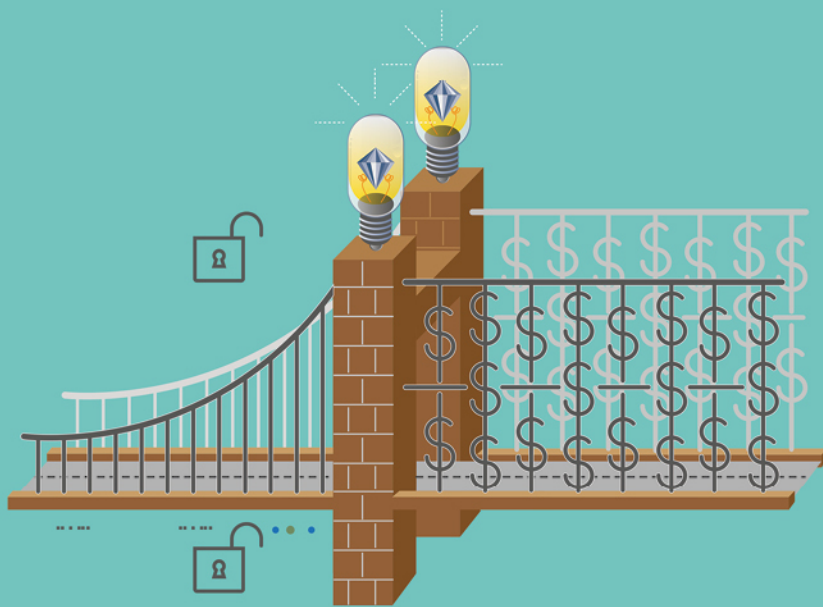


# Unlocking Your IP's Financing Potential

*How to harness IP's hidden value when obtaining funding to grow your business.*





# Contents

<b>Introduction</b>	<b>4</b>
<b>1. How does IP fit with funding?</b>	<b>5</b>
Why is funding such an important issue for IP-rich businesses?	6
What types of funding are best suited to innovative businesses?	6
The three main business funding sources	7
How does IP feature in grant applications?	8
Four questions to ask when applying for grants	9
Why do equity investors care about IP?	10
Barriers to entry and freedom to operate	11
When does IP matter to lenders?	11
Two reasons lenders are starting to pay attention to IP	12
Can I mix and match funding methods?	13
CHECKLIST: Which types of funding might be most applicable to my IP's stage of development?	13
<b>2. What types of IP are finance-friendly?</b>	<b>15</b>
Why might some types of IP be preferred over others?	16
Does size matter when it comes to IP portfolios?	17
What qualities add value to an asset in a financier's eyes?	18
Your pitch checklist: 10 ways to demonstrate IP relevance and quality	19
<b>3. Can IP help me get grants?</b>	<b>20</b>
What sort of companies suit grant funding best?	21
How does grant funding work?	21
What makes grant funding an attractive option?	22
Does having IP improve my chances of getting a grant?	23
Will I create new IP when I get a grant?	23
Main points to watch when creating new IP	24
<b>4. How do I harness IP in equity investment negotiations?</b>	<b>25</b>
What sort of companies suit equity funding best?	26
Pros and cons of using private equity investment to fund business growth	27
What is the connection between IP rights and investment?	27
How does my stage of development affect investors' IP expectations?	28
How important is IP for a stock market listing?	29
How important is IP at exit?	30
How might my IP be scrutinised by investors?	31
CHECKLIST: What questions will an equity investor ask me about my IP?	32
<b>5. How can I leverage IP value in lending?</b>	<b>33</b>
What sort of companies suit debt funding best?	34
What types of regular commercial lending may be relevant?	34
How are my IP rights connected to my cash flows?	35
How different types of IP and intangibles connect to cash flows	36
What restrictions are there on the use of IP in lending?	37
How is a bank likely to view an IP-rich company's balance sheet?	38
What does 'taking a charge over IP' mean in practice?	39
CHECKLIST: What information may a bank request from me if I invite them to take my IP into account?	40
<b>6. Where do I get help?</b>	<b>41</b>

# Introduction

In knowledge-based markets, nothing stays still for very long. Keeping ahead of the competition requires a continuous process of innovation. If this costs more than you can fund from retained profits, then you'll need to look for external sources of funding to support your plans.

This guide sets out to explain the funding landscape from two IP-related angles. The first concerns the routes you might take to fund the creation of your IP; the second looks at the routes you can take to fund more IP, once you have some already.

**Chapter 1** sets the scene by considering why and how IP and funding often go hand-in-hand. It introduces the principle of risks and returns to explain how each main type of funding may suit different development stages. It explains in general terms how IP is a consideration in equity investment, debt finance and grant-awarding, and how you might combine them to raise the funding you need.

**Chapter 2** starts from your IP. It looks at the characteristics of intangible assets that are likely to make them more or less well suited to use for raising finance, providing a 'scorecard' to help you determine where you might be on the IP attractiveness scale.

**Chapter 3** focuses on the type of funding which is most commonly associated with IP-intensive companies: equity investment. After characterising the types of business for which selling shares makes the most sense, it examines why IP matters to investors, how their expectations may vary by development stage, and what 'due diligence' they may conduct on it, with a checklist to help you prepare.

In the past, it has generally been the case that lenders took little notice of IP and intangibles. However, now that growing companies typically have few of the tangible assets banks like to use as collateral, IP is starting to become a consideration. **Chapter 4** sets out the main types of debt available, the types of IP most likely to be considered valuable and how security is taken over them, and the limitations that banking regulations impose on IP use.

**Chapter 5** concludes the guide with a section on grant funding. It considers who can qualify, what strings may be attached, and how grant awards can help businesses secure other forms of finance. It also considers how to look after the new IP that a grant award is likely to help you create.



Produced by **IPOS International**, these intellectual property management (IPM) business guides aim to deliver a suite of IP solutions for enterprises based on industry best practices. As the expertise and enterprise engagement arm of the Intellectual Property Office of Singapore (IPOS), IPOS International helps enterprises and industries use IP and intangible assets for business growth. Some of these engagements may be eligible for Enterprise Singapore (ESG) funding, such as the intangible asset audit and strategy development aligned with business goals. IPOS International's business portal [www.iposinternational.com](http://www.iposinternational.com) also contains case studies and videos of enterprises leveraging IP to gain a competitive edge in their innovations. Should you have questions on IPM matters or wish to speak with our Intellectual Property Strategists, do email us at [enquiry@iposinternational.com](mailto:enquiry@iposinternational.com) or call **+65 63308660**.



# How does IP fit with funding?



## FUNDING 01

# 1. How does IP fit with funding?



## Why is funding such an important issue for IP-rich businesses?

It is possible to start a successful business with just a few dollars. However, IP-rich companies seldom fall into this category. Putting a novel idea into practice normally takes money—and many businesses need to fund on-going investment to stay competitive.

“Big ideas often need some form of external financial support to help realise them”

In some industries, like biotechnology and pharmaceuticals, developing strong and valuable inventions may take years and involve successive, multi-million-dollar funding rounds. Where there is no fundamental science to be explored, inventions can often be brought to market for much more modest sums of money, but may still involve setting up a factory or store, equipping a production line, writing reams of code, paying for raw materials and/or recruiting staff before any cash starts flowing in. Also, whenever you are selling something underpinned by IP, there is (by definition) some difference between what you are offering and the ‘status quo’, so you may need to pay to promote your new product or service for some time before you develop traction and profits.

For all these reasons, entrepreneurs and businesses that have a ‘big idea’ often need money from elsewhere to make it a reality. Fortunately, one of the advantages of IP is that it can help businesses achieve much higher returns on their investment because they can protect their points of differentiation. That can make fundraising a bit easier.

