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Ron Laurie
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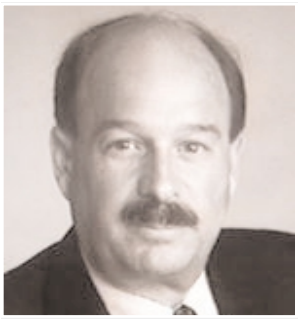

RON LAURIE has worked in Silicon Valley for over forty years, initially as a computer programmer and systems engineer, and then as an intellectual property lawyer. In January 2004, he co-founded Inflexion Point Strategy, an intellectual property investment bank involved in buying, selling and investing in strategic intellectual property assets and IP-intensive companies. Prior to launching Inflexion Point, Ron was a founding partner of Skadden Arps' Palo Alto office where he chaired the firm's IP Strategy and Transactions practice for six years. He was also a founding partner of Weil Gotshal's Silicon Valley office in 1991. As a lawyer, Ron advised clients in the semiconductor, computer, software, communications, media and financial services industries on intellectual property strategy — a subject which he has taught at Stanford and Boalt (UC-Berkeley) law schools -- with a primary focus on the strategic use of IP assets in complex business transactions including mergers and acquisitions, technology divestitures, joint ventures and strategic alliances. At Skadden, Ron led IP teams in some of the largest technology deals ever done, worth over $50 billion. Ron is a registered patent attorney and a substantial part of his law practice involved strategic planning, competitive analysis and commercial exploitation of patents on leading-edge software-based technologies such as encryption, biometrics, and Internet telephony. Ron wrote the Priceline "reverse auction" patent which was the first Internet business method patent to gain national attention when it issued in 1998. Ron has advised major US and foreign computer and semiconductor companies in implementing reverse engineering and "clean room" design programs for the development of compatible software and chip products in order to minimize legal exposure for copyright and mask work infringement. Ron was an IP litigator for ten years handling high-visibility patent, copyright, trade secret and trademark infringement cases in Federal and state courts, including representation of Hewlett Packard in its successful defense of the "look and feel" copyright infringement suit filed by Apple Computer against HP and Microsoft over the Macintosh user interface. Ron has been an advisor to the U.S. Patent & Trademark Office, the U.S. Copyright Office, the Office of Technology Assessment of the U.S. Congress, the National Research Council, the National Academy of Science and the World Intellectual Property Organization (WIPO), a United Nations agency based in Geneva. He is on the Executive Council of the Berkeley Center for Law & Technology and is a permanent faculty member of the World Law Institute. He is on the editorial boards of The Journal of Internet Law and The Computer Lawyer magazines and co-edited a two-volume treatise titled International Intellectual Property. He has been a Director of the Computer Law Association, and has served on the Executive Committees of the International Intellectual Property Association and the Intellectual Property Section of the State Bar of California. He has spoken on IP and computer law topics at conferences of lawyers, engineers, business executives, judges and government officials in the United States, Europe, Japan, Korea, Australia and Brazil. Ron has been listed in virtually every survey of leading IP lawyers including Top 25 California IP Lawyers (Daily Journal), Best Lawyers in America (Woodward-White), America's Leading Business Lawyers (Chambers), Global Counsel 3000 (Practical Law Co.) and International Who's Who of Business Lawyers (Law Business Research).

(ZAG300) TWST: Mr. Laurie, would you please describe Inflexion Point and the services you provide to your customers?

Mr. Laurie: Inflexion Point is an intellectual property investment bank. Our business model is based on the premise that intellectual property is more than just a bundle of legal rights. IP is an asset class like real property and corporate securities and many of the methodologies that are used to commercialize and monetize those other asset classes can be applied to IP, either directly or with some creative adaptation. This concept has been evolving over the past several years as evidenced by the emergence of companies whose only business may be creating, buying and selling, or investing in IP. So our model reflects the fact that most of the things that the traditional Wall Street investment bankers do, most of the kinds of transactions that they deal with involving companies and corporate securities, can also be done with IP. This includes patent brokerage — what you might think of as the retail side of the business

