

# Change management in IP licensing

In order to maximise the value that a company gets from its IP-based transactions, it needs to put in place an effective management strategy that encompasses all relevant parts of the business. Three acknowledged experts in this field explain how it can be done

By **Bill Elkington**

**Buckminster Fuller:** *If you want to teach people a new way of thinking, don't bother trying to teach them. Instead, give them a tool, the use of which will lead to new ways of thinking.*

**Peter Senge:** *The fantasy that somehow organisations can change without personal change, and especially without change on the part of people in leadership positions, underlies why many change efforts are doomed from the start.*

**Niccolo Machiavelli:** *There is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things.*

**Jim Collins:** *A visionary company doesn't simply balance between idealism and profitability: it seeks to be highly idealistic and highly profitable. A visionary company doesn't simply balance between preserving a tightly held core ideology and stimulating vigorous change and movement, it does both to an extreme.*

**Peter Drucker:** *Everybody has accepted by now that change is unavoidable. But that implies*

*that change is like death and taxes; it should be postponed as long as possible, and no change would be vastly preferable. But in a period of upheaval, such as the one we are living in, change is the norm.*

**Jiabao Wen:** *The future competition in the world is about intellectual property.*

IP rights management and IP licensing – two sides of the same coin – were highlighted for leaders around the world when in 2004 Jiabao Wen, the-then Chinese premier, said (approximately): “The future competition in the world is about intellectual property.” If leaders of global enterprises were not already alerted to the importance of IP management to their future success, they were now. Or should have been.

It is one thing to have a bunch of pencil-necked IP attorneys, engineers on larky excursions from their engineering careers and oddball MBAs saying that IP management in general, and IP strategy and IP transactions in particular, need to be taken more seriously by global enterprises. It is quite another for a top political leader in one of the world's largest and fastest-growing economies to say the same thing.

While many of the world's great companies were already developing and implementing best practices around IP management in 2004, quite a few were not. Wen's pronouncement, as it has been repeated often since then, has helped – along with what I call repeated strong doses of IP reality – to convince senior leaders of many global enterprises that may not have known what intellectual property was in 2004 to wake up and smell the IP. And by ‘IP’, I mean all creations of the human mind that are protectable by patent, trade secret, trademark and copyright law.

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### Joining Bill Elkington for this roundtable discussion are:

**Wallace G Oliver** is general counsel for Applied Thin Films, Inc, Skokie, Illinois, which is a leader in high-performance surface coatings, especially for the energy, aerospace and defence industries.

He is a member of the State Bar of Illinois and is registered to practise before the US Patent and Trademark Office. He is also a member of the Licensing Executives Society (LES), for which he has served as counsel and as a member of the board of trustees. He is a Certified Licensing Professional and an adjunct professor at John Marshall Law School in Chicago teaching licensing law and transactions.

Oliver received a JD *cum laude* from Northwestern University School of Law, a BS in chemistry from the California Institute of Technology and a PhD from Northwestern University in physical organic chemistry.

**Walter G Copan** is managing director of the Office of Technology Commercialisation and Partnerships at the US Department of Energy's Brookhaven National Laboratory. He leads the technology transfer and economic development programmes of the laboratory.

He received his PhD in physical chemistry and undergraduate degrees (chemistry and music) from Case Western Reserve University, and is an active member of the LES, having recently served as regional vice president for LES

USA. In addition, he is currently vice chair of the LES International External Relations Committee and is a member of the Industrial Research Institute, Association of University Technology Managers, the Council on Competitiveness, the National Business Incubation Association and the American Chemical Society.

**Ada C Nielsen** established a consulting firm in April 2012 that specialises in commercialising inventions, improving the profitability of established products and services, and coaching to develop and execute strategy. This follows a 15-year career at (Amoco) BP, where she started the intellectual asset strategy and management team for upstream technology in 2008.

Nielsen was the 2010 president of the LES (USA & Canada), during which time she initiated not only the annual IP100 Executive Forum, but also "Around the World with LES", a yearly global observance of World IP Day. Her volunteer work has included serving as a member of the LES Foundation Board, as well as chairing the LES (USA & Canada) Chemicals, Energy, Environment and Materials Sector and the LES International Education Committee.

She earned an AB in chemistry from Wellesley College and an MBA in finance and marketing from the University of Chicago Booth Graduate School of Business, and studied theoretical physical chemistry in graduate programmes at Tulane University and Dartmouth College. She is a Certified Licensing Professional.

