

## Session XI

# IP and the Global Financial Crisis Risks and Opportunities

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# Intellectual Property Risks During Economic Downturns

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# Intellectual Property Risks During Economic Downturns

- Budget cuts for IP protection and procurement.



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- Data theft and cybercrime.



# Intellectual Property Risks During Economic Downturns

- Budget cuts for IP protection and procurement.
- Data theft and cybercrime.
- Budget reductions in R&D.



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But there are also  
Opportunities...

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# Intellectual Property Opportunities

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# Intellectual Property Opportunities

- Acquisition of under-valued IP.



# Intellectual Property Opportunities

- **Acquisition** of under-valued IP.
- **Audits** to reduce costs and discover value of non-core assets.



# Intellectual Property Opportunities

- **Acquisition** of under-valued IP.
- **Audits** to reduce costs and discover value of non-core assets.
- **Licensing** of non-core IP assets to create new revenue streams.



# Intellectual Property Opportunities

- **Acquisition** of under-valued IP.
- **Audits** to reduce costs and discover value of non-core assets.
- **Licensing** of non-core IP assets to create new revenue streams.
- **Innovation** - Tough times foster innovative.



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# Risks

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# Risk #1: Budget Cuts for IP Procurement and Protection

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## *State of the IP Industry Survey 2009*

51.9% of respondents said financial climate has had a negative impact on their IP strategy. This was primarily due to:

- Less desire to undertake long-term IP strategic activities.
- Less focus and clarity in IP-related initiatives.
- Reduction in the range of countries in which registrations are undertaken.
- Fewer overall filings.

Source: *State of the IP Industry Survey 2009*, CPA Global in association with *IP Review*, April-May 2009.



## *State of the IP Industry Survey 2009*

Legal practitioners surveyed reported clients' biggest challenges:

- Loss of income from sales.
- Financial problems relating to funding and capital issues.
- Pressures on cost cutting to ride out financial downturn.
- Overall economic uncertainty.
- Resulting struggle to prioritize IP spending.

Source: *State of the IP Industry Survey 2009*, CPA Global in association with *IP Review*, April-May 2009.



## And now the really bad news:

- Almost half of the companies surveyed stated that they intend to spend less in 2009 than they did in 2008 for general IP services.
- More than a third of the companies stated that they would spend less specifically in patent and trademark protection.

Source: *State of the IP Industry Survey 2009*, CPA Global in association with *IP Review*, April-May 2009.



## Proposition: Budget cuts reduce the value of IP portfolios...

- Decrease in procurement → Portfolios age and become obsolete.
- Lack of adequate protection → Loss of market share and competitive advantages due to competitors appropriating the IP assets' value, undercutting prices while adding features.

Source: Biasco, Tye, *Recession Demands Strong IP Strategies*, MinnesotaBusienss.com



## Result...

- Loss of market share.
- Tarnish competitive advantage IP asset once enjoyed.

Source: Biasco, Tye, *Recession Demands Strong IP Strategies*, MinnesotaBusienss.com



## But there's more...

- In a recession, IP infringement increases during down turns because competitors are desperate to gain market share.

Source: See Recher, Stuart, *A New Set of Rules for Innovation During Times of Economic Uncertainty, Building and Enforcing Intellectual Property Value 2009*, (2009); Rosie at 1; Biasco, Tye, *Recession Demands Strong IP Strategies*, MinnesotaBusienss.com.



## But there's more...

- In a recession, risks from data theft and cybercrime add a new and uncharted dimension to IP infringement in the current economic downturn.

Source: See Recher, Stuart, *A New Set of Rules for Innovation During Times of Economic Uncertainty, Building and Enforcing Intellectual Property Value 2009*, (2009); Rosie at 1; Biasco, Tye, *Recession Demands Strong IP Strategies*, MinnesotaBusienss.com.



## But there's more...

- In a recession, companies increasingly neglect a long-term IP acquisition and management strategy when innovation is necessary to remain competitive.

Source: See Recher, Stuart, *A New Set of Rules for Innovation During Times of Economic Uncertainty, Building and Enforcing Intellectual Property Value 2009*, (2009); Rosie at 1; Biasco, Tye, *Recession Demands Strong IP Strategies*, MinnesotaBusienss.com.



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# Risk #2: Data Theft and Cybercrime

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## Purdue University

The global economic crisis is poised to create a perfect information security storm, as increased pressures on firms to reduce spending and cut staffing lead to more porous defenses and increased opportunities for cybercriminals.

Source: *Unsecured Economies: Protecting Vital Information*, Purdue University Center for Education and Research in Information Assurance and Security and McAfee, Inc. 2009.



