

Big Blue gets its man

Kevin Rivette is one of the pivotal figures in the development of intellectual asset management. He has now surprised many by swapping life as a consultant for the high-profile pressure of a senior position at IBM

There are few books that have had more impact on intellectual asset management than *Rembrandts in the Attic*. Published at the back end of the 1990s, the book demonstrated just how corporations could leverage their intellectual property rights in ways that would have a profound influence on revenue generation and bottom-line return. Critics may look back now and complain that it over-simplified and over-hyped but, at the time, that was no bad thing. *Rembrandts in the Attic* was the book that the IAM world had needed: it helped take IP and other intangibles out of the labs and the lawyers' offices to the very centre of the corporate decision-making process. Now, six years after co-authoring the book, Kevin Rivette has demonstrated just how powerful its message was by joining IBM Corporation as its vice-president of IP strategy.

In leaving Boston Consulting Group (BCG) and joining up with Big Blue, Rivette becomes the most recent of a number of recent hires who are expected to perform IP strategy miracles at large US corporations. Q Todd Dickinson, the former US under-secretary of commerce for intellectual property, left Washington DC's Howrey Simon Arnold & White in 2004 to become vice president and chief IP counsel at General Electric Corporation. In the same year, Hewlett-Packard Company elevated non-lawyer Joseph Beyers to the post of vice president, intellectual property licensing. And Marshall Phelps, who helped develop IBM's licensing programme back in the 1990s, was lured away from the worlds of consulting and venture capital by Microsoft in 2003 to

become that company's corporate vice president and deputy general counsel for intellectual property. For each of them, the job description is simple: they are expected to generate up to US\$3 billion of revenue per year for their companies.

Survival strategies

Of these high-profile names, Rivette is a case unto himself. The patent lawyer turned IP guru will now be required to demonstrate the efficacy of the theories he laid out in his book. *Rembrandts in the Attic*, which became an international business bestseller, is both a cautionary tale about companies that failed to recognise and leverage their IP assets and a recipe for mining the potential riches in a patent portfolio. Rivette's mantra has always been that it is no longer enough for a company to innovate; in today's economy, the company must also protect and leverage its innovations in order to survive and thrive.

But Rivette neither survived nor thrived when he ran his own business. He was founder, CEO and chairman of Aurigin Systems, a Silicon Valley company that developed patent-mapping software and provided IP advice to a number of large corporations including HP, Pfizer and Matsushita. Aurigin went under in early 2002, however, after the company was abandoned by its funders, and its patent-mapping software was acquired by Information Holdings, where it became part of MicroPatent.

Rivette then moved on to become an executive adviser to BCG, which was one of the

founders of iFormation Group, which, in turn, established ipValue Management in mid-2001. In 2002, ipValue entered into a deal with the UK's BT plc to manage the telecom company's patent portfolio in North America with a view to increasing licensing revenue so that by year five of the six-year deal, annual income would be in excess of US\$100 million. Since then, ipValue has also agreed a five-year partnership with Xerox as a result of which the company is now Xerox's worldwide agent for the commercialisation of its intellectual property.

Rivette has been a frequent speaker and participant in international IP-related gatherings, most recently at the Industrial Research Institute's annual meeting in May 2005. He left BCG at the end of May, to move on to IBM.

Patent focus

Although he is a qualified patent lawyer, Rivette has had inactive status with the State Bar of California since 1994. And unlike most other patent lawyers in the US, he does not have an undergraduate degree in technology or science. Rivette has always been much more interested in the business of patents than in the nuances of the technology they protect.

One of the issues Rivette raised early on when he first started talking about IP asset management was the question of who in the corporate structure should have the responsibility for formulating IP strategy. He predicted that conflicts between competing constituencies would arise at many corporations, and that members of the patent bar or corporate patent counsel were not necessarily best suited to take that role. Too many patent counsel, he has said, lack vision

to see beyond building a protective fence around a technology, and then calling in the litigators to go to war against any possible infringers.

The years since *Rembrandts in the Attic* was published in 1999 have seen a proliferation of entities designed to fill that gap by assisting corporations to develop more sophisticated IP policies. Some of the major accounting firms have also tried to position themselves as the natural managers of IP assets. Consulting firms that evaluate damages in big-ticket patent litigation have expanded their range of activities to include transactional consultations.

It's a moot point whether the success of eBay.com was a trigger, but a number of patent-auction websites also came into existence post-*Rembrandts*. One of those, the Patent & License Exchange Inc, developed a patent-valuation system based on the Black-Scholes option-pricing model that won its developers the Nobel Prize for economics in 1997. And in Silicon Valley, economist Patrick H Sullivan brought a number of large international companies together to form the ICM Gathering, at which they meet and exchange IP strategies.

Other key players in the IP asset arena are patent-acquisition companies,

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Kevin Rivette
Rembrandts author entering his Big Blue period

particularly two with connections to former Microsoft Chief Technology Officer Nathan Myhrvold. One company is ThinkFire in New Jersey, run by Daniel McCurdy, who formerly headed Lucent Technologies. The other, Intellectual Ventures, is based in Washington State with Myhrvold at the helm.

The big question in recent months has been why patent-management companies have acquired certain patents, and whether they intend to assert them against big companies like IBM. In a bankruptcy auction in late 2004, the previously unknown company JGR Acquisitions successfully bid US\$15.5 million for a portfolio of e-commerce patents previously owned by the defunct Commerce One. What created the biggest buzz

in the San Francisco courtroom where the auction was held was that ThinkFire and Brissac, which was identified with Intellectual Ventures, bid against each other until late in the auction.

The expectation was that either of the two companies intended to target IBM and Microsoft in efforts to enforce the Commerce One patents. The patents cover a technology for web-based business-document exchange that is widely incorporated into IBM and Microsoft programs. The auction's winning bidder, JGR Acquisitions, is still an unknown entity whose intentions have not been made public.

Choke points

What this has to do with Rivette is that he likes to look at a company's potential choke points,

namely proprietary technology that can keep competitors out of the market place, or at least slow their entry. The classic example he always cited is Amazon.com's one-click method of ordering which, for at least a year, gave the Seattle-based bookseller domination of online book sales.

But perhaps the first choke point he will have to face in his new job at IBM will be the former Commerce One patents. Given that Rivette's approach to IP assets goes far beyond litigation, one could expect any possible enforcement issue to be solved through licensing and other creative leveraging techniques.

At IBM, Rivette will be reporting to non-lawyer Jim Stallings, the computer giant's vice-president for IP and Standards. The choke point issue is also sure to arise *vis a vis* the IBM Strategic Growth Initiative

Stallings heads. This programme includes both IBM's Linux and Grid Computing initiatives. The latter deals with a form of distributed computing that operates in an open system of proprietary rights. The concepts of choke points and open systems seem, on their face, to be antithetical, or at least to contain a great deal of tension.

Many Rivette watchers are surprised to see him move to IBM. They can't quite reconcile the company's legendary blue-suited legions with the free-wheeling Californian who likes to grab vegetarian lunches in nouvelle cuisine bistros and tool around the coastal highway in his Morgan roadster. But they do acknowledge that even as a former patent lawyer, Rivette may well have that essential vision thing down pat. After all, IBM would not be paying for anything less.