While some enterprises are decades into the change management process around IP management and IP licensing, others are just beginning. The way I talk about this with my colleagues at Rockwell Collins is that we are nearing the end of our beginning. We should reach it in this calendar year, with broad training and communication rolling out about how we would like our leaders to manage IP transactions differently.

For me and for my company, this has already seemed a long journey. It has involved thousands of conversations, dozens of different presentations (some of them including Wen's famous words), hundreds of meetings, incremental changes in IP transaction policies as a consensus was built, training sessions in IP valuation, training sessions in IP transactions best practices, the development of several IP transactions tools and so forth.

We have provided multi-day training to more than 150 specialists. We have held many process improvement events. We have developed many action plans. We have all learned – as we developed a company-wide consensus – that we need to do IP transactions better, because it is in these IP transactions that much value in the form of IP rights changes hands in the normal course of our business.

We discovered data together that told us we had cause for concern: the data provided a sense of urgency. We developed action plans together that took us forward; and we cadenced our progress on our work. And we experimented together to see what doing IP transactions in a new way would look like – to see who would do what, how we would work together in the new way we envisioned and what the beneficial effects might be.

It has been a bit colourful from time to time. Colourful because whenever people learn how to work together in a new way, the learning can create drama and dramatic language. But it has been colourful also because the world that we have discovered in the process has turned out to contain a broader spectrum of possibilities than any of us imagined.

The key word here, though, is 'together'. We have been working the questions and the issues and the solutions together across all pertinent disciplines, whether that is engineering, programme management, product management, marketing, business development, sales, order administration, supplier management, quality management, manufacturing, finance, contracts, sub-contracts, procurement, communications, legal, human resources or information technology.

We have been working the questions and the issues and the solutions together across all levels of leadership and individual contributorship. We have been working together in these areas across the full range of our business partners – from customers to co-development partners to suppliers.

But there is still much work to do and learning to be had; that is for sure. And there are many discoveries to be made. Preparations are almost complete. We have our crew. Soon we will launch onto the IP ocean that surrounds us for places we have heard of, but wish to see for ourselves.

Change is never easy, but change in the way that an organisation thinks about intellectual property and IP value and about the role of IP strategy in business strategy seems particularly challenging. Part of it is that intellectual property and IP value are

quite abstract. Part of it is that there may be no historical institutional ‘place’ for IP management. In other words, responsibility for IP management is typically spread throughout the corporation. This means that as the enterprise’s size grows, getting all stakeholders on the same page becomes quite challenging.

Also, it turns out that many responsible for IP management throughout the enterprise have found themselves forced into doing it as part of some other job, without having been given training in the field. This means that in addition to the territorial issues – issues with trying to exert decision-making influence across organisational boundaries – there are potentially personalisation issues. And by this I mean that sometimes people may initially take an effort to improve IP management as a criticism.

People who have routinely made decisions about intellectual property without training in the field – on bases that seem perfectly logical and reasonable to them – have difficulty accepting input from others who have made a study of IP management, because the new input and the logic and evidence for it seem contradictory and perhaps nonsensical to them. Some re-education needs to take place, and it is difficult to learn things that seem to contradict what one thought one knew. It is just a lot harder to learn when a lot of unlearning needs to take place simultaneously.

Finally, there is the relatively long-term nature of what I call ‘results collection’. It takes a while to collect meaningful results. First, there is the time-consuming process of convincing others to become change agents and to do IP management and IP transactions differently. Next, there is the lengthy negotiation process with the other parties to any IP transactions. And then there is the sometimes debatable nature of the benefit derived from doing the IP transaction differently, with meaningful input and influence from IP-trained businesspeople.

And, of course, the longer it takes to collect meaningful results, the more difficult it is to convince the enterprise to change. The question at every turn is: “What is the business case?” And another just as meaningful comment that is often repeated can be: “I see a benefit, but explain how it rises to the level of strategic importance.”

These are some of the issues confronting the individual or the group that would change the way that an enterprise manages intellectual property and does IP transactions, for the better. As I say, I and my team at Rockwell Collins have

been working on changing the way that we do IP transactions for some time, and I know how we have addressed the issues that I have just described and many others. But I wanted to know how others in the field have dealt with the same and similar questions. Perhaps I can improve what I am doing and how I do it.

