A Primer on Benchmarking a Licensing Operation

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INTRODUCTION

The increasing value of intellectual property (IP) has produced many new IP management initiatives and activities designed to extract value from this form of intangible assets. Because the activities related to managing intellectual property are new, the managers whose job it is have little in the way of guides or textbooks on which to draw. As a result, many firms are using the experience of other companies to provide them with valuable information and lessons. Some companies have joined self-interest sharing groups and one-on-one benchmarking activities have increased significantly. (Although there are no hard data on the rise in benchmarking, heads of licensing groups in many leading companies say that they are increasingly receiving requests to be benchmarked.)

One group of companies that is frequently the target of benchmarking requests are those in the ICM Gathering, a collection of large, global corporations whose representatives meet regularly and who have been actively engaged in extracting value from their intellectual assets for an average of more than five years. As these companies have developed and become recognized for their relatively sophisticated knowledge, other companies, less sophisticated in IP management, often ask them to share their knowledge and experience through benchmarking arrangements. All of the ICM Gathering companies report that other companies' benchmarking activities are sometimes frustrating and not as effective as they might be. ICM Gathering companies attribute this, in part, to 1) a lack of adequate preparation for benchmarking and 2) poor execution.

Companies around the world have practiced benchmarking for decades. However, in the field of IP management, benchmarking (along with everything else) is new. In many companies, attorneys—a group whose training rarely includes courses on management or organization—are often the ones responsible for managing the firm's IP activities. For this reason, many IP attorneys turn to others—colleagues, other companies, consultants—for advice and to learn by example. But whether the people managing the firm's IP are attorneys, technology people, business people or scientists, all share an interest in learning how to benchmark their own operation against that of other companies.

This paper is intended to provide guidance and insight for companies that anticipate undertaking a benchmarking effort relating to licensing. This paper contains information designed to increase significantly the probability of successful benchmarking. Although the processes described herein refer to benchmarking activities related to licensing, they are applicable to virtually any functional area. This first paper provides some lessons about benchmarking in general and, in particular, describes how to increase the odds of a successful benchmarking endeavor through better preparation. Later papers will provide some examples of successful benchmarking efforts, specific guidelines and suggestions about implementing a benchmarking effort, and key lessons.

WHAT IS BENCHMARKING?

We have noticed that people in the licensing field may use the same or similar terms and phrases but define them differently. When this happens, discussions can be confusing and fraught with well-intentioned misunderstandings. Thus, everyone reading this paper should understand that the authors define benchmarking as follows:

A benchmark is a point of reference or a standard by which others may be measured or judged. Thus, benchmarking consists of a controlled exchange of information between one company and carefully chosen other companies (benchmarks). Those companies may be inside or outside of the industry of the company doing the benchmarking, and may even include competitors. The subject matter has no limits, other than what a company wants to know and has the ability to interpret. A company may work to understand more about how others handle brand marketing, trademark protection around the globe, licensing, organizational structure and many other things.

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WHY FIRMS BENCHMARK

Companies that wish to justify or increase their budgets, companies contemplating a change in their licensing practices, or companies that want to better evaluate their licensing office's activities often turn to benchmarking to obtain helpful insights. Information about the operations of others always provides new perspectives and may present solutions to vexing issues.

Companies may have individual reasons for benchmarking the licensing practices of recognized leaders, but all companies grapple with two major issues: 1) justifying their current practices and 2) making changes.

To justify expenditures and practices. Companies seek information about the operations of others in order to substantiate or improve their own resource levels or practices. Justification is usually sought for:

- Resource levels—retaining current levels or seeking additional resources
- The organizational locus of activity (e.g., retaining licensing under the IP function or moving it to the business development function)
- The focus of activity (e.g., retaining licensing as a defensive activity through litigation avoidance, or changing the focus of licensing to an offensive activity such as revenue generation)

To determine how to make a change. Companies starting up or modifying a licensing activity often need guidance on aligning that activity with their strategy and goals, in particular:

- Setting objectives and monitoring performance. Many companies have questions about the strategic intent of a licensing activity and are interested in learning how other companies have developed objectives and performance metrics and then sold these to senior management.
- Improving processes. Most companies want to and even have a policy to steadily improve their processes. Benchmarking can help them gauge how good they are today and lead to the adoption of new best practices to help make desired improvements.
- Learning and retraining. Benchmarking can help teach new people or even retrain experts on the state-of-the-art of key business processes. Involving a new employee in a benchmarking exercise helps him learn about the licensing business based upon the information he provides to the other party, what he learns from them, and what information is exchanged during the benchmarking discussions.
- Teaching. Dow Chemical, for example, has used benchmarking to teach suppliers selected best practices related to key processes.
- Understanding the competition. Although both you and your competitors may place limits on the information you wish to exchange, this exercise will enable you to compare your capabilities with theirs in selected areas, determine where you have competitive advatages, and study whether these advantages are sustainable.