— as well as mergers and acquisitions, M&A, in the form of the aggregation and spin-off of IP-intensive business units, which involves not only patents but also know-how, trademarks and human capital — the wholesale side of the business. Before launching Inflexion Point, I managed the IP Strategy & Transactions group in the Silicon Valley office of Skadden Arps and led IP diligence teams on over 50 billion dollars worth of M&A and joint venture deals. This experience convinced me that all of the things that the M&A community has been doing with companies and pieces of companies can also be applied to IP. The other thing I learned at Skadden was that IP is almost always considered too late in the M&A process. That is, IP analysis typically takes the form of "due diligence" which is designed to identify areas of potential risk and allocate that risk among the parties to the transaction, typically buyer and seller. This occurs after the other party to the transaction, i.e., the acquisition target or the likely acquirer, has been identified and the purchase price has been negotiated. In other words, the role of IP in M&A is all about risk and not about value. I believe this is because the business professionals (boards of directors, corporate executives and investment bankers) justifiably feel that if lawyers are introduced into the process too early deals would never get done. Whatever the reason, ignoring IP during the early stages of the transaction makes no sense at all in the context of knowledge companies whose enterprise value derives primarily from intangible assets, in the form of its creative people, internal processes, external relationships, and of course, its IP.

TWST: Are you strictly a broker model putting two parties together?

Mr. Laurie: That's an important part of what we do, but a lot of work needs to be done after the parties have engaged with one another in terms of structuring the transaction and allocating IP rights among the parties, whether they be buyer and seller or joint venture partners. We operate both on the sell side and the buy side. The brokerage part of the business tends to involve IP assets per se and usually patents. But the other side of the business, the M&A side, is equally interesting and that is dealing with what is generally referred to as intellectual capital, which is not just patents, but also know-how and in some cases even undocumented technical expertise in the form of skilled employees.

TWST: And do you take a proprietary interest in some of these IP technologies or are you just acting as a representative?Mr. Laurie: Both. Actually we're in transition. We've been operating in advisory mode so far, but we are in the process of raising a fund to acquire IP on our own behalf and to invest, or in the case of our private equity clients to co-invest with them, in IP-based companies.

TWST: Do you also provide valuation advisory work?Mr. Laurie: We don't do IP valuation ourselves, but we will recommend to our clients in appropriate cases that they have a valuation done by a specialist consulting firm. I think that the art of IP valuation, and particularly patent valuation, is evolving and needs more development before it's anywhere near a science. Up to now, the techniques that are used have basically been imported from the world of tangible asset valuation with little or no change. For example, one of the methodologies that the valuation experts use is the market approach which involves looking for "comps," that is, comparable transactions or assets. However, in my opinion, while the notion of a "comp" works fairly well as applied to real estate, it does not work as well with IP which is inherently unique. So to say that a given patent or patent portfolio is comparable to another one, at least in quantitative terms, usually doesn't work. (In addition, publicly available information on IP sale transactions is very sparse, although this will certainly change.) On the other hand, having a valuation model, as opposed to just a number, can be an effective tool in negotiating a transaction. It can be a big advantage to come in with a number and be able to justify the number with an economic model. Then, the parties can test each other's model and underlying assumptions. But my own view is that people shouldn't put too much credence in the numbers that come out of those models; they're just really starting points for negotiation.

TWST: How desperate are corporations in need of guidance for managing their IP assets? And in particular, what types of companies are more likely to employ your services than others?

Mr. Laurie: It certainly varies. There are companies like HP, Intel and IBM that are really very adept in managing their IP assets. I should point out that we don't view ourselves as being in the business of providing consulting services, that is, we don't advise companies on how to manage their IP assets on a day-to-day basis. There are a number of very good firms that do that, but we're strictly transaction-based, just like the traditional investment banks. So we always operate in the context of a purchase, a sale, or an investment in IP or IP-intensive companies or business units. In terms of the types of clients that we represent, they include technology companies, large and small, as well as investment professionals like venture capital and private equity firms and even hedge funds.

TWST: Are corporations typically ignorant of what IP assets are out there that can have synergies with their ongoing research and development?

Mr. Laurie: Again, it varies. The larger corporations have been looking at this area for quite a number of years in the context of monetizing their non-core IP, the IP that doesn't provide critical competitive advantage or strategic value to the company. This was showcased in two books published about five years ago, "Rembrandts in the Attic," written by Kevin Rivette and David Kline and "Edison in the Boardroom" by Suzanne Harrison and Julie Davis. For a number of years large corporations have looked at how they could turn their non-core IP into cash flow. Initially the answer was licensing. More recently, IP divestiture ("spin-off") and joint venture ("spin-out") have become popular alternatives. In other words, companies are not just dealing with IP as an exclusionary legal right, which perspective necessarily produces a licensing model, but as a commercial asset, around which one can create a lot of business opportunities. So for example, if a company has some broad IP covering not only its core business, but some non-competitive business as well, it can form a joint venture with a company that is active in the non-competing area and its sole contribution to the joint venture might be an exclusive license limited to the non-competitive field. So the IP owner essentially becomes an equity holder in the non-core business and the cost of acquiring that equity position, i.e., the exclusive non-core field license is something that wasn't producing any corporate value anyway.