So I convened a panel of IP experts for whom I have high regard. This is a group that I constantly learn from. They generally provide me with new perspectives that I have not considered before, new knowledge that I did not have or both. In a word, I find them enlightening.

My panel for this article is made up of former Licensing Executives Society (USA and Canada) (LES) board members. All are technologists. One is a patent attorney. All three are senior IP licensing and management professionals. One is a former president of LES (USA & Canada). While the fields of their work have been diverse, the chemicals, materials and energy industries are heavily represented.

Their experience is also diverse, encompassing large and small for-profit enterprises, universities, national laboratories and consulting firms. I am anxious to hear what they have to say.

What I and they have to say are our own personal views and do not necessarily reflect the views of our employers or our employers’ customers or clients.

So before getting the discussion underway, here are the individuals answering my questions (fuller biographics are in the box-out on the second page of this article):

- **Wallace G Oliver**, general counsel for Applied Thin Films Inc in Skokie, Illinois.
- **Walter G Copan**, managing director of the Office of Technology Commercialisation and Partnerships at the US Department of Energy’s Brookhaven National Laboratory.
- **Ada C Nielsen**, who runs a consulting firm, having previously started the intellectual asset strategy and management team for upstream technology at (Amoco) BP in 2008.

**What is your understanding of or experience with organisational behaviour around IP licensing? And when I say ‘organisational behaviour’, I am referring to issues raised by organisational boundaries to developing IP agreements that are optimal for the enterprise.**

**Wallace L Oliver (WLO):** Typically,



**Wallace G Oliver, general counsel, Applied Thin Films Inc**  
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**For an organisation to do IP licensing well, how closely aligned do the business strategy and IP strategy need to be?**

**Wallace Oliver:** A licensing organisation must understand that IP strategy and business strategy should be joined at the hip. In addition, for organisations in which R&D is important, R&D strategy is also a segment of these overall strategies. This means that both acquisition and use of intellectual property, including licensing, must be aligned with the business goals. A siloed licensing organisation that operates as its own fiefdom will ultimately fail, primarily due to lack of maintaining a recognised benefit to the business.

**Walter Copan:** As Wallace indicated here, to achieve effectiveness and impact for the long term, IP strategy must be fully integrated with the business strategy. The organisation and its leaders need to see the connection between the intellectual property and the business, and how the intellectual property can and will be used to execute the plan. There are always surprises in the world of invention and innovation which require flexibility and resolve, openness to new alliances, and for actions to be guided by strategic intent. Intellectual property may be a tool of creative destruction and can result in creative tensions within and across organisations to drive change and innovation.

**Ada Nielsen:** Ideally, it needs to be 100% aligned. I do not know how far apart the two can be and still hope to have a successful enterprise. It might be manageable to have diverging actions for a short time, but the market is efficient. Any discontinuity will be picked up by the market and used against the organisation.

licensing organisations either evolve as parts of business or R&D groups or are established as a central organisation serving multiple businesses. Licensing organisations may transform from a central functional group to distributed groups and back, depending on observed personal behaviour. Licensing professionals usually come from other business disciplines – that is, licensing persons tend to have been trained in various fields and licensing is an opportunity that such persons have chosen during a career path. However, one of the outcomes is that a person desires a licensing career as a means to break out from one field into another. In technology licensing, typically, a technically trained person sees licensing as a means to enter the ‘business’ arena and forgo a technical career. Alternatively, a person with a pure legal function may desire to have business responsibility and authority.

This may foster what may be referred to as the ‘licensing disease’ – a sense of personal self-importance that is not consistent with the business purpose of licensing. A licensing person or licensing group should not assume that licensing provides an exploitable power structure. Merely because an organisation or person has authority to negotiate licensing deals does not mean that such activity occurs in a vacuum and without business buy-in and participation.

**Walter G Copan (WGC):** Each organisation has its own context for intellectual assets and the roles of IP licensing. Whether the organisation is a well-established corporation or a start-up, a university or research institute, beginning at the top, the organisation leadership needs to understand and to communicate its vision for intellectual asset strategy and IP utilisation. As the appreciation for the value, role and strategic use of intellectual assets is shared among the organisation’s leaders and staff alike, the organisation can position itself to move towards a higher level of integrated performance. IP transactions must be seen by stakeholders as supporting the strategic and tactical goals of the enterprise. IP transactions have the potential to create value in multiple ways, which the organisation’s stakeholders need to comprehend and appreciate. These include, of course, revenue generation, technology access, divestiture of non-core assets, creation of alliances, mergers and acquisitions, and supporting the strategic advantage and competitiveness of the enterprise. Understanding and support for the IP licensing vision, and developing

shared expectations for the organisation’s execution of IP agreements aligned with strategy, is underpinned through also aligning incentives and providing for value sharing across organisational boundaries.