## What types of funding are best suited to innovative businesses?

If you need to seek external funding for your business, you are likely to have three main options: applying for a grant, selling shares in your business, or borrowing money from formal or informal sources. IP is potentially important to obtain any of these, but its relevance will vary depending on your development stage.

The key point to bear in mind is that the **rewards** that can be unlocked with IP have to be balanced against the associated **risks**. Successful inventions, brands, designs and creative content (and the IP rights that support them) can be worth vast sums, but unsuccessful ones are generally worth little or nothing. For financiers, these costs are usually ‘sunk’ because there is a low prospect of cost recovery if market acceptance does not materialise (despite everyone’s best efforts).

The three main sources of funding for innovation can be summarised in terms of their risk appetite, which in turn has implications for their likely relevance to your particular situation.

## The three main business funding sources

	Type	What is it?	Typical sources	Risk appetite
1	Grants	<i>A grant is money that you don't have to pay back. It is usually provided for a specific purpose</i>	<b>Government and industry bodies, charities and research foundations</b>	<b>High</b> —grants generally aim to encourage and support the sort of scientific, cultural or artistic work that would struggle to find commercial backing due to the risks involved
2	Equity investment	<i>Equity means dividing up ownership of your company by inviting other people to buy your stock—in anticipation of capital value appreciation, dividend payments or both</i>	<b>Informal investors (friends and family), crowdfunding platforms, business angels, syndicates, venture capital firms, private equity companies, stock markets</b>	<b>Medium</b> —equity investors can negotiate larger stakes for their money when risks are higher, and some like to 'get in early' for this reason. However, there must still be a compelling business case for all types of equity investment (except perhaps 'friends and family')
3	Debt finance	<i>Cash may be made available to creditworthy companies, in the form of working capital facilities (typically overdrafts), project finance, term loans or specialist products like venture debt</i>	<b>Banks, alternative finance providers and specialist funders (including peer-to-peer lenders)</b>	<b>Low</b> —lending markets are highly competitive which means that margins are comparatively low. Defaults therefore have to be low as well. Also, there is no extra upside for a lender if a business does spectacularly well

# 1. How does IP fit with funding?

## How does IP feature in grant applications?

Innovation generally involves risk and uncertainty. Recognising that for some firms, getting (or staying) in front may cost more than a company can fund from its resources or profits, some sectors offer financial incentives to encourage companies to invest in developing new IP.

Grants are especially important to early-stage businesses looking to develop IP, across a range of activities ranging from cultural and artistic works to fundamental scientific research. Grants generally come from public sources such as government agencies, or industry bodies like scientific foundations: they offer funding that does not have to be repaid (if you do have to repay, you are really looking at a 'soft loan' not a grant).

This type of funding usually concerns an activity that is relatively self-contained and has clear pre-determined deliverables. Importantly, these aims should be things that would not have happened otherwise, otherwise there will be no 'additionality'. They might require some collaborative development activity, or be done by one company.

Apart from the type of grants that are provided for infrastructure or community projects, it is generally expected that a successfully funded project will produce some new intangible assets, which may include registrable IP rights. Having a track record of creating and filing for IP is, therefore, an important credential, as Chapter 3 explains.



## Four questions to ask when applying for grants

	Question	Explanation
1	How much match funding do you need to find?	<i>Grants often have at least some requirement for a financial contribution (or sometimes, an 'in-kind' contribution based on time invested). If you can't obtain the match funding that is required, a grant might not be the best way of advancing your idea.</i>
2	Will anyone else try to claim ownership over the IP?	<i>Confirm where the rights to any intangibles and IP will reside: under some circumstances, the grant-giving body could acquire rights to own or exploit them.</i>
3	Are IP protection costs eligible under the grant conditions?	<i>If you do create potentially valuable IP as a result of your grant, you will want to take steps to protect it, which might include professional advice and statutory filing fees. It is wise to determine whether you can reclaim these as part of the project you are contemplating.</i>
4	When can you claim?	<i>You may only be able to claim in instalments, or on completion, and you may need to provide evidence of defrayal (actual payment, not just commitments to incur costs) before you can 'get your money back'. You may have to plan your cash flows quite carefully to ensure you can complete the project.</i>



A separate guide in this series—**Partnering For Commercial Advantage**, sets out some of the key points to bear in mind when entering into grant funding applications with research institutions, universities or other commercial partners. It is worth noting that many types of IP investment can attract tax perks—these are covered in another guide—**Making Tax-efficient Use Of Your Assets**.

# 1. How does IP fit with funding?

## Why do equity investors care about IP?

Taking shares in a company aligns the interests of both parties. Generally, an investor is looking to make a return by selling a stake that has increased in value. Therefore, anything that helps a business to grow, and makes it more likely to become an acquisition target, is of potential interest; IP falls into this category.

It is important not to overstate the role IP plays. Outside of a few very specialised and highly technical areas, most investors will generally prefer to back a great team with an average idea than an average team with a great idea.

The thinking is that a great team is more likely to make an idea work, at least to some degree. Also, investors understand that you may need their money to **create** the IP in the first place (or to make more IP to strengthen your portfolio) and that the important assets your business will ultimately have might not be visible for some time.

That said, as Chapter 3 sets out, investor expectations will vary depending on the development stage of your company and its intangibles. They also appreciate that, when a company is starting out (and in many cases, even as it grows), its most important and valuable ones are likely to be intangible. Accordingly, if you are looking to negotiate a value for shares you wish to sell to raise capital, you may well have to justify it by referring to the existing or potential value of your IP—if only because there may be few other 'hooks' that you can credibly use.

There are two key aspects of IP that make it important in attracting investment. While the terms used may vary, these are commonly referred to as **barriers to entry** and **freedom to operate**.

## Barriers to entry and freedom to operate

	Type	Why	How IP helps
1	Barriers to entry	<i>If you have a new creative or inventive proposition that needs investment, any investor is likely to ask, 'what's to stop everyone else copying you if it turns out to be any good?'</i>	<b>IP protection provides an answer to this question because it provides a means to stop imitators and pursue them for damages (if resources permit)</b>
2	Freedom to operate	<i>This is the 'flip side' of point 1. An investor will want to be confident that you are not likely to get prevented from trading or taken to court by a competitor because you are infringing their rights</i>	<b>It is very difficult to be 100% sure that you are not infringing anyone else's IP. However, if you have secured your rights, it shows you are aware of the issue and have done some homework. If someone does accuse you of infringement, at least you have assets that might form the basis of a counter-claim</b>

Chapter 2 explores which assets might be most important in securing investment under different circumstances—but in general, the more creative or inventive your idea, and the more you can claim that you have a decisive advantage over your competition, the more investors will expect to see IP at the heart of your strategy.

### When does IP matter to lenders?

Since lenders earn money by charging interest, they need to be confident that borrowers have the ability—and the intention—to honour their commitments. Where assets support cash flows, they may be taken into consideration for serviceability, and lenders may also take them as security to create an additional incentive to repay.

As with equity investment, it is important not to overstate the role that IP plays in lending. Many banks have become accustomed to ignoring both on- and off-balance sheet intangible assets because they assume they have no realisable value. Further, for reasons set out in Chapter 4, even if your bank understands your IP and takes a security interest over these assets, it will not be permitted by current regulations to allocate a realisable value to them—at least, not in the way that it could harness your house, office, factory, lorry or van (or even your invoices).

However, times are changing. With growth businesses now typically investing more in intangibles than in so-called 'hard' assets, lenders are running out of conventional collateral to rely on, and any they can secure is increasingly divorced from the real sources of value and cash flow within their client companies.