That's just one example of dealing with IP as a corporate asset and creating new business around it.

TWST: And typically, do you structure deals around outright sales of IP or do you license the IP? What are the determinants of the license by relationship?

Mr. Laurie: It depends on whether we're doing a brokerage deal or an M&A deal. On the brokerage side, it's usually just a straight sale of the IP asset, typically a patent portfolio. In some cases the seller will take back a non-exclusive license, which might be field-of-use limited, so that it has freedom to operate and doesn't have to worry about the buyer coming after it years later on the very same patents it sold. But it's primarily a one-time, completed transaction. The M&A side, which also includes strategic investments and joint ventures, often involves ongoing relationships built around the IP, and those can involve a fair amount of cross-licensing. Again, the licenses we deal with tend to be exclusive field-of-use licenses — because that preserves exclusivity in each party's respective market, which is a very good result —- rather than just straight non-exclusive licensing. The difference between exclusive and non-exclusive licenses is at the heart of the distinction between what has become known as the "assertion model" of patent monetization, and our model which we describe as the "business opportunity model." Under the assertion model the patent owner, or a company acting as the agent of the patent owner, says to the target, "We have patents, you are infringing, you should pay us money or we will sue you." And, if there is a settlement it almost always involves a non-exclusive license, which is nothing more than a promise not to sue. That's what's being traded. It's a zero-sum-game because what the target is getting for the license payment is just the right to be left alone. They are not getting any real business value in terms of know-how or competitive advantage. The other kind of license, the exclusive field-of-use license, actually does provide competitive advantage because it's a way to faction effect divide ownership of the IP among different parties for different uses. And that's one of the magical attributes of IP as opposed to tangible assets — that many parties can use the same property at the same time. It's difficult or impossible to do with real estate or other tangible property, where ordinarily the party "in possession" of the property at any given time is the only one who can use it.

TWST: Do you also provide advisory services with regard to due diligence. I would think that maybe one reason why I would go to a broker, instead of trying to find the technology on my own, is that maybe the broker would have done some due diligence on the product before I can get to it.

Mr. Laurie: Yes, we do due diligence both when we are representing buyers as well as when we are representing sellers. When we are representing a buyer, the client typically says, "We would like to acquire some significant patents in this or that particular area," either to augment what they've already got in that area or because their business is moving into a new area and they realize that it may be more effective initially to buy the IP in that area than to make it. If they create the IP themselves based on their own R&D, they are going to have to invest a lot of money and many years of work before the IP is mature. It typically takes three to five years after filing a patent application for a patent to issue and by that time, the technology may have moved away from the patented invention. On the other hand, if you find and acquire a patent that covers what you are doing right now, you know exactly what you are getting. This "make versus buy" decision on IP is pointing more and more toward the buy option, and that's driving the expansion of the IP brokerage market. So we do a lot of diligence for our buy-side clients in terms of finding out exactly what IP is out there and whether it can be acquired. And we do that through a combination of a bottom-up and a top-down methodology. The bottom-up approach is a sort of brute force technique involving data-mining of various patent databases, looking for patents that provide broad coverage in the area in which the client is interested. The next step is finding out which of those patents might be available for purchase, contacting the owners and convincing them that they should sell. The top-down approach, on the other hand, is to interact with the IP broker network, which is now fairly well-established. We might send an e-mail to twenty or so brokers saying, "We have a client looking for patents in Area X," and we might get back five or six responses saying, "We have a client that has patents in Area X for sale." So the buy-side process is a combination of digging up the nuggets yourself and finding out what's already on the market.

TWST: And typically, are these deals an outright buy or can a deal be structured in tranches based on the patent not being challenged by other people over a period of time?