**Ada C Nielsen (ACN):** In reflecting on my experience in organisational behaviour, I have had widely differing circumstances. In thinking about it, it seems to sort out in different ways. It has depended on, among other variables:

- The stage of maturity of the organisation overall.
- The degree of use of internal versus external R&D.
- The use of contracted facilities.
- Understanding the value (including leverage) of different classes of intellectual assets – from trade secrets to patents to trademarks and copyright. The use and value of each has reflected the organisation, its size, the focus on R&D, its place in the value chain, the geographical reach of its influence, and the resulting corporate culture.

At one time, I worked in a chemical company where trade secrets were far more valuable than any other intellectual asset and provided the highest operating margins of any chemical company at that time in the industrial chemical world. Behaviours were careful, disciplined; procedures were recorded carefully and managed tightly; there were few – maybe no – contractors. Employees were reminded annually of obligations. All manuals and documents relating to key information were numbered, recorded, tracked and so on. When employees left the company, the process of debriefing and reminding them of obligations was very thorough. At the time I was working there, an employee left the company and misappropriated key information; the consequences were extremely negative for that ex-employee. The consequences of that kind of behaviour could not have been communicated more dramatically. The culture preserved the value of the intellectual assets. And so any licensing deal tended to reflect the long-term nature of trade secrets and top value was received.

**What tips and tricks are you aware of for overcoming these organisational behaviour issues?**

**WLO:** If behaviour interrupts the business sufficiently, a change in the organisation may be effected – for example, moving from a distributed licensing organisation

to a central group or vice versa. If the behaviour is localised, a change of personnel may be required.

**WGC:** Dealing with organisational behaviours and boundaries is all about getting the fundamentals right. No tricks are involved here. Communications, engagement and maintaining a shared understanding around IP strategy and transactions are keys to averting and dealing with potential organisational behaviour issues. Decision processes must appropriately involve and inform stakeholders, and licensing progress and performance against key performance indicators communicated regularly. The business models and plans for the deployment of intellectual assets should be understood by all who need to know, and in so doing avoid the potential for misalignment and conflict. In some cases, in and out-licensing can be used to drive organisational performance in ways that ensure the best technology and business options are always considered – regardless of source. This can set up a healthy competition between the organisation's internal offerings versus externally developed solutions in an environment of open innovation, so that the most compelling value propositions are selected. The results obtained and the revenues generated need to be credited appropriately so that the right behaviours are rewarded.

**ACN:** If the IP strategy is aligned with the business strategy, and if the company actually uses the IP-business strategy, the system of rewards and negative consequences is the most powerful correction tool. If the business leadership does not walk the talk, then all strategy tends to be an exercise that does not affect the business results. Employees are quite savvy when understanding what really counts and what will advance their careers, what will be activity without a positive personal outcome, and positive rewards for doing good deals and living with them will be a self-priming engine. Of course, strategy must ensure that any and all personal rewards are first based on better outcomes for the organisation. Rewarding the team, function or individual who has ignored IP strategy will undermine its value. It may be close to impossible to recover if the reward mechanism is repeated for off-strategy behaviour.

### **How effective are the tips and tricks you have described?**

**WLO:** Change of personnel or change of

organisation structure may be effective.

**WGC:** Organisations that communicate effectively, that have leadership buy-in to the strategy for intellectual property and that have their incentives appropriately aligned have the fundamentals needed for excellence in organisational behaviour and performance. So much then comes down to the people, their behaviours, the foundation of trust that has been established and how the leadership addresses organisational issues. The cultural context, history and political climate will differ from organisation to organisation, and specific approaches to be put in place need to be tested and adapted.

**ACN:** Consistency in message across the organisation is the first step, but it must be followed with consistent behaviour. Inconsistent behaviour against messaging from the top leadership can be the most devastating to behaviour. Top leadership buy-in is essential. Without it, one should be practical and abandon a strategy that is not recognised by actions. Only a change in the behaviour of the leadership will cure that – or a change in the leadership; but that is not typically within the reach of anyone but the board.