# 1. How does IP fit with funding?



Specialist lenders have now shown how asset-backed finance, venture debt and even unsecured cash flow lending can benefit from understanding the assets that really make a business ‘tick’. Accordingly, the chances that your IP will be taken into consideration in some way, if only as a ‘comfort factor’, are increasing.

If a lender does take an interest in your IP, they will probably want two main things: a clear inventory setting out what all your intangible assets are (and how they add value to your business and help secure its cash flows), and an IP valuation report so that they can see whether the contribution these assets are making is a material one. Their requirements are considered in more detail in Chapter 4.

## Two reasons lenders are starting to pay attention to IP

	Reason	How IP helps
1	<i>The IP-led investment profile of technology and knowledge-based firms often means they have weaker-looking balance sheets. This is because it is not permissible to capitalise IP at the value it contributes to a business, and because a lot of costs of innovation will be ‘sunk’.</i>	<b>If a lender can understand how much you have invested in your IP and what assets this has produced, they may be able to take this into account when looking at your historical profitability, and understand your true ability to repay borrowings.</b>
2	<i>Companies are increasingly unable to provide the forms of readily tradeable, tangible assets that banks and their regulators are accustomed to using. Even where they can, these ‘hard’ assets are increasingly peripheral to the ways in which knowledge-based companies drive value.</i>	<b>Lenders can take charges over IP and intangible assets that are actually driving your business, so that they have more effective recourse to them if you get into difficulties.</b>

A separate guide in this series—**Uncovering your Hidden Value**, explains how IP valuation works and why accounting regulations make it increasingly necessary.



## Can I 'mix and match' funding methods?

“Most forms of funding are not mutually exclusive—you can 'mix and match'”

While the three main funding routes are very different and work best at different stages of development, they are not mutually exclusive. Equity investment often works well with grant funding, and debt can also be used to make equity investment go further and last longer. Generally, the more sources of funding you can access, the better!

As one example, investors are generally more willing to support early-stage businesses that can show they can attract grants. Because grant funding is **non-dilutive**, a business can obtain more money with a smaller equity raise (which reduces existing shareholdings less).

This works both ways. Larger grants are generally easier to obtain if an enterprise can show that it can raise match funding. Also, some grants are only reclaimable periodically against milestones, and on proof of expenditure, so you will need additional cash to have the money to spend while you await reimbursement.

Lenders also like to see a strong equity commitment to a business. This counts as 'skin in the game'; it shows there is a group of people who may be prepared to stand behind the company if it gets into difficulties. Where new ventures have accumulated a substantial amount of equity backing, specialist lenders may offer venture debt as a 'top-up' based on the business and technology due diligence already conducted.



### CHECKLIST

## Which types of funding might be most applicable to my IP's stage of development?

**NOTE:** The following table does not apply if you are a listed company (with access to stock markets), or already making money from other activities.

✓	Development stage	Grant?	Why/why not?	Equity?	Why/why not?	Debt?	Why/why not?
	Idea	Y	Support may be available to determine feasibility and size markets	N	Too early for anyone except family and friends—there needs to be a plan!	N	You don't have cash flows. Your only option is to borrow on your personal account
	Build specification	Y	Where you have a specific defined project, grants can help you fund it	Y	But only for investors with high risk/high return appetite	N	No cash flows

# 1. How does IP fit with funding?



✓	Development stage	Grant?	Why/why not?	Equity?	Why/why not?	Debt?	Why/why not?
	<b>In build</b>	<b>N</b>	<i>Grants are less likely to be available for something you're already doing</i>	<b>Y</b>	<i>Once project is underway, additional investor groups may relate to it</i>	<b>N</b>	<i>No cash flows</i>
	<b>Near market</b>	<b>Y</b>	<i>You may be able to obtain help with market access, especially international markets</i>	<b>Y</b>	<i>Risks reducing, so the range of potential investment sources will be increasing</i>	<b>N</b>	<i>Sorry, still no cash flows...</i>
	<b>On sale</b>	<b>N</b>	<i>Once you're up and running, grant givers will usually prioritise other applications</i>	<b>Y</b>	<i>This is 'scale-up' territory where risk is further reduced but significant returns can still be made</i>	<b>Y</b>	<i>Once you have sales, debt products like invoice discounting become possible</i>
	<b>Established</b>	<b>N</b>	<i>Mature IP and companies do not usually meet the additionality requirements of grant funding</i>	<b>Y</b> <i>(large and high growth-firms)</i>	<i>To secure an ongoing flow of capital, a firm may list on a public market, increasing share liquidity</i>	<b>Y</b>	<i>This is debt's 'sweet spot'—borrowing is limited only by your cash flows, profits and collateral</i>



# What types of IP are finance-friendly?

02

## 2. What types of IP are finance-friendly?

### Why might some types of IP be preferred over others?

**W**hen it comes to supporting finance applications, not all IP assets are created equal. While the overriding factor will be their relevance to your business, it is helpful to be aware that in some industries, a kind of 'hierarchy' is likely to be at work.

In terms of **relevance**, the assets likely to be most helpful will depend on your sector and your business model. If, for example, your company engages with the general public and needs to compete directly with other firms offering broadly similar goods or services, then strong brand protection and promotion are bound to be business-critical. In relation to these aspects, registering trade marks (in all your major markets) will be a very important element in protecting your interests. If on the other hand your activities are technical and you trade based on significant product differentiation, patents are more likely to be the priority.

This isn't quite the full picture, however. The following table provides some useful pointers on the attitudes you may encounter from an 'IP savvy' financier towards your rights and trade secrets.

Type of right	Likely financier attitude	Follow-up questions you may be asked
<b>Granted patent</b>	<i>Provides evidence that you are doing something novel and inventive—because an independent examiner has said so. Should be enforceable, and may have transferable value.</i>	<ul style="list-style-type: none"> <li>• What does it cover?</li> <li>• What territories are protected?</li> <li>• How much will it cost to maintain?</li> <li>• Who else has similar rights?</li> <li>• What is the likelihood of legal action?</li> </ul>
<b>Patent application</b>	<i>Indicates you have a claim to be doing something unique. Shows you understand the importance of protecting your IP.</i>	<p><b>All of the above, plus:</b></p> <ul style="list-style-type: none"> <li>• Is it likely to grant?</li> </ul>
<b>Trade secrets</b>	<i>Accepted as the best way to protect some processes and methods that would be copied if they were patented. You may face some scepticism about how 'real' they are.</i>	<ul style="list-style-type: none"> <li>• Why did you decide to use secrecy?</li> <li>• Are your secrets truly unique?</li> <li>• Aren't they just know-how?</li> <li>• Who knows them? How committed are they?</li> <li>• Can you really protect them?</li> <li>• What steps are you taking to protect them?</li> </ul>
<b>Registered trade mark</b>	<i>Especially important for a 'B2C' proposition, but value very closely tied to your business's fortunes</i>	<ul style="list-style-type: none"> <li>• What markets are covered?</li> <li>• Are they the right ones?</li> </ul>



Type of right	Likely financier attitude	Follow-up questions you may be asked
Registered design	<i>Can be useful, but have a reputation for being easy to design around and hard to enforce (because they are not examined).</i>	<ul style="list-style-type: none"> <li>• Is your styling truly distinctive?</li> <li>• Do you have anything patentable?</li> </ul>
Copyright assets	<i>Have a history of being used for a range of transactions for books, films and music. May not be seen as offering very strong protection for software, as imitators may copy the idea, not the code itself.</i>	<ul style="list-style-type: none"> <li>• How does this protect your business model?</li> <li>• Are there licensing opportunities?</li> </ul>



*It is important to remember that people's level of IP knowledge varies widely. Many will not be as savvy as the hypothetical financier above! If IP rights are important to your business and differentiate it from your competitors, the onus will be on you to get this message across in your presentations clearly and compellingly.*

## Does size matter when it comes to IP portfolios?

Most funders understand that the breadth of a company's IP portfolio is related to its development stage, so will not expect an early-stage company to have a mature or extensive set of rights. Getting as many assets registered as possible is unlikely to be the priority: it is more important that the IP a company owns or will own in future, supports its business model.