Mr. Laurie: Yes, patent acquisition can take the form of a purchase with installment payments. This protects the buyer in the event that the patent is later designed-around, or invalidated in court. There could also be a reversionary interest triggered by failure to reach predefined financial performance milestones. This means that instead of selling the patent for a single lump sum payment, the purchase price is determined by future performance. That is, the price is based on how well the buyer exploits or monetizes the IP. Or it may be a combination of an up front payment and earnout. It looks a lot like a license except that title actually passes. And the reversionary interest means that if the milestones aren't met, if the payments aren't up to the agreed upon levels, then the patents get assigned back to the original owner. So there is a kind of staged or contingent ownership even in the outright sale category. That's an important option because, getting back to IP valuation, I believe that there are only two ways to structure a sale to reflect the "true value" of a patent. One is to just to put it on the market and let the market set the price, sort of an auction approach, because the market will determine the value at any given point in time. The other way is based on what you might call the wait-and-see approach which says, "Okay, I will sell you this patent now but you will pay me based on your future revenue attributable to the patent," i.e., a revenue split. There are a number of companies like General Electric Commercial Finance that operate according to this model. They buy patents sometimes with a front-end payment, but most or all of the purchase price is based on future performance.

TWST: Which deal structures are generally better for the buyer and which deal structures are generally better for the seller of the patents?

Mr. Laurie: That depends on how much risk is associated with the patents**.** If the patents are very solid in terms of validity and breadth of coverage, then of course the buyer prefers a lump sum

purchase so that the future earnings don't have to be shared with the seller. If the patent has some risk uncertainty associated with it, then the seller often would prefer a quick sale so that the risk of the patent being designed-around, or held invalid or not infringed in court, is shifted entirely to the buyer. It's a question of patent quality and ultimately a function of who has the negotiating leverage between the buyer and the seller.

TWST: The last economic downturn was really unusual in American history in that it was an investment-driven economic downturn. Looking forward, is IP acquisition going to be a much, much greater concern as the economy starts maturing and building from its base?

Mr. Laurie: IP is becoming one of the primary currencies of the digital economy and there is going to be a lot more buying and selling of IP in the future. In terms of concern, there is an issue that is being discussed quite a lot these days in the IP community and in the press, involving the notion of "patent trolls" or what I call institutional patent asserters. IPAs are companies whose only business is acquiring patents with the intention of asserting them, usually against large corporate entities. And the problem, or the perceived problem, results from the fact that unlike competitive manufacturing companies, the IPAs have no exposure to countersuit for patent infringement (because thy don't make anything) and thus these cases can't be settled with a cross-license or a business deal. The only business of the IPA is getting royalties for non-exclusive licenses, and so the only thing that the target companies have to give them is money. This has created a kind of a backlash among the large operating companies which have asked Congress for patent reform legislation to fix the problem. There is a legislative proposal pending now that would deny an injunction to a successful patent plaintiff if it is not in the manufacturing business, and that's specifically targeted against the IPAs. My own personal belief is that there is nothing per se wrong with buying patents as a business and then licensing them – to either willing or unwilling licensees — as long as they are good patents. The problem is that some of these IPAs are acquiring patents are not really good patents in the sense that they shouldn't have been issued in the first place, but because of the risk, many companies will just pay for a license because they can't afford to take the chance of going to court and losing. In a post-Sarbanes-Oxley environment, directors and officers of public companies are, or at least should be, particularly concerned about liability exposure if they go ahead with a lawsuit that could have been settled and then lose with "extreme prejudice."

TWST: And this pricing with the recent RIMM settlement of roughly $450 million, correct?

Mr. Laurie: Yes, that's right. $450 million is a lot of money to pay to settle a patent case, but it represents RIMM's assessment of the potential risk in taking the case all the way to judgment. Microsoft paid a similar amount a couple of years ago to settle a patent infringement suit brought by Priceline.com on its internet reverse-auction patent. And Medtronic recently paid over a billion dollars to settle a patent suit. As I said before, my own view is that there is nothing wrong with developing a business model around buying patents and then monetizing them, whether by granting non-exclusive licenses or by creating business relationships around them or spinning off companies around them or anything else, as long as they are good patents. So I think the troll debate really involves the issue of patent quality and not the business model of the troll.

TWST: Is it also a situation too where just regular market forces will probably alleviate that concern, so maybe the RIMM situation was very low-hanging fruit and then all the patents are going to be exponentially more difficult to enforce?