### **What leadership support do you think is called for when significant changes in IP licensing transactions are being attempted?**

**WLO:** To the extent that business dictates a change in licensing strategy or tactics, a business leader should be on board to support the change. Whether the proposed significant change in licensing transactions is initiated within the licensing professional group or arrives from an external source, a business champion is needed. This is premised on a practical requirement to have common goals for the IP, licensing and business groups.

**WGC:** I agree. Whenever contemplating a major change in how licence transactions will be handled, the top-level leadership affected must have a clear advance understanding of the potential ramifications. Support from the top, and from the other levels of leadership, for the change is essential. Stakeholders need to understand the effects and the potential bottom-line impacts of the IP licensing change. Communication – and understanding – at all organisation levels is the key.

**ACN:** Not surprising the leadership is critical, so advance notice is important. If at all possible, a discussion about possible scenarios may be quite helpful



**Walter G Copan, managing director, Office of Technology Commercialisation and Partnerships, Brookhaven National Laboratory**

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**Ada C Nielsen, consultant and formerly with (Amoco) BP**

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– particularly if the other party has a leader who can access your organisation’s leader via a back door. An example is the phone call that may seem innocent, but is positioned as a surprise that could have the effect of diminishing a quasi-personal relationship or of affecting other deals already completed. It is good practice to identify all executives who may have a relationship with their peers in the other party and get their buy-in for the deal before it is broached.

**IP strategy is typically long-cycle work, given that patents last 20 years from the date of filing and given that relations with business partners evolve slowly, even in fast product-cycle businesses. How do we get typical MBA-trained business leaders to think, plan and act on long-cycle (10-year-plus) business strategy when their strategic planning horizon is typically no more than five years?**

**WLO:** Strategies for IP use depend greatly on the specific industry involved. There is a natural longer-term view for pharmaceutical IP assets that may be used to the end of a patent term. For short-cycle industries, such as consumer electronics, the long-term view may be only a few years for a specific product, but the longer-term viability of a company may depend on continuing acquisition of many IP assets rather than relying upon a few older IP assets. For some industries, business management must be convinced that proprietary know-how has significant long-term business value. There are businesses in which know-how is licensable far beyond a 20-year patent term. We should not be totally technology centred and understand that licensing copyrighted materials and trademarks is a long-term business that even a new MBA should appreciate.

**WGC:** The time cycles of businesses and the relative value of intellectual property can vary widely, depending on the market sector dynamics and on the nature of the intellectual assets themselves. Business leadership needs to understand well the relationship of IP value, and the right to exclude others that may be conveyed for a time, relative to the business time cycles. In most sectors, core intellectual property can offer longer-term protection to product lines and technology platforms, and to the evolution of the business models that allow the organisation to create value for itself, and for other players across the supply chain. Trademark

and effective brand management is also part of this picture, which, together with handling technology and trade secrets, can effectively create durable value. This longer-term impact is abundantly clear in the pharma and biotech sectors, and across their value chains. The chemicals, materials and energy sectors, as well as high-tech and many others, also have the potential for longer-term value extraction from their IP positions. This needs to be understood and factored in dynamically with the business leadership in making decisions day by day, quarter by quarter.

**ACN:** Good question. I don’t know the answer exactly. Perhaps:

- Create case studies that demonstrate the longer duration of IP deals. And ideally, do some data mining within the organisation and use your own experience and outcomes. It may be necessary to use some external models, particularly if the licence involves trade secrets or know-how that has been managed appropriately.
- Develop scenarios that have different outcomes with assumptions that vary five, 10, 15 years in the future. It is doing a deal anticipating the future to be exactly like the present that can create undesirable results – subject to market characteristics.
- Assume that everything is short term and create deals that anticipate change at some point in the lifecycle.
- If one really wants stability, it is probably advisable to consider choosing a firm that has the characteristic of stability – such as working for a private company with a reliable track record.

**How do you manage organisational change around IP transactions without seeming to build empires or seeming to tell others their business?**

**WLO:** The duty of a licensing organisation is to further the business in which that organisation operates. Many times the most difficult licensing negotiation is the internal negotiation with business management to demonstrate the value of a licensing transaction. As with any negotiation, the licensing professional should be prepared to demonstrate or project actual value of a licensing transaction, in either monetary or strategic terms. Although the licensing person should not tell the business folks their business, the licensing person should know the business well enough to have a convincing case for a licensing transaction.