As explored in more detail in the following chapters, it may well be that you need investment to create the rights you need to drive your business forward. The following table, organised by broad development stage description, provides a summary of what investors and lenders might reasonably expect you to have in place at different points in your innovation journey.

Development stage	Likely priority
Idea	<i>No-one will have expected you to have applied for any IP rights yet, but you will need to show you understand how IP is going to be important to your business, and appreciate the importance of keeping ideas confidential.</i>
Build specification	<i>You should have a business plan with an IP strategy section in it. You should have done some research into the availability of the rights you think your business may need.</i>
In build	<i>You could usefully be applying for rights at this point, though you may need to refine the details at a later stage in the build.</i>

## 2. What types of IP are finance-friendly?



Development stage	Likely priority
Near market	<i>You are approaching the point at which other people will become aware of what you are doing, so you should definitely be applying for any protection that is identified as important to your business by now.</i>
On sale	<i>The disclosure that happens at this stage will most likely prevent you from patenting anything if you have not already done so. However, you should still be able to register trade marks. If you have started your IP journey earlier, you may by now have identified more things to protect.</i>
Established	<i>At least some of your rights should be granted/registered and in force.</i>

If patents are important, and their importance has been recognised, you might expect that more patents would equal more value. More is not worse—but it is not necessarily better, either, because international studies show that even in a large company's patent portfolio, it is unlikely that the percentage of patents that really drive and generate value will be in double digits.

Having more rights than you need or use can have a negative implication because it adds cost (especially in terms of renewals), and could imply that you have not thought carefully about commercial utility. Financiers may not want to fund the process of casting a very broad net on a 'just in case' basis. They will, however, expect that you have thought about territories when deciding what you need to protect and where so that your most important revenue- and value-generative assets are covered.

### What qualities add value to an asset in a financier's eyes?

If IP rights are integral to your business model—and they often are, in the case of growth businesses—you can expect them to be subjected to additional scrutiny in the funding process, especially if you are hoping to bring equity investors on board.

While it is important to understand that investors, lenders and grant giving organisations are not necessarily very well versed in IP matters, what counts is your ability to describe what you have and the purpose it serves compellingly. How much notice financiers take of your IP is partly down to how well you explain why it matters and how your rights compare with those of your competitors.



## YOUR PITCH CHECKLIST

### 10 ways to demonstrate IP relevance and quality

How many of these points have you included within your funding proposal?

Every business is different, and this is not an exhaustive list (this guide also contains checklists tailored for equity and debt funding). However, it will help you to work out which qualities your IP portfolio possesses, and confirm whether you have featured all the relevant ones in any slide deck or presentation you are making.

Attribute	Ways to demonstrate or quantify	Covered?
Competitor intelligence	<i>Explain the main points of your IP strategy and show how your invention or creation differs from and is better than your competitors.</i>	
Application status	<i>Set out any rights that are registered or granted, and make the point that they have enforcement potential.</i>	
Spread within type of IP right	<i>Show that, within the types of IP protection that are most relevant for your business, you are not reliant on one asset but have several 'irons in the fire' (you are building a wall, not relying on one brick).</i>	
Spread by type of IP right	<i>Explain how your business model is supported by a variety of different IP rights (preferably registered or granted ones, depending on your development stage).</i>	
Support for a unique selling point (USP)	<i>List important features your products or services have (or will have) that are demonstrably underpinned by IP rights, making them harder to copy.</i>	
Support for a whole business	<i>Alternatively, explain how your business model is underpinned by enforceable IP rights.</i>	
Geographical coverage	<i>Demonstrate that you have obtained, or are in the process of getting, good IP coverage in all the markets that account for a material proportion of your production and/or sales.</i>	
Status in the landscape	<i>Explain how your IP has helped you carve out and maintain a niche in the competitive landscape, backed by evidence from your incomes and/or market share (this shows your IP is not only distinctive but also value-additive).</i>	
Lack of replicability	<i>Where applicable, make the point that you can do something <b>no-one else can</b>, and you have the IP strategy and the IP rights to back this up. Investors find this particularly attractive, provided you can demonstrate it to be true.</i>	
Proof of enforceability	<i>If you have successfully defended your IP in court or used it to pursue an infringer and extract compulsory licence fees and/or damages, your IP has incontrovertible worth—don't forget to mention it!</i>	



# Can IP help me get grants?



03

## What sort of companies suit grant funding best?

**G**rants have several attractions which are particularly important for start-up enterprises and companies seeking to innovate and grow. They can be significant enablers of new technology development and adoption.

Generally, grants are most generous for younger businesses. In Singapore, there are dedicated support packages which include grant funding for entrepreneurs seeking to commercialise an innovative idea, and who may not even have formed a company yet.

For start-ups, the benefits of grants are not limited to cash. Some schemes are connected with physical 'incubators' or 'accelerators' which makes networking easier from the very start. Others involve an element of mentoring to assist with the growth journey.

Small- and medium-sized enterprises can benefit from a variety of schemes designed to support innovation and export. Larger and more mature businesses may also be eligible to benefit from grants that are specifically designed to facilitate the introduction of new processes and new technology.

For these reasons, any business that is creating new IP (or thinks it will create new IP in the near future) would be well advised to familiarise itself with Singapore's grant landscape.



*Enterprise Singapore is your gateway to a range of government-backed grants for which start-up businesses and innovative local companies may be eligible. These grant programmes are subject to periodic revision to ensure they stay appropriate and competitive, so always ensure you are looking at the very latest initiatives.*

## How does grant funding work?

**G**rants usually require companies to provide an element of 'match funding'. This commitment may be expressed in different ways. It may vary according to your stage of development.

Start-up programmes may offer a 3:1 ratio (\$3 for every \$1 raised) or up to 70% funding for research and development projects carried out by small- and medium-sized enterprises. In some cases, the matching requirement may involve increasing share capital to demonstrate commitment and offset risk, which has much the same effect. Enterprise Singapore is your first port of call to confirm the eligibility criteria for the latest forms of support that are available.

In Singapore, you can obtain grant support not only for initial research but also for implementation and market entry (including international markets) and for adopting new technologies that will help your business become more efficient. Some programmes are sector-linked (though a range of sectors may qualify), while others are more generally available.

### 3. Can IP help me get grants?



It is always advisable to read grant payment conditions carefully to plan your cash flows. Some programmes pay on milestones, while others only on proof that related costs have been defrayed (i.e. not only incurred but spent), which may mean payments are less frequent. The costs that are eligible will also be specified, and may only cover certain particular aspects of the project you have in mind. Also, they may or may not include the costs of obtaining IP rights to protect the inventions that may result.

As well as grants, it is worth remembering that Singapore businesses can obtain attractive tax perks in relation to their investment in IP. A separate guide in this series—**Making Tax-efficient Use Of Your Assets**, contains further details.