Mr. Laurie: Well, the problem is risk mitigation, especially as the number of patents asserted in a particular case increases. Situations involving assertion of a single patent are much easier to deal with. You can evaluate the risk and then you can make a decision. But when the IPAs come calling with five or ten, or more, patents, any of which would significantly impact your business if infringement were established, the probability mathematics says that as the number of patents increases, the amount of risk goes up geometrically. So, for example, just to pick some numbers, if you were faced with an infringement claim involving one patent and it had a 50-50 chance of being held valid and a 50-50 chance of being held infringed, as a defendant, you would have three chances out of four to win that case. If it were held to be invalid, you would win; if it was not infringed, you would win; and if it was both invalid and non-infringed, you would win. The plaintiff can only win if it is valid and infringed, i.e., one chance out of four. The target would have a 75% chance of success and a lot of companies might roll the dice with those odds. As the number of asserted patents goes up, you multiply the probability of success on each individual patent. When you have six patents asserted against you, your probability of escaping infringement liability under all six, is 0.75 to the sixth power, which happens to be 18%, that is, an 82% probability of losing. So you can see what happens to the risk calculus as the number of asserted patents increases. At some point, there will be a settlement because the defendant, the target, just can't afford to take the risk; it's just too large.

TWST: That brings up a question. If I buy two or three patents that individually don't amount to much, but in aggregate amount to let's say a device like the RIMM or like a cellphone, can I enforce those patents in tandem as if they were one?

Mr. Laurie: Yes. That's a very effective strategy because of the risk analysis I mentioned before. However they can't be bogus patents. I mean, each asserted patent has to pass some minimum credibility threshold, let's say, 20% or 30% chance of being held valid and infringed. Once you get over the threshold, though, the geometric risk calculation kicks in and as the number of patents goes up, a defendant really can't afford to take a chance of getting an adverse result in court. I first encountered this representing a large Japanese electronics company that had been threatened with a patent infringement suit by Texas Instruments in the mid-1980s. TI was asserting 10 of their best patents against PC makers. They were all credible patents and they all covered a significant part of the business of the companies TI was going after. And their argument was, "Look, in order for you to escape significant damages liability and an injunction, you have to win on all 10 patents. In order for us to win, i.e., collect a big money judgment for past damages and shut down a significant part of your business with a permanent injunction, we only have to win on one. So the odds are 10 to 1 in our

favor." As a result of that math, TI collected over $1 billion in patent royalties between 1985 and 1990.

TWST: Billions and billions of dollars are spent each year on R&D departments in publicly traded stocks. In your view, what sectors of the market possess the most underdeveloped and undervalued IP portfolios? Is it in the conglomerate sector? Is it in the software sector?

Mr. Laurie: I'm sure that there are many such areas, but the one that comes to mind immediately is nanotechnology and in particular "smart materials." There are some patents that are starting to issue now in this area that will turn out to be fundamental. In the biotech and pharma world, patents have always been given high value, because if you have a patent on a new molecule, it's pretty clear that the patent is going to be valid because everyone in the field knows what molecules exist and what molecules don't exist at any given point in time. If you have a patent on a new software algorithm, there is a much higher probability that if someone does a thorough enough search, they are going to find a similar algorithm published or commercialized before, which might invalidate the patent if it is litigated. So in the bio-pharma domain, patents have always been regarded as very important. This is reflected by what happens to the stock price when a blockbuster drug goes off-patent; it's a significant event. But, in other areas, especially in the early stage venture capital raising process, VC firms traditionally have not placed a lot of value on patents. This is especially true with respect to software patents and it's even more true in the case of business method patents, like the Priceline reverse-auction patent or the Amazon one-click patent. However, I think that this view is changing. I'm starting to see the venture capital community paying more attention to patents when they are evaluating investments in startups. They are looking not just at whether there are patent applications on file, but at how broad the underlying inventions are, i.e., will those applications result in issued patents, and if they do, will they cover a significant part of the market.

TWST: Taking a different tack now, can you enforce non-disclosure agreements? I think this is a topic that is going to be on one of the panels. And if so, how do you go about doing it?

Mr. Laurie: The problem with NDAs is that legally, assuming they are written correctly, you can enforce them but once the trade secret or confidential business or technical information has been publicly disclosed, its competitive value is gone. At that point the question is, can you prove what your damages are and, even if you can, can you and collect against the person who misappropriated it? Some would call that a right without an effective remedy.

TWST: Yes, it's unfortunate, and at the end of the day, it will cost me much more to win a case, if a case was to be won, than I would ever get out of it. It's just a little disheartening to see that sometimes.