**WGC:** Understanding the role of

## “Change can be supported most effectively when there is a shared vision and strategy to set the foundation”

IP transactions as an integrated part of strategy is the starting point for contemplating needs for the organisation and how it can be structured and best managed. What resources, skills and assets are available and needed? What are the actions, accountabilities, outputs and interdependencies? How can they be organised for greatest impact and return on investment? What are the organisational alternatives? These are not decisions to be taken in isolation – but shared by bringing about a mutual understanding of what is required to achieve business results and how to align value sharing around IP transactions. Licensing and intellectual property deals clearly are part of total business success, with business development, M&A, alliances, divestitures and technology acquisitions to fill the pipeline all playing a role.

**ACN:** One way is to repurpose an external view of the enterprise (ideally, one that is published in a trade journal or a financial paper) comparing the firm to its competitors to show the steady state management approach of a few of the competitors. More would be better in this case. Capturing something of the ways others see the organisation is a very powerful ‘voice’.

A different view might arise from determining the realised value of the historical transactions, capturing the importance to the company in at least one meaningful metric and comparing/contrasting the outcome to the likely value in a new organisation. If the organisational change will not reduce the value, one could argue that living with the change might be the better response.

**With business partners (customers, co-development partners and suppliers), how do you do change management around changes in the way you intend to manage IP transactions? How do you keep from alienating business partners at the same time as insisting on negotiating reasonable value (perhaps something considerably less or more than the value you or others have negotiated historically with these partners in similar transactions)?**

**WLO:** We live in a dynamic world in which business relationships evolve. Advantageous business relationships are formed as a result of finding mutual benefits. Thus, the trick for continuing that relationship is for each party not only to know what that party receives, but also to understand the benefits for the other parties, and to evolve the relationship accordingly. Although personal relationships are important in maintaining a business alliance, personnel eventually change and business reality may require structural changes in the relationship.

**WGC:** Change can be supported most effectively when there is a shared vision and strategy to set the foundation. As business partners come to understand and share the vision and the context of the new reality, as you see it, the need for a change can become clear. The other partners across the value chain each bring their own perspective and expertise. When these are heard and taken into account, this will likely help to sharpen the strategy for change, make it more relevant and now owned with the business partners. The negotiations may still be tough – but with this new understanding and common ground, and the stronger the supporting data, the greater the buy-in towards a mutual win.

**ACN:** It seems to me that one needs to understand the nature of the transaction from the other party’s view. What is the structure of the deal relative to the cost of creating the intellectual property versus who extracts the value from it? Is there cost sharing in creating this? And so on.

Where the deal is an early-stage development deal with a commercial party, for example, and you are contributing a significant amount of money – perhaps 100% – the cost of creating the intellectual property needs to be balanced with the risk involved. Will the technology development be even marginally successful? What party should benefit more? One could argue that the party that bears the greatest risk should have the greatest reward.

Having a viable Plan B is always useful – and in fact, almost essential. If the deal underway can be done with only one

**In the companies you know of with the best IP management, how do they manage change to accommodate their IP reality? Are their change management processes optimal when it comes to intellectual property? What do they do well and in what areas could they improve?**

**Wallace Oliver:** Well-managed organisations realise that there is always a need to improve, especially as the economic world evolves. Resting on your laurels (or anything else) will not work in the long term. A current driver for change is the new US patent law, which may be useful to IP management to promote early disclosure of inventions and to reduce cycle time in patent acquisitions. Also, emerging IP powerhouses in Asia and changing IP rules in Europe will move an effective IP organisation to understand future change and take appropriate action to make that change benefit its business.

**Walter Copan:** The best companies embrace change and build in the expectation of performance excellence as part of their cultures. The continually evolving process of IP management, commercial development and licensing can be seen as a journey of adapting to technology innovation, new legal frameworks, tools and strategies for competitive advantage in dynamic

markets. Leading organisations have long recognised that intellectual assets and their effective deployment are central to global competitiveness. IP-based market intelligence can often provide indicators of creative destruction opportunities or threats for the marketplace. The leaders of the best companies engage regularly with the thought leaders of other organisations – creating opportunities to benchmark processes and to share their own approaches in pre-competitive settings. These learning organisations recognise that today's best practices will be superseded by tomorrow's. The best are consistently willing to learn and adapt and to test new business models and approaches to gain advantage. Change is, by definition, both disruptive and messy. The areas to improve are always in embracing change, translating the best of what has been learned into market value through timely execution. As Albert Einstein once said: "We can't solve problems by using the same kind of thinking we used when we created them."

