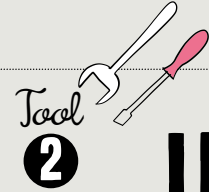
EXAMPLE

APPLE

Apple regulates and controls their open innovation, so that application developers can create products that work in the Apple environment. These creative app developers can best cater to the needs and expectations of smartphone users. This way, their products/services can be distributed through Apple's channels with little to no insight into the other aspects of Apple's internal R&D¹⁷.

"INNOVATION CONTRACTS DETERMINE THE BEHAVIOUR OF INNOVATION TEAMS AND SET THE BOUNDARIES FOR WORKING. ISN'T THAT SOMETHING EVERYONE IN THE TEAM SHOULD KNOW? NO ONE FLIES SOLO.*"

*WITH REGARD TO THE LAST SENTENCE OF THIS QUOTE, WE WERE INSPIRED BY RICHARD MABEY FROM JURO. ONE OF THE ORGANIZATIONS ACTIVE IN LEGAL DESIGN THINKING. RICHARD MABEY'S QUOTE WAS "LAWYERS DON'T FLY SOLO". JURO'S WEBSITE IS WWW.JURO.COM



2

LEGAL DESIGN THINKING

Start with the end user in mind

Contracts don't make innovation happen; people do. So it is essential to set them up for success. How? By designing processes and documents that support collaborating, communicating, and sense-making. This is the aim of legal design thinking. *By Stefania Passera & Helena Haapio.*



Legal design thinking is an umbrella term for merging design thinking with progressive legal thinking. It takes a proactive approach² to contracts and law, along with human-centred design. It focuses on supporting collaboration, driving desirable outcomes, creating opportunities, and preventing problems before they arise. This requires contracts and processes that make sense on a business level as well as to the people involved; the current contract design—or lack of which—does not meet their needs.³

FUNCTIONALITY AND GOOD USER EXPERIENCE FIRST

Legal design thinking stresses the importance of clarity, simplification, and visual communication to foster collaboration and innovation². Visualizing helps people think, communicate, make assumptions visible, and secure understanding across disciplines. The goal is not to beautify contracts or create a false first impression of simplicity (which quickly disappears when you start reading): that amounts to putting lipstick on a pig. The goal is to create functional, readable, usable, engaging documents that users can understand and put into practice without experiencing information overload.

Definition

DESIGN THINKING

Tim Brown, CEO of IDEO, describes design thinking as 'an iterative process in which you seek to understand the user, challenge assumptions, and redefine problems in an attempt to identify alternative strategies and solutions that might not be instantly apparent with an initial level of understanding.'

Tool
2

A deep dive into clever contracting FOR INNOVATION AND ITS IP

In moves Think and Strategize, we identified lines of thinking (“Bringing IP into play”) to help you put the model into practice while using innovation & IP strategies. Here, we would like to show how to use the business model in particular to determine and define your IP clause.



Bringing IP into play

→ Generally speaking, you do not always have to own IP to use it. What organizations seem to forget sometimes is that in order to capture the value of an innovation, you need user rights and/or freedom to operate. If you own the IP, you can distribute user rights to one or many other partners in the same or different field, geography, etc. If you are a user, you gain access to IP without having to take a multitude of administrative action related to owning the IP.

→ In case of co-ownership or licensing or other distribution of IP, you could also consider adding the ‘use or lose’ rule. This means that a party who gets rights to use the foreground information—or any other IP in a technology or product or service—will lose the rights to do so if the IP remains unused for a certain of time (anti-shelving). You can also get creative and say that the rights will expire unless certain sales targets have been met or certain results achieved within an established time period. Such rules may even be applied in case of co-ownership, so IP ownership remains only with those co-owners who actively use it.

This table is an example of possible IP arrangements based on your organization’s business model. For a complete overview and efficient discussions, you can prepare a similar table for your partner or partners. This IP overview is a useful tool that can be used as the basis for mandates, to equip your contracts and legal team and to speed up the process—be it for negotiating, contracting, or even the innovation itself.

→ If you decide to co-own IP, you could also decide whether it is with or without accounting. In this context, ‘with accounting’ means that one party reports to the others what they do with the IP, for example profits made etc.

→ Two final points to decide on are whether you need the other party’s consent to sublicense, and whether one party can enforce the right in legal action or whether all co-owners need to join when you sue another party. This can be arranged in the contractual agreements.



IP OPTIONS FROM YOUR PERSPECTIVE

BACKGROUND INFORMATION

CORE IN BUSINESS MODEL

Grant a non-exclusive licence for the purpose of the project only.

Grant a non-exclusive licence on favourable or commercial terms.

NON-CORE IN BUSINESS MODEL

Often not relevant or applicable.

FOREGROUND INFORMATION

One party owns the FI and licenses it to the other party or parties.

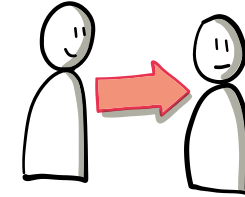
Register separate same-day filings with different fields of use.

Joint ownership with different fields of use and/or exploitation rights, with or without accounting.

The party who owns the BI, on which the FI is further developed, owns the FI too.

Sell or license out.

Joint ownership without accounting.