## Purdue University

Forty-two percent of respondents interviewed said laid-off employees are the biggest threat caused by the economic downturn.

Source: *Unsecured Economies: Protecting Vital Information*, Purdue University Center for Education and Research in Information Assurance and Security and McAfee, Inc. 2009.



## Purdue University

### Result...

- IP is increasingly transferred between companies and getting lost.
- Stealing IP becomes a way for employees to secure financial gain.

Source: *Unsecured Economies: Protecting Vital Information*, Purdue University Center for Education and Research in Information Assurance and Security and McAfee, Inc. 2009.



For example...

In June of 2008, a former Intel Corp employee allegedly downloaded one billion dollars worth of IP document before leaving the company to join AMD, a competitor... the employee was charged with trade secret appropriation and fraud.



## But there's more from Purdue...

- Industrial espionage and cyberterrorism exacerbated by "geo-information hot zones"
- Russia and China
  - Feel pressure to "appropriate" IP.
  - Organized crime and state sponsored groups seek out new targets.

Source: *Unsecured Economies: Protecting Vital Information*, Purdue University Center for Education and Research in Information Assurance and Security and McAfee, Inc. 2009.



## But there's more from Purdue...

- Industrial espionage and cyberterrorism exacerbated by "geo-information hot zones"
  - Other less developed countries could pose greater risk because motivation is ideological rather than economic.

Source: *Unsecured Economies: Protecting Vital Information*, Purdue University Center for Education and Research in Information Assurance and Security and McAfee, Inc. 2009.



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# Opportunities for IP

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## Recessions...

...bring about excellent acquisition opportunities for companies with the financial means to act on them.

...incentivize IP owners to conduct IP audits as cost reduction pressures increase to better align their IP portfolios with their core competitive strategies, thereby decreasing costs.



## Recessions...

...preface the licensing of the non-core IP assets as audits more efficiently tap asset value and generate additional revenue.

...act as a catalyst for survival and competitive prosperity in economic downturns making innovation the holy grail of opportunity for the willing and able IP investor.



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# Intellectual Property Opportunities

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# Intellectual Property Opportunities

- Acquisitions

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# Intellectual Property Opportunities

- Acquisitions
- Audits



# Intellectual Property Opportunities

- Acquisitions
- Audits
- Licensing



# Intellectual Property Opportunities

- Acquisitions
- Audits
- Licensing
- Innovation



## Acquisitions

- Bankruptcies provide opportunities for “brand trolling”
  - Linen’s N Things, Sharper Image and Bombay brands acquired by retail liquidators Hilco Consumer Capital LP and Gordon Brothers Brand LLC with plans to re-launch brands.

Sources: see handout



# Acquisitions

- Solvent companies sell non-core IP to increase cash flow.
- Reward for acquisitions can be high potential returns for investors.

Sources: see handout



## Audits

- Can help companies direct IP budgets to the most beneficial IP assets, and eliminate non-productive IP by allowing it to lapse or by selling.
- Can help uncover hidden value in knowledge assets and IP.

Source: Biasco, Tye, *Recession Demands Strong IP Strategies*, MinnesotaBusiness.com



# Licensing

- Non-core assets can be licensed to help support core businesses:
  - Recover 10 to 20% of annual R&D spending this way.
    - Royal Philips Electronics refocused on the healthcare and wellness markets and is licensing a portfolio of over 60,000 semiconductor patents which earn hundred of millions annually.

Source: Chesborough, Henry and And Garman, *Use Open Innovation to Cope in a Downturn*, Harvard Business Review, June 2009.

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# Innovation

- Recessions are followed by economic boosts driven by innovation and new inventions.
- Companies that invest in IP during recessions can increase margins and maintain market presence and will come out stronger.
- Those that fail to innovate, lack the foundation to rebound .

Sources: Recher, Stuart, A New Set of Rules for Innovation During Times of Economic Uncertainty, Building and Enforcing Intellectual Property Value 2009, (2009); Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009; Rosie, Jeremy, The Value of IP in a Recession, Industry Insight, Intellectual Property Management, July/August 2009.



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# Joseph Schumpeter's Theory of Creative Destruction

Entrepreneurial innovation fuels long-term economic growth and competitive sustainability

Source: Schumpeter, Joseph, *Capitalism, Socialism and Democracy*, 1943.

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# Joseph Schumpeter's Theory of Creative Destruction

Markets incessantly revolutionize their economic structure from within, incessantly destroying the old one, incessantly creating a new one. This process of creative destruction is the essential fact about capitalism.

Source: Schumpeter, Joseph, *Capitalism, Socialism and Democracy*, 1943.