**Ada Nielsen:** Major change for any organisation driven by a change in top leadership, by a dramatic change in thinking of current management (although I believe that this is more hypothetical than probable), by change forced on the organisation by market forces or by government intervention. In the market case, the organisation must change and adapt to new market forces or face extinction. If a government changes the rules of engagement, it may not be possible for the organisation to adapt to the changes if, for example, taxation schemes change or may actually benefit the organisation if taxation of licensing royalties would be reduced or eliminated. The recent changes to the patent law in the United States, for example, will require an understanding in an organisation of which of its current practices and methods of conducting business, timelines and business metrics will need to be changed – with clear individual responsibility for making these changes happen.

other party, it is harder to maximise the opportunity. There are so many variables here that it is hard to structure one path only.

In any case, any change in deal structure and value capture needs to have top-level buy-in and support before any discussions begin with a third party.

**If a key competitor or multiple competitors, or a key competitive customer or multiple competitive customers, are clearly operating on a long-cycle IP strategy, how have you seen organisations respond in a positive way? In other words, what has had to happen inside such organisations to get them to change positively to that sort of challenge, before a hammer blow has been struck?**

**WLO:** In organisational change, someone must recognise that there is a problem. That someone should exist in business management and have the ability to initiate change. Being clueless is not an effective management tool. Such a person need not know how to make an effective change, but must be able to attract persons with applicable knowledge to effect change.

**WGC:** Market/technology intelligence

and IP intelligence are closely interlinked – regardless of the market sector. The patterns of positively using intellectual property in preparing for competitive threats, and in positioning the organisation and its partners for growth by capturing the IP high ground, are reflected throughout Sun Tzu's *The Art of War*. Chapter 9, entitled "Army Manoeuvres", says: "If the enemy holds the high ground, do not ascend and do battle with him." The strategic use of intellectual property and other assets, as in deploying resources for war, involves the unique strengths of the organisation together with those of its allies. There are a number of ways to win the important battles in the marketplace. Today's high ground may be overtaken by the development of a new competitive high ground of strategically recombined assets tomorrow.

**ACN:** An objective message of news of the outside world is critical. Use a credible external voice. That is why attending conferences and so on can provide a news source in addition to reading weekly e-newsletters and blogs. It transforms what could otherwise be determined to be a self-serving opinion into a position in the competitive landscape as viewed by other players in the market.

**Have you seen consultants used effectively to bring about changes in the IP management culture of enterprises?**

**WLO:** Consultants may be able to provide some alternatives for change, although many times consultants will parrot the preconceived notions of the persons who hired them. A good consultant will challenge the organisation with real organisational change.

**WGC:** Consultants and other independent external advisers can be used to provide helpful insights and to support the organisational impetus for change. A fresh, credible and knowledgeable perspective can reinforce the need for a new approach, without the appearance of being self serving, as might the same recommendation generated internal to the organisation. By virtue of being an outsider, the expert consultant or adviser can bring a new level of accountability and transparency to the situations being considered for change.

**ACN:** Yes, consultants can add value, but the client must be able to:

- Articulate the desired outcome.
- Be amenable to change.
- Have good project communication.
- Evince a willingness to work collaboratively.
- Understand that change is not instantaneous.
- Typically, master a new vocabulary which can reinforce a new hierarchy and strategy.
- Speak in business language about the potential positive impact and not in IP-centric language.

Similarly, consultants must be able to:

- Adapt their view to the client culture.
- Provide a change management process that can be implemented in that culture.
- Project practical timelines for change.
- Provide useful tools for behavioural change.
- Be pragmatic.
- Convey the sense that the outcomes can be expected to be reflective of the new culture and not necessarily mimic what another organisation has achieved.

**What are the key lessons you have learned about change management in IP licensing?**

**WLO:** In any business and in any organisation, there will be change. People change, businesses change and the

economic environment changes. Effective IP licensing management anticipates change and is prepared to make change irrespective of business history.