IP OPTIONS FROM BOTH PERSPECTIVES

BACKGROUND INFORMATION

CORE FOR BOTH PARTIES

Grant a non-exclusive licence for the purpose of the project only.

Grant a non-exclusive licence on favourable or commercial terms.

CORE FOR ONE PARTY, NON-CORE FOR THE OTHER

Grant a non-exclusive licence for the purpose of the project only.

Grant a non-exclusive licence on favourable or commercial terms.

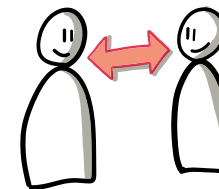
FOREGROUND INFORMATION

Separate same-day filings with different fields of use.

Joint ownership with different fields of use and/or exploitation rights, or without accounting (in case of generic FI or shared interests).

The party who owns the BI on which the FI is further developed, owns the FI too.

Claim ‘core’ ownership FI and license it to the other party. Possible return value for this party: other IP, percentage in profits, etc.



NON-CORE FOR BOTH PARTIES

Often not relevant/applicable to Background Information.

Parties can sell or license Foreground Information to a third party.

Definitions

BACKGROUND INFORMATION (BI)

Knowledge/IP that is relevant to a collaborative venture or innovation project that is supplied by the partners at the start of the project.

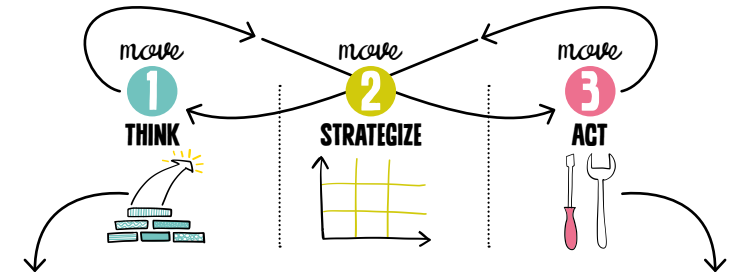
FOREGROUND INFORMATION (FI)

All knowledge/IP produced within the collaborative venture or innovation during the project.

SIDEGROUND INFORMATION (SI)

Knowledge/IP that is relevant to a collaborative venture or innovation project, but produced outside the project by any of the partners during the project.

GO!



PLAY

3 cases that pull it all together

"ASKING 'WHY' CAN
LEAD TO UNDERSTANDING.
ASKING 'WHY NOT' CAN
LEAD TO **BREAKTHROUGHS**."

— Daniel Pink

You have gotten to know our Tools, now it is time to put them to use. We have three different cases—easy, medium, and complex—to which you can apply **The Three Moves**. Instead of answers, we have provided you with a key to use the cases as an exercise. The key represents considerations you can take into account when designing the innovation and IP strategy, but these are not the only options. There is **no one right answer**, so use your creativity. Play the game by using the Building Blocks, the Matrix, and the Tools.

Case 2

TAYLOR'S SMALL FAMILY BUSINESS & DAILY TROPICS

Taylor's small family business has been baking cookies and muffins for fifty years. From just three varieties of cookies ten years ago, they now sell twenty varieties of cookies and muffins, nine varieties of confectionery goods and six varieties of ready-made, fruit-based beverage mixes such as the Green Goddess smoothie mix and the Vitamin Booster mix in over 1,300 stores all over England. Almost all of their family recipes use orange peel as a special ingredient to bring out a unique flavour.

Orange peel in large quantities is processed on a daily basis to extract an essence, which is then blended in specific combinations for their recipes. The success of the business is partly owed to Taylor's invention eight years ago to process orange extract easily and quickly, to keep up with the growing demand. This year, they plan to double the number of stores where their products are available.

Daily Tropics is a large producer of fruit-based beverages in England, which belongs to a big multinational consumer food corporation. Their fruit is supplied by fifteen orchards in Spain. Orange juice is a top-selling product of Daily Tropics, and orange concentrate is a key ingredient for their juice blends. Daily Tropics is facing stiff competition from new juice producers, but has not seen a decline in sales yet. Daily Tropics wants to be prepared for this competition and ensure that they

can increase current sales by at least twenty per cent in order to stay ahead of possible competitors. If they don't meet that target, the projection is that they may start facing a decline in sales within the next three years. They are considering whether new products should be added to their product portfolio, as well as looking at ancillary sources of revenue that can boost their R&D tasting department.

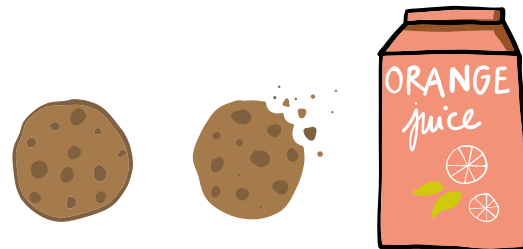
QUESTION

Taylor's manager has proposed working with Daily Tropics, whom he approached to discuss sourcing oranges. Daily Tropics also wants to evaluate a possible working relationship with Taylor's business.

■ Prepare a report for Daily Tropics and/or Taylor's business to help them make a decision about working together.

■ Evaluate what innovation options are available from the Matrix.

■ What Tools can help implement the strategy?



"OUR INDUSTRY DOES NOT RESPECT TRADITION, IT ONLY RESPECTS INNOVATION."

—Satya Nadella