Your purpose for benchmarking affects several key aspects of the activity. As noted, companies normally benchmark with others in order to justify current or planned activity and resource levels, or to create new or improved operations or activities. These are very different goals, and those differences affect several key aspects of the benchmarking process, such as: the companies you select as your benchmarking targets or partners and the specific information or learning you seek (e.g., information about data, activities or operations).

WHEN YOUR PURPOSE IS JUSTIFICATION

When your purpose is justification, you should seek benchmarking partners that closely mirror your company's business. This means that you should benchmark either with competitors or with companies your firm's management perceives as important—or both.

- Compare your practices with those of competitors. After all, these are the companies you wish to surpass, so why not find out what they are doing, how they are doing it and how you stack up to them. When competitors are doing better than you are, and your resource levels are lower than theirs, this can be a good justification for expending more resources. Competitors are useful benchmarking targets when your objective is justification. When your objective is to emulate, competitors are usually poor benchmarking targets. This is because they often are not world-class best practice companies and, at best, all you may learn will be a set of "non-world-class" not-necessarily-best practice activities.
- Compare your practices with those of firms you admire. These are the companies, including best-in-class competitors, that, for whatever reason, you must include in your benchmarking because they are seen by your top management as increasing the credibility of your bench marking results. Companies in this set are useful when your purpose is justification. If you wish to learn, however, these companies are usually not the best targets for comparison: they likely have different business strategies, different organizational dynamics and different goals and objectives for licensing.

WHEN YOUR PURPOSE IS LEARNING

When your purpose is learning, you should seek partners that are recognized as world-class best-

practice companies in the aspect, function or activity you seek to emulate. When you have identified the companies whose best practices you want to learn about, further reduce the list until it includes only the companies that most closely align with:

- Your licensing purpose and objectives. When your licensing purpose involves revenue generation, it may be unproductive to benchmark with a company whose licensing objective is litigation avoidance.
- Your philosophy of operation. When you are involved in active and offensive licensing, it may be unproductive to benchmark with a company whose philosophy involves passive and defensive licensing.
- Your degree of complexity. When you are a multi-office, multinational organization involved with the licensing of a range of technologies, it may be unproductive to benchmark with a company that operates in one location and licenses a narrow range of technologies.

Firms that undertake benchmarking as a learning process usually already know which functions or activities they wish to learn about. If you know what functions or activities you want to improve, seek out world-class performers in that function or activity. This usually means they will not be competitors, nor will they be the companies your management perceives as ones to be emulated. They will, however, be the companies from whom you can learn the most. If you don't know with which functions or activities you should be concerned, then seek out benchmarking partners with two characteristics:

those whose licensing purposes and objectives are similar to yours (i.e., those companies that are the most likely to operate in ways that will help you achieve your licensing purpose and objectives); and

those that are highly regarded within the licensing field. These are companies whose approaches to the activities and functions related to licensing are probably to be trusted.

Perhaps as a final consideration, you should select companies that have a reputation for being willing to share information, and even for teaching.

PREPARATION IS KEY TO SUCCESSFUL BENCHMARKING

All important and meaningful studies require significant preparation, and benchmarking is no different. Perhaps the most important preparation is the internal establishment of your firm's objectives: 1) what you want to learn and 2) what you will do with the information once you have it. Let's deal with each of those in turn.

Define what you want to learn. There are a number of dimensions to this issue, and they should all be discussed and defined. The following are the most often-mentioned items of interest among benchmarking companies:

- Functions. What functions are most common (e.g., the decision to patent; administering the IP portfolio; determining which innovations are licensable; negotiating the terms of the license, etc.)?
- Roles. Who performs each of the functions listed above?
- Organizational structure. Which activities are centralized and which are decentralized? To whom do the business units report within the organization? How and where is the staff recruited?
- Practices. What are the other companies' best practices and other practices of interest? What methods and procedures do they use? What is the sequence of activities?
- Data collection. What data do other companies gather about licensing inputs, processes and results? How are these things measured and in what context? How are the data compiled (e.g., manually, as part of a company MIS)? Do companies use the same definitions of terms and gather the same data?
- How have they secured management buy-in?