Mr. Laurie: Well, the history of Silicon Valley has been about people leaving companies to form startups and getting sued for stealing trade secrets. Sometimes these suits are justified and sometimes they are just fishing expeditions to find out if in fact anything was taken.

TWST: It seems to me like the last couple of years, a lot of good technology has not really been new technology, but an aggregation of existing technologies to make a new device.

Mr. Laurie: Do you mean a new application of known technology?

TWST: Yes, new application on your cellphone, new type of storage device, and new type of way of transferring MP3s. Can you patent those kind of synergies between different technologies that are already in use?

Mr. Laurie: Sure, absolutely you can. These cases fall into two categories: new use patents and new combination patents. In either case the question of whether you can get a patent depends on the classic patentability test — whether the use or the combination is novel, which is assumed in this case, and whether it are non-obvious in light of the relevant prior art, and that's the real issue. Was it obvious to take these separate pre-existing technologies and combine them for the new application? It happens in the pharma world all the time where somebody figures out that a compound or molecule that has been used for treating disease X turns out to be really effective in treating disease Y. And it also frequently happens in technologies like infotech and telecom and semiconductors. Usually, there is a missing piece that prevented the component technologies from being combined in the past and somebody creates a "glue" invention and then everyone immediately says, "Now we can do it, we can put the pieces together." Whether the creator of the glue invention is entitled to a patent on just the glue or the entire combination enabled by the glue is an interesting question in patent law. If the industry acknowledged that someday the combination would be possible, even though the technology that ultimately enabled the combination didn't exist, then the inventor of the glue should only be able to patent the glue. If on the other hand no one had previously even suggested the combination then the glue creator should be able to patent the entire system. So the test is whether it was obvious to combine the pre-existing elements, which is an easy test to state in theory but very difficult to apply in practice. And getting back to the patent quality issue, one of the criticisms of the US Patent Office that is most often heard is that a lot of patents are being granted on inventions that are in fact totally obvious to those in the field because the obviousness threshold is set too low.

TWST: Getting on to maybe a related subject, it seems to me that a lot of technologies that come across my desk as an analyst are really enabling types of technologies that people are trying to point to as a standalone process. Now, in the world of IP valuation, are enabling technologies less valuable than process technologies or is there a difference?

Mr. Laurie: Could you elaborate on what you mean by enabling.

TWST: Let's say that I own the patent that makes these things talk to each other, a patent to the thing that makes the bandwidth. In the world of equity valuation, many times that process technology, because you have to sell to an end user like Oracle or an IBM, doesn't get the same valuation of let's say the IBM's database software, which can't work without this process technology, but the process technology costs a couple of hundred thousand dollars to the end-users as opposed to millions for the Oracle database implementation.

Mr. Laurie: It depends on whether there are commercially competitive but non-infringing alternatives to the patented enabler. And if there are, then people will design around the patent claims and in fact that's one of the primary public policy purposes of the patent system — to force people to create non-infringing improvements, and thereby advance the state of the art. If, on the other hand, that patented enabler is the only way to do it or the only commercially competitive way to do it, it can be extremely valuable. But, this is a rare case; more often than not, it's only a matter of time before someone comes up with a way to engineer around the patented solution.

TWST: Maybe a little bit more of a fluffy question, but what are some of the more interesting patents that you have seen that really would excite the average reader of Popular Mechanics?

Mr. Laurie: Well I don't know about Popular Mechanics, but how about On-Line Gamer**.** We are currently working for a client that has patented the concept of online game-of-skill tournaments with instant cash prizes. These tournaments can involve two people or thousands of players in which case they go by the acronym MMOG, massively multi-player on-line games. In very simplistic terms, you can think of the invention as the combination of a PlayStation and an ATM. So the minute you win the game, you get paid, and you can take your friends out to dinner to celebrate your victory. You get paid in digital cash. You have a smart card reader and it loads up the winnings on your card and then you go out and spend it. It's a simple concept, but in order to put it together commercially, you need a lot of different kinds of expertise, and no one company can do it all. So we are exploring forming a joint venture that combines the payment processing piece, the game platform piece, and the game content piece, and ties it all together with the patents. This is a project that provides a good illustration of the intersection of IP and M&A. In other words, putting together a new company where the founders each contribute their respective technology, expertise, and IP, to create a new product and service, which couldn't have been created by any of them alone.