**WGC:** Communicate regularly. Stay close to your stakeholders. Be guided by the data. Benchmark the best. Change management principles as applied to IP licensing are really the same as for effecting any major change. John Kotter's classic book on leading change is also an excellent reference on bringing about change in intellectual asset licensing (*Leading Change*, John P Kotter, Harvard Business School Press, 1996). Here are the eight principles of creating major change:

- Establish a sense of urgency.
- Create the guiding coalition.
- Develop a vision and strategy.
- Communicate the change vision.
- Empower broad-based action.
- Generate short-term wins.
- Consolidate gains and produce more change.
- Anchor new approaches in the culture.

Every change initiative brings with it pitfalls and potentially damaging errors that can undermine or scuttle the best-laid plans for change. It is important in leading change to keep your friends close and your 'enemies' closer.

**ACN:** Internal cultural norms rule and change slowly, over five to 10 years – unless there is a catastrophic event which forces change, such as being purchased by another company. Or the top management can change by hiring a new executive team, bringing new people, new ideas, expectations, metrics and behaviours.

**Points to remember**

Some of the salient points made by our panellists are as follows:

- The proposed change must make sense for the organisation. It must fit with the strategic direction of the enterprise. Otherwise, the change is not so much about IP strategy and practice as it is about the value proposition of the organisation in question.
- Changes in how intellectual property is managed organisationally often result in changes to IP strategy and business strategy, and these changes can easily impact the status of ongoing agreements.
- IP strategies are only as powerful as leadership's willingness to walk the talk. A system of rewards and consequences for performance related to the plan is a very powerful tool.

## Action plan



Senior IP managers should consider the following when launching a significant change to an enterprise's IP management and licensing functions:

- Develop a senior leadership champion for the change. The chief financial officer is often a good candidate.
- Use mistakes and missed opportunities (unfortunate anecdotes) without attribution to motivate the early work.
- Convene a pan-enterprise team to collect data on the level of expertise in key areas of IP management, specifically IP transactions.
- Work with the pan-enterprise team to develop policy, process and training recommendations.
- Obtain ratification of the recommendations by the champion and the senior leadership team.
- Execute on the recommendations using the pan-enterprise team.

- Clear communication and consensus building skills are paramount. Without the ability to build consensus, if the change is implemented at all, it may very well limp along. Support from only one quarter will not do. All key stakeholders need to be in agreement.
- Support of the enterprise's senior leadership is required. Without senior leader engagement and active involvement, the rest of the enterprise will be less than enthusiastic. Senior leaders will supply the necessary torque to get through the rough patches – and there will be rough patches.
- Giving leadership some advanced notice about a change and how it may play out can be advantageous.
- Using metrics and case studies can be valuable when making the case for change and when working to manage expectations for what a change (or lack of change) could mean five, 10 and 15 years down the line.
- Beneficial financial results need to be allocated appropriately. In other words, the organisations responsible for tilling the soil, planting the seed and keeping the weeds down – doing the hard work of change management internally and externally – should also reap the harvest. Otherwise, why should they bother?
- Judicious use of consultants can help to inject credibility into the case for change and the change management process. An expert is, by definition, someone who is at least 25 miles from home.
- Changes in IP management should be linked, where possible, to the evolution of the enterprise's business model and trends in the marketplace. Change agents need to point ahead to the beneficial effects of new best practices in IP management and licensing as the enterprise responds to strategic threats and opportunities.
- The language used to persuade the enterprise of the wisdom of a change in IP management and IP transactions should be business language – the language of financial and strategic benefit – not legal language.
- With business partners, any changes in approach to IP transactions need to be linked to a shared concept of value or equity. Without this, an enduring relationship will be much more difficult.
- The IP licensing function needs to align its objectives, motives and methods with the business interests of the

enterprise. IP management and IP licensing are implementing elements of business strategy, not determinants of business strategy. IP strategy supports business strategy, not the other way around. And R&D strategy is often strongly interactive with both. So any change in the IP management and licensing function in an enterprise must take these considerations into account.

I would add that successful enterprise change in IP management and licensing is a character-building experience. Failure in this area is easy and, believe me, I have had more than my share of setbacks. In my team, we talk about climbing the mountain. In order to climb a very high mountain, such as Everest, the method is essentially two steps forward, one step back. This is also the way with enterprise change around IP management best practices.

It is important to keep this metaphor in mind all along. That way, when you need to retreat down the mountain to acclimatise – to catch one's breath, so to speak – it will not be regarded as failure. It will merely be understood as being part of the process – part of how the IP mountain is successfully climbed. *iam*

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