# Joseph Schumpeter's Theory of Creative Destruction

- Entrepreneurial innovation funds long term growth and competitive sustainability.
- Innovation is catalyzed by crisis which leads to "industrial mutation"
  - 8-track replaced record
  - Cassettes replaced 8-track
  - CDs replaced cassettes
  - MP3 replaced CDs
  - Ipod is now changing the game

Source: Schumpeter, Joseph, *Capitalism, Socialism and Democracy*, 1943.



## Recessionary Innovations

- RCA launched its R&D effort for the first commercially available television in 1934. In 1929, the company was a poster-child for the stock market crash having lost 97% of its share price from 1929 to 1932.
- Investments in projection, film and camera equipment technology was tied to the boom of the film industry during the Great Depression.



## Recessionary Innovations

- Some of the greatest and long-lasting brands were created during the Great Depression and later recessions, including Revlon in 1932 and Gap Inc. in 1969.
- The Japanese auto industry and the personal computer were born out of the early 1970s recession.



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# Corporate Reinvention Through Innovation

- Audits can help companies decide whether company can re-tools efforts to reinvent themselves
  - Apple and Ipod
  - General Motors -- Chevrolet Volt vs. Hummer

Source: Recher, Stuart, A New Set of Rules for Innovation During Times of Economic Uncertainty, Building and Enforcing Intellectual Property Value 2009, (2009).



# Open Innovation

- Process whereby company places some of its assets or projects outside its own walls
- Five key strategies
  1. Become a customer or supplier of your former internal projects
  2. Let others develop nonstrategic initiatives
  3. Make IP work harder for you and others
  4. Grow your ecosystem
  5. Create open domains to reduce costs and expand participation

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



## Become a customer or supplier of your former internal projects

- Reduces cost and risks, but retains participation for a potential pay off.
- Eli Lilly's - Bounty Chem Project

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



# Become a customer or supplier of your former internal projects

## ■ Eli Lilly's - Bounty Chem Project

- Geared towards "improving [Lilly's] sourcing of external ideas for developing new drugs."
- Most successful if it sourced ideas from multiple companies.
- Launched as separate entity with the participation of various companies.
- Lilly became the initiatives first customer

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



## Let others develop nonstrategic initiatives

- Spin off non-core knowledge assets to outside investors, but retain a piece of the investment
- If successful, may have an opportunity to increase equity stake later on
- Lucent Digital Video

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



# Let others develop nonstrategic initiatives

- Lucent Digital Video
  - Internal project that eventually evolved into Lucent Digital Video.
  - Lucent decided technology was ahead of its time.
  - Spun it off as a separate venture with outside investors.
  - Lucent eventually reacquired it.

Source: Chesborough, Henry and Andre Garman, *Use Open Innovation to Cope in a Downturn*, Harvard Business Review, June 2009.



# Lucent Digital Video

By spinning-off, Lucent was able to profit from the market's "second opinion," that revealed the project's true strategic value.

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



# Make IP work harder for you and others

- License non-core IP to generate revenue.

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



## Grow your Ecosystem

- Engage with customers, collaborators, industry experts, trade associations and others to identify opportunities.
- Build a network of innovation partners to execute strategies.

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



# Grow your Ecosystem

Great Major League baseball general managers always know which team will be interested in which player at what price.



## Grow your Ecosystem

- Unilever's incubation process "develops ideas either for internal placement in suitable business units or for potential spin-off as turnkey ventures."
- Out of the incubation initiative developed MiLife, a wellness counseling service that has in turn created a new advertising platform for Unilever's products.

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



## Create open domains to reduce costs and expand participation

- Open channels that either exchange information and ideas or provide shared facilities and services in an effort to attract influential communities and create advances
- Philips R&D Facility

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



# Create open domains to reduce costs and expand participation

- Philips R&D Facility
  - In 2004, Philips opened its R&D facilities and rented it to other companies.
  - The facilities went from a cost center to a revenue center.

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.



# Create open domains to reduce costs and expand participation

- Philips R&D Facility
  - Allows Philips to embark in collaborations on ideas only discussed internally and stagnant.
  - Facilities are hub for innovation and have garnered the support of the Dutch government.

Source: Chesborough, Henry and Andre Garman, Use Open Innovation to Cope in a Downturn, Harvard Business Review, June 2009.

