Editorial

A bid for recognition

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Last year this journal carried a note on the world’s first auction of intellectual property rights, held in San Francisco before the full glare of publicity. Like the Wright Brothers’ first manned flight more than a century before it, the first manned IP auction attracted a mixture of responses. From the cynical and from those whose interests are served by more traditional means of matching IP vendor and purchaser came words of criticism or faint praise: yes, the auction had achieved some sales—but the prices fetched were moderate and the rights on offer were somehow portrayed as unwanted or tarnished by the means selected for their disposal. From enthusiasts and idealists came quite the opposite message: it was an achievement for such an event to have happened at all and the very fact that it had taken place was an encouraging omen, if not a precedent, for the conducting of future auctions.

A year later, the notion of the intellectual property auction has become well-established in the psyche of the intellectual property investor, even if it has not yet become part of his business routine. The prominent presence of IP auctioneers at the International Trademark Association Meeting this spring in Chicago, a wider acceptance of the notion that IP rights have become a commodity in their own right, the perception of a future need to develop further channels for the disposal of securitised rights and the attraction of auctions as an empirical means of establishing the value of an individual right or a bundle of rights—all these factors have softened resistance to the notion that the auction is an apt and desirable means of trading IP rights.

Indeed even conservative Europe, treated to a taste of this transatlantic phenomenon this June, has survived the ordeal and, by all accounts, is not unwilling to repeat it. Cumulative sales on the auction floor (an understated description of London’s Dorchester Hotel) exceeded $8 million, the average sale price per lot reaching $578,607.

Some criticisms of the IP auction may have been neutralised or inhibited by positive talk and by financially lucrative results, but they have not gone away. The sad facts are that you can only bid for what is on offer and that businesses that have developed commercially attractive viable IP assets will not sell them if there is another, more appealing route to their commercialisation: working the asset oneself, the development of a licensing programme or even mortgaging it may all be preferable in any given set of circumstances. No analogy may be drawn with the sale by auction of fine art works either. For a Monet masterpiece the auction room is the method of choice: the painting is a collector’s item, it is unique, its value is likely to appreciate as the passage of time progresses and in accordance with the degree to which comparable works themselves appreciate. For intellectual property rights the position is quite different. Most are of finite duration (patents and designs being particularly so) and their value is more likely to depreciate in the face of competition from comparable products and methods. Further, the most valuable assets—brands that are underpinned by a raft of trade mark registrations, supporting design and copyright and a deep reservoir of know-how, are rarely sold separately from the business that has developed them; they are more likely to be the subject of a takeover bid than an auction bid. Bearing this in mind, it is important not to condemn the IP auction as a failure in terms of the sums offered.

So what is the next step for IP auctions? Will they continue to develop into the pleasurable events that businesses such as Ocean Tomo are seeking to develop, with glossy catalogues, opulent dinners and a good deal of ego-polishing for prospective bidders? Or will they take the discreet and downmarket route of the internet, offering the facility to conduct e-bids and perhaps a wiki for the ongoing maintenance of commercial data, due diligence and suchlike? The answer to this question is driven by considerations of profit, principally the profit of the auctioneer as middle man. The greater the gap between outlay and return, and the greater the absolute magnitude of the latter, the more disposed will be the IP auctioneer to steer his skills into that particular haven.

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