Create a "dummy" report of benchmarking results. Creating a "dummy" report—that is, an outline of what you would expect the report of results to contain—will help you identify the specific information you require from the benchmarking event. This is a project device often used by consultants to focus attention on the things that are important as opposed to the things that are merely interesting! The dummy report should contain, at the outset, the purposes for benchmarking and how the results are expected to be used. By placing this information in the front of your dummy report (and your actual report as well) you increase the odds that the benchmarking results will be consistent with your purpose as well as your intended uses of it.

Communicate with your benchmarking partners. Successful benchmarking projects are those where the participants work together to define their mutual needs and focus the discussion. Theo Grigoriou, executive vice president of licensing operations for Honeywell Intellectual Properties Inc., recommends that the benchmarking company and the target company determine the scope of the inquiry together. A narrow scope allows the participants to get into the details of selected processes rather than learn only about the proverbial 30,000-foot-high strategies.

Be sure your benchmark partner is willing to do the necessary preparation before the benchmarking session. Dennis Melton, director of patent and licensing management for Avaya, Inc., and formerly at Lucent, recommends that, after defining the scope of inquiry, the two companies develop a glossary that defines processes and key terms. This will ensure that they share information on an apples-to-apples basis and thus arrive at meaningful results.

Each party should prepare a list

of detailed questions and send the questions in advance of the session to the other party. Some companies go at least one step further, answering for themselves the questions to which they seek answers from their partners. This can lead to a refinement and clarification of those questions, making them more useful to the "benchmarker" and easier for the partner to respond.

The benchmarking participants should define the rules of engagement: Will both parties share all information about selected processes? Will confidential information be exchanged? If so, how may it be used? As important as the rules of engagement are to the success of benchmarking, nevertheless, the authors believe that the best benchmarking is achieved when the "rules" are held to a minimum. Both parties should indicate how willing they are to share information. Obviously, as Dennis Melton puts it, "open kimono" is best; however, this policy may be tempered if the benchmarking is between two competitors. And both parties need to indicate upfront that they are willing to give as well as take.

Finally, those present at the benchmarking session should be able to answer the other company's questions in the desired detail. Small groups work best. In large groups, participants tend to share information less freely.

MEASUREMENT AND THE BENCHMARKING PROCESS

There are two broad measurements related to benchmarking: 1) measurements of the activities and practices being benchmarked, and 2) measurement of the benchmarking effort itself.

The activities and practices being benchmarked are called the "measures of interest," of which there are three kinds: measures of success, measures of progress and measures of process.

Measures of success. The company doing the benchmarking is in a position to determine what it means by "success." Success in measurement means that one has measured the items of interest. Success in outcomes means that one has learned from the effort and made business progress. The most important measurement of success is whether anything changed as a result of the benchmarking project.

Measures of progress. These are, as the name implies, measures that are used to define and describe the degree of progress toward a goal or objective. For example, for a licensing office striving to achieve a targeted level of royalty payments, a measure of progress might be the current royalty stream amount, expressed in percentages of goal, or in terms of the distance remaining to achieve the goal.

Measures of process. It may be that an activity or process, though required, does not itself make progress toward a goal faster. In such a circumstance, one may measure the process itself. In our licensing example, the licensing office's activities—all of them necessary for reaching the targeted goal—are difficult to measure in progress terms. They are, however, measurable as processes that take place during the race. An example of a process measure might be the number of potential revenue-producing technologies considered for licensing, the number of licensing agreements drafted, or the number of licensing agreements executed.

SUMMARY AND CONCLUSIONS

Benchmarking is a widely used and accepted means of learning about and adopting best practices in a selected area. A successful benchmarking effort depends on the amount and quality of preparation and execution. Done well, the exercise can lead to new ways of doing business and enhance personal and corporate relationships. Professional societies are often a good source of target companies. The Licensing Executives Society offers all of its members networking opportunities with candidate companies and their employees.

Benchmarking is not a game. Participants must take the exercise seriously and be fully committed to working together to make the session worthwhile for the benchmarking company and those being benchmarked. If your vision of success and the scope are clearly and concisely defined, the experience will be positive and can result in important process changes at your company.