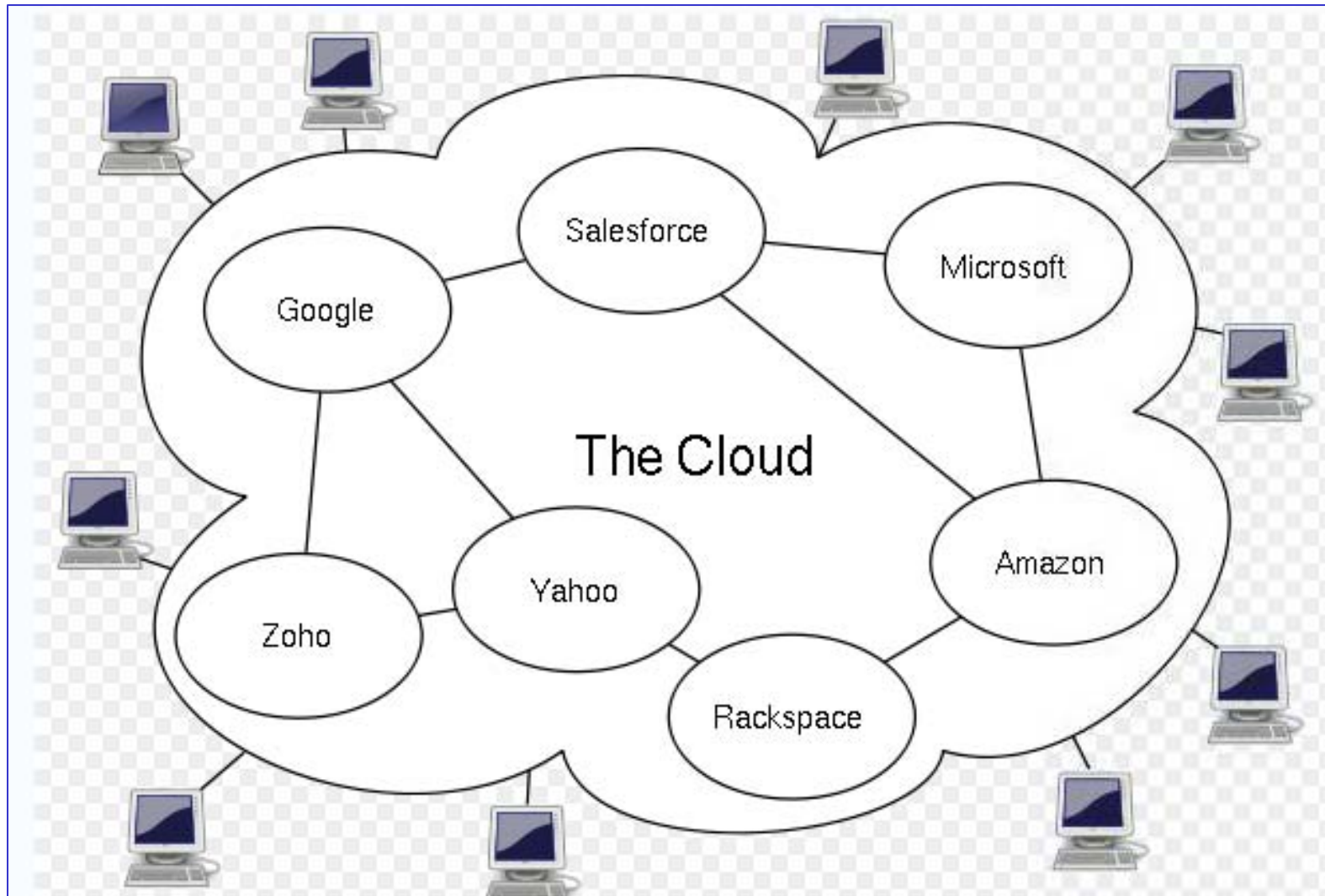


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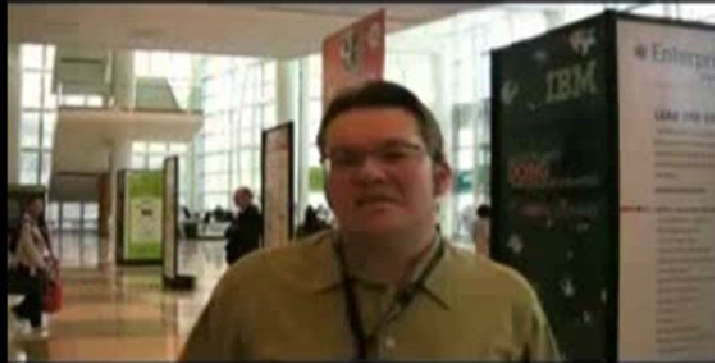
# Google and the Cloud



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## Conclusions

In a recession...

...while the downturn creates serious risks for the IP industry, there are clearly opportunities for companies that continue to invest in IP procurement and protection.



# Conclusions

In a recession...

...companies that act on these opportunities present the greatest risk to those companies that do not act on them.



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# Thank You

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