#### What makes grant funding an attractive option?

No	Attribute	Implications
1	(Usually) non-dilutive	<i>While there are some exceptions, you do not normally have to give away shares when you are awarded a grant, and it makes the money from any equity investors go further.</i>
2	Not repayable	<i>Provided that you achieve your project's objectives (and you don't act fraudulently!), you would not normally be expected to pay back any grant funding you have been awarded.</i>
3	Has a signalling function	<i>Since a grant award requires your proposals to be independently scrutinised, it may help to persuade other funders to support you.</i>
4	Enables you to experiment	<i>Grants are generally provided to help companies research and investigate ideas that are at an early stage. They can help you with the costs of trying something new and reduce the risks to your business if things do not work out as hoped.</i>

## Does having IP improve my chances of getting a grant?

**M**ost companies seek grant funding because they are looking to create knowledge that will become an intangible asset. However, some programmes will require evidence that you already have IP. Showing that you have a proven capacity to innovate should make any grant funding application more credible.

The grants that are most likely to reference existing IP are related to 'proof of concept' or 'proof of value' work. These may contain a specific requirement that the technology or science focus must represent a clear breakthrough that has the potential to disrupt an existing market or create a new one.

Such grants have a particular focus on the current status of the applicant's IP and how this provides a foundation that will contribute to a successful outcome. They will also expect new IP to be created, as a result of the activity the grant is funding.

As a result, grants like these have a useful 'signalling' function to equity investors. As well as providing another source of funding which is non-dilutive, a successful grant application demonstrates that your plans have been subjected to a degree of independent scrutiny and are considered to be sufficiently well-differentiated to qualify. The more competitive and rigid a grant is, the stronger a reference it provides.



*When planning your funding strategy, you may need to tap into more than one source of finance. If so, make sure you do things in the right order. You may find it beneficial to be able to show that you have secured grant funding before you approach equity investors.*

## Will I create new IP when I get a grant?

**G**rants are not normally provided for 'business as usual' purposes: rather, they are aimed at helping companies make 'step changes' they would otherwise struggle to fund. These changes usually result in intangible assets being created, many of which will be protectable using IP rights.

This means that whenever you apply for grant funding, it is important to be aware of the IP-related consequences and consider how best to deal with them. These will vary depending on whether you are conducting the grant-funded project on your own, or in conjunction with partners and collaborators.



*Grants may be awarded for projects that are collaborative and involve working with other companies, universities or research institutes. Under these circumstances, the ownership of the IP may not be straightforward, and will definitely need advance planning. Another guide in this series— **Partnering For Commercial Advantage**, highlights key issues for consideration and how to address them: here, it is assumed that no formal collaboration is involved.*

### 3. Can IP help me get grants?

Before starting a grant-funded initiative, you will need to have done your homework in respect of your competitors' activities and the extent to which you have room to innovate profitably. It will be important to bear these findings in mind throughout your project to make sure your scope of work does not drift into areas that are already covered by granted patents or served by companies who own other relevant rights, where you may run a risk of infringement.

If all goes well, you should create new knowledge and insights that will translate into enforceable IP rights. In most cases, where no collaboration is involved, ownership of these rights should be yours to exploit in future, and you can expect this to be the case with most government-backed grant schemes.

Industry-specific grant programmes may have different rules, however, and grant-giving bodies can end up owning some rights to your inventions in exchange for their funding. This is a good reason for reading terms and conditions carefully before making any commitment.

#### Main points to watch when creating new IP

No	Points to watch	Explanation?	Remedies
1	<b>Your IP ownership gets undermined</b>	<i>A supplier might provide technical or creative input into your grant-funded project and assert ownership rights to the assets you create subsequently</i>	<i>Use non-disclosure agreements when working with any suppliers or partners on grant-funded projects.</i>  <i>Ensure that any services you obtain under contract (such as for consulting, design or tooling) contain clauses that assign any IP ownership to you on payment.</i>
2	<b>You do not take timely action to protect new IP</b>	<i>You may invent or discover something of commercial value which you disclose or reveal and prejudice your ability to protect it via patents, registered design rights or other means</i>	<i>Determine whether the costs of IP protection constitute eligible expenditure under the terms of your grant.</i>  <i>Keep a secure record of all findings that might constitute patentable material and update it regularly during the course of the project.</i>  <i>File for protection in a timely manner: if an invention requires further development before you can tell what to protect, keep it secret in the meantime.</i>



INVEST



TRADE

# How do I harness IP in equity investment negotiations?



04

## 4. How do I harness IP in equity investment negotiations?

### What sort of companies suit equity funding best?

**E**quity fundraising necessitates selling part of your business. It involves bringing in brand new shareholders, and/or enabling people who are already shareholders to increase their stake in your business. Equity funding is a great way for early-

stage and fast-growing businesses to raise capital but needs to be entered into with care, because your interests and those of your investors may not always be a perfect fit.

Bringing in new and independent investors is an excellent way to obtain more than just cash. It can be especially beneficial for a young business; because investors want you to succeed, they are often prepared to contribute their expertise and connections. If you know that there are areas of your proposition or your team that need strengthening, you can focus on attracting investors who can address them.

As your business matures, debt finance usually becomes a more attractive option, simply because it does not dilute your longer-term returns. However, you may find it difficult to borrow money, at least from conventional sources, until such time as your profits become reasonably predictable. Therefore, if you need to 'pivot' your business model, finance R&D activity for the longer term, or expand into new markets, the scale of your growth opportunities you are running may make venture capital or private equity investment (or even a listing on a publicly quoted market like the Singapore Exchange) the most viable options.

There are a few downsides of equity funding which it is advisable to take into account. Every time you sell shares, you give up an element of control in your future. When dealing with private investors, you, therefore, need to do some due diligence on them to understand their typical 'modus operandi'; you do not want to end up with a cuckoo in the nest!

## Pros and cons of using private equity investment to fund business growth

Pros		Cons	
✓	Can be used to fund business plans that carry risk (for example, because they are unproven or disruptive)	✗	Investors expect a substantial return on investment to compensate for elevated risk, so equity is not well suited to situations where growth is slow or incremental
✓	Creates an opportunity to access knowledge, expertise and connections of your investors and build out your 'team'	✗	Gives up a measure of control in your business, which may require you to gain more widespread approval for future decisions
✓	Can be used to raise small or large sums—there is no predetermined amount	✗	Institutional investors (like venture capital funds or private equity firms) often impose conditions or restrictions which may limit your freedom (for example, to hire people or spend money) without permission
✓	Does not require your business to be profitable at the time of fundraising	✗	Crowdfunding platforms and other syndication exercises may leave you with a wide variety of investors who prove hard to manage
✓	The more your business is worth, the less equity you have to give away in order to raise a given amount of investment		

### What is the connection between IP rights and investment?

**B**y definition, investment is always made in expectation of a return—otherwise, it's a gift! IP matters to investors because it increases the chances that a return will materialise. It may also be the only thing of value within the business at the time funding is being sought. However, it is important to understand that IP on its own is unlikely to be sufficient to obtain funding.

While your company remains relatively young, it is unlikely to have a great deal of 'substance' on its balance sheet. Your value to investors will be determined by the extent to which you can carve out your own profitable niche in a market that interests them. This requires you to have some form of competitive advantage, which is where IP comes in: it is at the heart of scientific breakthroughs, new product designs, branding and all forms of creativity.

## 4. How do I harness IP in equity investment negotiations?

Investors expect IP to be part of a business proposition because it supports profit generation in several ways. It provides the legal mechanism by which companies protect the attributes that make them distinct and special because it provides a basis for tackling imitators. This, in turn, allows a business to reap the lion's share of returns, which can then be shared with the investor.

Investors will take some comfort from the fact that your IP is well protected. It is much better if it includes rights like patent applications that have undergone an independent examination. However, it is important to recognise that IP is unlikely to be enough to secure investor commitment on its own. This is because history is littered with great ideas that never became commercial successes. Also, in markets that need a lot of education and development, it is sometimes the second company to enter them that makes the greatest impact, simply because they have an opportunity to learn from the mistakes made by the first one.