TWST: It is a very exciting space and a lot of large companies are playing in that space too.

Mr. Laurie: The electronic game industry is now bigger than the movie industry in terms of annual sales and it's getting bigger every day. And now, with the new platforms like Microsoft's xBox and Sony's PSP, these devices are not just going to be limited to playing games; they are going to be able to do many on-line functions like shopping and stock trades.

TWST: Are there any publicly traded companies or private sector companies in particular, that you would say employ best practices on leveraging their IP technology and are doing things to multiply the effect of their R&D budgets?

Mr. Laurie: I think there are some obvious choices that have very well thought-out IP strategies. HP, I think, is close to the top. Intel is another. Microsoft is coming on strong and has just created a new business unit named Microsoft IP Ventures that represents an interesting approach to IP asset management. It's based on the fact that the company is creating more technology, and associated IP, than they can possibly put into their own products. So they are creating a pool of IP that they are offering to others, mostly startups, and essentially seeding new companies based on technology that, for one reason or another, they don't plan to use. This is a very interesting model because they become a seed capital provider where the seed capital is technology and IP.

TWST: It seems pretty interesting if you lease that IP to somebody, right?

Mr. Laurie: Yes.

TWST: IP is currently valued at zero on your balance sheet, yet you lease it out to somebody, that lease has a value on your balance sheet, doesn't it?

Mr. Laurie: That's right. Or instead of leasing it, which really means licensing it, you start a new company and transfer an exclusive field-of-use license to the new company in exchange for an equity stake in the venture. You have essential converted an unused piece of IP into shareholder equity.

TWST: Assetizing, it is pretty interesting.

Mr. Laurie: This is really a very creative area now for IP because a lot of interesting financial models that have been used in other asset classes are now available for IP monetization and the challenge is to "port" them from the tangible property domain to intangible property. Often it's not trivial to apply them directly but with a little bit of creativity and imagination, I think a lot of them will be successful.

TWST: Now, instead of being the driver of opening up the doors to somebody's research vault is to generate an asset value from the IP. Is that the biggest driver or are there other drivers?

Mr. Laurie: Traditionally, companies have what they consider to be crown-jewel IP that they will not license under any circumstances. In the case of HP, it has been their printer consumables technology, toner cartridges and ink cartridges and such. They want to be the sole provider of those products. In contrast, IBM has recently announced that it would license any and all patents in its portfolio. In other words, there is nothing in the IBM patent portfolio that is so valuable from a strategic or competitive standpoint that they won't license it. This makes a lot of sense from a commercial perspective because it helps establish the technology as an industry standard if it's freely available. That's one example of innovative thinking about unlocking the R&D vault, so to speak, in saying that everything is available for revenue generation via licensing.

TWST: Does this ability to generate revenues from R&D motivate researchers to develop products that are more marketable than perhaps they were working on before?

Mr. Laurie: That has to do with a particular company's IP strategy and involves the concept of directed IP development. Some of the more IP-enlightened companies devote at least a part of their R&D resources to developing IP as opposed to products. For example, it may be widely recognized in an industry that a particular technical problem needs to be solved before the industry can produce the next generation of products, but no one has the solution yet. In such a case it may be possible to propose a solution that is sufficiently "enabling," that is detailed, to support a patent, even though from an engineering standpoint it still needs a lot more work to be commercial, or even operational. A number of small consulting firms have been formed to do this kind of IP development on an

outsourcing basis for large corporate clients who are too busy getting products out the door to focus on longer term design problems. In terms of motivating R&D personnel on a personal level, many companies have programs to funnel at least a part of the financial returns from licensing or sale of IP or other IP monetization back into the R&D groups that created the IP, and in many cases to the individual inventors.

TWST: Is there anything you would like to add for the interview?

Mr. Laurie: I usually conclude talks on the investment banking model of IP monetization with a reference to the old adage that, "if all you have is a hammer, everything look likes a nail." What this means in the context of IP monetization is that when one views IP solely as the ability to stop others from doing something, which is legally what an IP right represents, then everything looks like am infringement lawsuit, or at least the threat of one. Of course, ultimately the potentiality of enforcement has to be implicit or the IP has no commercial value. However there are a lot of opportunities to derive value from IP upstream of enforcement and even where the IP is never actually asserted, and that is the role of the IP investment banker.

TWST: Thank you. (RT)

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