You can, therefore, expect investors to be most interested in whether you have a big market opportunity and a credible plan to achieve it. They will also want to know a lot about you and your team and your respective skills and experience. They will typically focus more on these aspects than on trying to assess whether your technology is any good.

*“IP matters in investment, but is not enough on its own”*

### How does my stage of development affect investors' IP expectations?

Investors appreciate that few early-stage companies will have had the time, or money, to accumulate an impressive set of granted or registered assets. However, venture capital firms may have higher expectations. As a minimum, you should ensure your IP portfolio should be appropriate for your size and stage of development.

*“Make sure your early marketing efforts do not prejudice your chances of obtaining good IP protection”*

If your business is at a pre-start-up stage, you may fear a 'Catch 22' when talking about IP with investors, simply because you need their money to secure the rights that will create future value (among other things). This is not necessarily a problem, provided you have done your IP homework and can identify what rights you intend to obtain and when. Investors will have little appetite for a business that has a great idea but does not seem to realise that other, more established companies are likely to 'muscle in' the moment it becomes successful.

There are also some rights that you need to have secured, or at least applied for before you commence trading. Patents are a case in point because you risk having been deemed to have disclosed your idea when you bring a product to market (or make it public in any other way). Going too public with what you are doing might not only preclude patenting but inadvertently prevent you from being able to maintain a potentially

valuable trade secret. If you get this wrong, you will quickly undermine investor confidence.

As your business gathers traction, and it becomes clear you have a scalable model, you may need to raise larger sums of money (sometimes called a 'Series A' round). Investors are likely to be larger, and their interest in your IP portfolio will be keener. They will have a legitimate expectation that at least some of the money you have invested in your business to date will have been used to protect it against imitators.

This is the point at which aspects such as territorial IP coverage become important. If you do not have protection in all the countries which you expect to be important for income generation (or worse still, if you have missed out on the opportunity to obtain it), you may face some tricky questions. You are also likely to be asked for more detail about IP infringement risks.

Investors recognise that IP protection takes time to put in place. Generally, the more value you are placing on your business, the more they will expect the fundamentals of your IP protection to be in place.

## How important is IP for a stock market listing?

Companies that grow very rapidly can find that their best funding option is to apply for a listing on the stock market. When preparing a prospectus, attention to your competitive differentiation is likely to be very important. You will also need to have a well-evidenced basis for your opening share price; IP can have a role to play here too.

Publicly quoted companies have access to a much larger pool of capital and a wide range of funding sources. Stock market investors are professional fund managers working for private investors or institutions, and their risk/reward judgements are made in a different way from a business angel who is 'just' looking for a 10x return or more. They look for growth, but also have a keen eye for risk; they will expect to be kept properly informed on developments in the business, such as progress with product pipelines, granting of new IP rights, access to new markets and major customer and distributor announcements—all of which can directly affect share price.

Knowing all this, the professional advisers working with you on your prospectus should be looking closely at your IP portfolio and finding ways to explain how intangible value (which is unlikely ever to have been visible in your accounts) supports your intended share price. While your company's value will be made up of more than your IP, having these core assets valued can be a very useful preparatory step.



*Our accompanying guide on IP valuation—**Uncovering Your Hidden Value**, explains how your intangible assets can be independently assessed and valued so that you can articulate their existing and prospective future value in negotiations.*

## 4. How do I harness IP in equity investment negotiations?

As well as supporting the value upside, IP is also important in managing downside risk, particularly litigation. IP gives you ‘ammunition’ that you can use to defend your company against attack and pursue firms that infringe your rights, so you will want to explain what is in your ‘arsenal’.

Some of the world’s largest companies (such as Google) have considered IP important enough to invest billions of dollars in building up a means of protecting core technology and defending their share price. You won’t (hopefully!) need to spend as much, but you will need to show investors you are equipped to safeguard your interests and theirs, especially if you operate in a ‘high-tech’ sector.

### How important is IP at exit?

**M**any growth businesses that do not list their shares on a publicly-traded market ultimately expect to be acquired if things go well—and this creates the big ‘upside’ investors are seeking.

*“Innovative, high-growth companies are often driven by intangible, not fixed, assets”*

Traditionally, valuations at exit are multiples of profit, but strong intangible assets can change the rules altogether.

When a ‘conventional’, mature business is valued—for example, one that has been established for several years, shown steady, organic growth and returned a modest profit—it is customary to apply multiples of its earnings, or sometimes its balance sheet asset value, to determine what it is worth. These multiples vary by sector and are often derived from public sources such as stock exchanges.

Innovative, high-growth companies often follow a different trajectory. At the time they are sold, they may not be making any profits—they may even be making comparatively modest sales—but they still clearly have value based on the market traction they have created (which might be measured by number of customers, users or ‘followers’ rather than sales or profits).

Where a large company sees the potential to monetise this traction or use it to transform the performance or competitiveness of its existing business, it may be prepared to pay handsomely to acquire control. A familiar example is Instagram—bought by Facebook for US\$1 billion at a time when it had no profits and only 13 employees. However, it also had 30 million users on the iPhone alone.

intangible assets rather than fixed, tangible ones. Sometimes these drivers will be patentable, such as in the case of a biotechnology, pharmaceutical or electronics business. Sometimes they will be brands that are associated with a distinctive offering, such as a service or an 'app'. Alternatively, they may be design-driven companies with a distinctive style that appeals to a wide audience or a well-defined niche market. On other occasions, it will be assets covered by copyright that are most important, like software and databases.

If you want your business to achieve exceptional returns, the very fact that they are exceptional means by definition that they will be driven by assets that are hard to value using conventional methods. It is therefore imperative to be able to show investors how the intangibles you already own and can scale, and the new ones you wish to create, have the qualities needed.

## How might my IP be scrutinised by investors?

**T**he level of 'due diligence' that will take place on your IP assets is likely to vary according to the type of investor you are seeking to attract. But whatever type of investor is involved, it often pays to answer some of the key questions that will arise by sharing some of the homework you have already done.

Questions from investors are likely to focus on what your business's key differentiators really are, and how well you have managed to protect these against imitators. By definition, you will first need to have a very clear idea of what makes your business idea or model different and special, and that means understanding what your competitors are doing.



*For more information on ways to track competitor activity, see the accompanying guide in this series—**Knowing Your Competition**.*

Typically, the amount of time and effort (and therefore money) spent examining IP-related matters will be driven by the type and amount of investment you are seeking. If you are raising large sums of equity investment from venture capital funds or private equity firms, you can expect to have your IP examined from several different angles. IP may be examined in due diligence on legal matters (looking at how and where your creations and inventions are protected, and whether it is adequate), but it will also be included in the examination of your technology and your markets.

If you are seeking more modest sums from crowdfunding sites, private investors or syndicates, the process is usually somewhat less structured. However, it is important to bear in mind that these less 'formal' investors are generally attracted to businesses with which they feel some affinity—sometimes, just because they like the products, but often because they have worked in the same market.

## 4. How do I harness IP in equity investment negotiations?

These investors may, therefore, turn out to have very detailed insights into your opportunities and challenges. To win them over, it will be all the more important to show that you know what you are doing in respect to your intangible asset strategy.



### CHECKLIST

#### What questions will an equity investor ask me about my IP?

No	Attribute	Evidence / measurement
1	<b>Competitor intelligence</b>	<i>You can talk about your IP strategy and show how your approach differs from and is superior to, that of your competitors.</i>
2	<b>Application status</b>	<i>You have rights that are registered or granted, so they are (at least theoretically) capable of being enforced against other people. If any rights are still pending, or are in areas where several patents have been recently invalidated (e.g. software-based business solutions in the US), you can expect to be asked questions around this issue.</i>
3	<b>Spread within type</b>	<i>Within the types of IP protection that are relevant for your business, you are not reliant on a single asset (for example, you may have several patent applications in progress).</i>
4	<b>Ownership</b>	<i>If the IP has been jointly created or is owned by a director of the company, expect questions about ownership and entitlement. If you are relying on any IP that is licensed from a third party, investors may want to see the licensing agreements.</i>
5	<b>Freedom to operate</b>	<i>Although you may have your own IP, that doesn't necessarily mean you are free to implement the product or service described. Investors may seek reassurance that you are not likely to get sued or prevented from trading.</i>
6	<b>Suspected infringements</b>	<i>If you suspect infringement, or have been accused of infringing a third party's IP, potential funders will require you to disclose the details.</i>
7	<b>Regional protection</b>	<i>Do you have sufficient IP in the territories where you plan to trade and, if not, is there still an opportunity to obtain it?</i>





# How can I leverage IP value in lending?



05

## 5. How can I leverage IP value in lending?

### What sort of companies suit debt funding best?

**D**ebt funding is the term usually applied to any form of borrowing. Its fundamental principle is that you are lent money that needs to be paid back—usually with interest, and typically over a specified period. By definition, lending is normally limited to

companies that are generating sufficient cash to repay their debts on time.

Owing to this emphasis on repayment, debt is not usually suitable for companies that are yet to establish a regular income stream. Quite a lot of innovative businesses fall into this category while they are young because creating IP and using it in an offering that is well-differentiated often takes some time.

By implication, equity investment and grants are usually a better solution where a company needs to ‘speculate to accumulate’ and spend substantial amounts on development before the returns have started to flow. However, once cash flows are established, debt becomes a possibility, and is not incompatible with equity funding—in fact, investors generally like debt because it is non-dilutive (it does not affect their existing stake in your business).

Depending on the lender, it may not be necessary for the business to have any retained profits. Specialist types of finance such as venture debt are well established in some markets: these can be used to ‘top-up’ working capital where a company has a strong and supportive shareholder base. Equally, it may be possible to use invoice discounting or factoring (where debts owed to the business are harnessed to improve cash flows) in a business that is still at a fairly early stage, if the quality of its customer base is high.

### What types of regular commercial lending may be relevant?

	Type	Explanation	Relevance for IP
1	Unsecured loans	<i>This type of loan is based primarily on how strong your cash flows are. It is called ‘unsecured’ because it is not underpinned by an expectation that the business has assets that could be sold to repay the debt if needed. However, this will not stop a bank requesting a guarantee from the company’s directors, and/or taking charges over business assets like IP.</i>	IP assets may provide ‘comfort’ that the cash flows are secure.  A lender may wish to take a charge over IP assets, even if it is not directly attributing value to them.

	Type	Explanation	Relevance for IP
2	Secured loans	<i>This type of loan is backed by 'collateral'—typically a physical asset (or series of assets) that the business owns. The favourite type of asset for banks is domestic or commercial property, but other types can also be used, such as machinery and equipment or stock in trade. A security instrument (a legal document) will provide the lender with recourse to the designated assets should you default on payment.</i>	<p>IP is difficult for a lender to rely on as collateral unless there is a guarantee or insurance policy to underpin a realisable value.</p> <p>IP may be included within a bank's security envelope if it is seen as important.</p>
3	Asset-backed finance	<i>If a business needs to invest in certain types of assets (like commercial vehicles, cars, computers or equipment), it can often use the current and future value of these assets to raise the finance needed using a mechanism such as a hire purchase or leasing agreement. If these assets are already owned, mechanisms like sale and leaseback can be used to release cash. Both are based on the expectation that the assets can be sold to discharge the loan should this prove necessary.</i>	<p>Specialist international lenders can now apply sale and leaseback principles to company-owned software.</p> <p>This involves selling the IP to the lender and licensing it back for an agreed period.</p>

## How are my IP rights connected to my cash flows?

To have a meaningful discussion about IP with a lender, it is important to establish a connection between how a business makes money (its model) and the IP and intangible assets which it owns. The more direct the connection is the model and the assets, the more likely it is that the assets can be taken into account when establishing your company's creditworthiness.

Demonstrating a connection to cash flow is likely to be the best way to persuade a lender of the importance—and therefore value—of your IP. In some businesses, the connection is very direct while in others it may be less obvious.

A **primary** connection arises when the thing that your business is selling is, to all intents and purposes, the IP. This is often the case in the creative industries (though, if your business acts as an agency and produces original works for other people, the IP you create is likely to be assigned to someone else). It is also not uncommon to find software copyright driving revenues. In licensing and franchising scenarios, the connection with IP and intangibles should be even more self-evident.

## 5. How can I leverage IP value in lending?



One of the most famous IP borrowing transactions took place in the music industry when David Bowie issued bonds against the current and future royalty streams generated by his catalogue of 25 albums recorded before 1990. The 'Bowie Bonds' were issued in 1997 and raised \$55 million for the artist. Although downgraded during their lifetime, they liquidated in 2007 as planned without default.



The less obvious **secondary** link is where your performance demonstrates that the IP you own and use provides your products or services with an important differentiator. This might be apparent from your overall revenues (increased sales values and volumes) or profitability (more efficient operation). It might also make your income streams more predictable (more customer recognition, loyalty and/or lock-in).

The presence of either of these elements (primary or secondary) makes your IP relevant to a lending discussion.

### How different types of IP and intangibles connect to cash flows

	<p><b>Complete creative works</b></p>	<p><i>If you have a book, a video, a film, a game, published or recorded music, and this asset (or collection of assets) is actively being marketed and sold, you should be able to demonstrate that these are cash-generative. If the cash flows are substantial and have been established over a period of time, some lenders will enable you to borrow against them.</i></p>
	<p><b>Software licensing agreements</b></p>	<p><i>Software packages are normally used under licensing terms since the developer does not intend ownership to change hands when software-based products are 'sold'. An example would be the software you use on your PC. If these licenses are for extended periods, or if over time a pattern of regular renewal has been established (for example, because the user relies on the software to do something important), the cash flows attributable to these licensing or subscription payments can be leveraged for lending purposes.</i></p>
	<p><b>Long-term supply contracts</b></p>	<p><i>Invoices can be used to obtain finance using factoring or invoice discounting, which lenders provide. Strictly speaking, these are financial instruments, not intangible assets. However, long-term supply contracts that underpin invoices are intangibles in their own right, and lenders will want to know their value and their key terms.</i></p>
	<p><b>Franchising agreements</b></p>	<p><i>If you choose a franchising model for business growth, the cash flows that arise from both upfront and recurring payments can be leveraged for finance. A franchise agreement is likely to provide access to a wide range of assets that are covered by trade marks and copyright, and may also include patents and designs.</i></p>



For more information on franchising, see our accompanying guide on IP monetisation—**Making Money From Your IP.**

## What restrictions are there on the use of IP in lending?

“Lenders can use your IP as security, but may not be allowed to attribute a realisable value to it”

IP-backed borrowing has one major regulatory challenge: international banking regulations do not provide ratings that enable registered rights or unregistered intangibles to be used as ‘collateral’. This makes it difficult for a lender to attribute credit directly to the actual value of your assets—but it does not prevent their use as security and ‘comfort’.

Collateralised lending has a particular meaning in banking circles. It means that a bank takes a charge or a mortgage over an asset which it expects to be able to sell to repay a debt if necessary.

Collateral plays an important role in what is called ‘capital adequacy’, which deals with the reserves that banks need to maintain if they are to stay solvent and robust in the event of economic shocks. In layman’s terms, an asset that has a clearly defined value (like a house or office block) will still be worth something even if the business that owned them is no longer in existence. Even if the building burns down, it will have been insured, so still has a recoverable value.

Where this is the case, the rules governing how much capital a bank needs to retain in case of default. As a consequence, secured lending is cheaper for the bank and the customer.

The problem IP has traditionally presented is that while it can be very valuable, it is also sensitive to changes in fortune relating to the company that owns it. Also, since it is not a commodity, the value achieved in one transaction is not very predictive of another, and the transactions that do happen do not take place on marketplaces that allow price to be discovered transparently and comparably.

This leads regulators to conclude that IP value is not sufficiently ‘liquid’ to make it suitable for use as collateral at present. Some countries such as China and Korea, offer state-backed guarantees to address these concerns, while in the US, insurance policies have been used to cover larger loans with some success. There are grounds for optimism that the regulatory position will change in the future.

## 5. How can I leverage IP value in lending?



### How is a bank likely to view an IP-rich company's balance sheet?

**B**usinesses that have made substantial investments in developing their IP can account for these costs in two ways: to expense them through their profit and loss account, or capitalise development costs where permitted. Both situations may require some explaining

when a traditional lender like a bank is being approached.

*For more information on how assets are represented in company accounts, and the valuation challenges this can present, see our accompanying guide on IP valuation—**Uncovering Your Hidden Value.***



Companies are likely to present one or both of two positions, each of which requires some explanation. The first is that the business has decided to bear all of the costs of research and development as they are incurred, with the result that its profitability trend is severely impacted.

Under these circumstances, a lender will need to be shown that these historical costs associated with scientific R&D, design, coding, branding and/or process engineering are to some extent 'sunk' and non-recurring, provided this is the case. In addition, they will need to be satisfied that the investment has created assets the business uses to generate income (otherwise, you are simply telling a lender that you are very good at spending money!).

The second possibility is that the company has chosen and have been able to capitalise at least some of the costs it has incurred in development. This will have led to a line in its accounts that places a value on 'intangible assets'.

Unlike tangible assets, which may also be present, the chances are that a lender will disregard this figure. This is partly because they will assume that none of the associated costs will be recoverable, and partly because they cannot tell what the assets are. If they do look at the figure, the other problem you will encounter is that a balance sheet entry only represents the reducing balance of investment over a specified period—and the value of your IP to your business may well be appreciating.

As with the first position above, the antidote is to explain what assets this expenditure has created and why they matter to the business.



*This description is generally representative of mainstream bank attitudes. However, some specialist funds (and a few banks) provide an additional alternative known as ‘venture debt’.*

*As a substitute for collateral peace of mind, the venture debt lender looks at the strength of the equity ‘covenant’ that is in place (typically from venture capital companies, though sometimes also from serial private investors). If the investors are of the right quality and are committed to the business, borrowing against milestones becomes possible.*

*Under these circumstances the lender will generally take fixed charges over the IP—see the following section.*

## What does ‘taking a charge over IP’ mean in practice?

**E**ven if a lender does not attribute recoverable value to your IP, it may still seek to register a charge over it, especially in the case of registered rights. This means that, if you default on your loan, your lender may ultimately have recourse to your IP to help it recover outstanding debts.

The legal mechanisms by which security is taken over IP vary by country and have different names (in the US, for example, you will typically come across ‘liens’). In Singapore, it is possible to take out either a charge or a mortgage over IP, which can be registered at the Intellectual Property Office of Singapore if it concerns registered assets.

Usually, a bank will take a charge, which may be fixed or floating. The difference between these is that a **fixed** charge affects specific assets that are clearly identified in the charging documentation and provides more control over how the assets can be used (for example, it would normally prevent the company from selling them). A **floating** charge, by comparison, only ‘crystallises’ in the event of default; this enables the business to trade in the assets in question without restrictions.

Where charges are taken, bank documentation tends to attach a fixed charge to identifiable and separable rights like IP assets and a floating charge to other intangibles. In both cases, any charges are in effect ‘dormant’ until a default event happens. At that point, the bank can, if it chooses, exercise control over the assets that are captured within its charge.



*While still not a mainstream lending activity, the use of patents as security to support financing applications is not new. For example, Thomas Edison reputedly used the value of his incandescent light bulb patent to finance the establishment of the General Electric Company in the late 1800s.*

You will seldom, if ever, be asked to mortgage your IP, because it is more burdensome to implement and can restrict things that a company might legitimately want to do to make money from its assets.

## 5. How can I leverage IP value in lending?



### CHECKLIST

**What information may a bank request from me if I invite them to take my IP into account?** The following checklist can help you demonstrate the relevance and importance of assets that are not reflected on your balance sheet.

✓	Information	Explanation
	<b>Registered IP inventory</b>	A table showing details of any rights that you have registered or whose registrations are pending, with the details of the territories that are involved and the dates of application, registration or grant. Include registration numbers so that the bank can verify their identity.
	<b>Renewal schedule</b>	Either separately or as part of the inventory above, a plan and budget for renewing the IP rights when due over the term of the loan being contemplated (or the next five years if the term is not known).
	<b>Copyright inventory</b>	A table setting out how software, databases, websites and other literary and/or artistic works add value to the business, and what steps are in place to protect them.
	<b>Intangible asset inventory</b>	A table or report describing and explaining important assets not covered above, with a particular emphasis on contracts, relationships and internal processes that add value. Trade secrets can also be included here, with an explanation of how they are protected.
	<b>Relationship between assets and products</b>	A short explanation of how the IP and intangibles the business owns support the past, current and future projected cash flows. This is usually easiest to do by referencing the use of these assets on an individual product or service basis.
	<b>Competitive comparison</b>	A short explanation of how your IP and intangibles compare with those owned by your competitors and how they give you a defensible market advantage.
	<b>Investment schedule</b>	A record of what you have invested in developing/creating your IP and how this has been reflected in your historical accounts.
	<b>Valuation</b>	An independent report showing the contribution that the assets you have described make to your business, which is not otherwise shown in your accounts.
	<b>Risks and mitigants</b>	A table demonstrating your awareness of the possible threats to your IP (risks) and the steps you have put in place to address these (mitigants). For example, whether you have taken out any insurance cover to protect against the risk of infringement (going after copycats or defending your business against accusations of imitation).





# Where do I get help?

## 06

### GETTING RIGHTS GRANTED

IPOS : [www.ipos.gov.sg/resources](http://www.ipos.gov.sg/resources)

IP ValueLab Directory :

[www.ipvaluelab.com.sg/news-events](http://www.ipvaluelab.com.sg/news-events)

### GETTING IP ADVISORY

- Intangible asset audit
- Intangible asset strategy and management
- Business and technology intelligence
- Commercial analytics on patents
- Due diligence on intangible assets
- Bespoke advisory services

### GETTING IP TRAINING

- Executive programmes
- Certifications
- Undergraduate and postgraduate courses
- Regional training

### GETTING PATENTS RIGHT

- Patent search and examination (for both national and international PCT applications)
- Patent analytics
- Customised search services

### DEALING WITH DISPUTES

IP Legal Clinic (IPOS) : [www.ipos.gov.sg/e-services](http://www.ipos.gov.sg/e-services)

### FOR INFORMATION AND ENQUIRIES

Website : [www.iposinternational.com](http://www.iposinternational.com)

Email : [enquiry@iposinternational.com](mailto:enquiry@iposinternational.com)

Telephone : +65 6330 8660

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A subsidiary of the Intellectual Property  
Office of Singapore (IPOS)  
1 Paya Lebar Link #11-03  
PLQ1 Paya Lebar Quarter  
Singapore 408533

T: +65 6330 8660 | [www.iposinternational.com](http://www.iposinternational.com)