

Placing IP Management At The Heart Of A Business

BY STEVE MANTON *



Introduction

When asked to talk about IP, most business leaders will argue that their businesses' future commercial success is dependent on the strength of its underpinning IP. However, within their organisations IP management is invariably treated as "someone else's problem," a speciality that should be dealt with by a central function with minimal input from the rest of the business. One way in which this behaviour is manifest is the poor, or non-existent, interaction that takes place between the processes used to manage IP and the processes used to manage the products and services the IP supports.

Instead, companies should give IP the profile it deserves by ensuring its management is placed at the heart of their business processes. This should start by ensuring that existing decision-making processes and corporate governance make visible both the strength of the IP portfolio and the quality of its management. Further, IP policy, strategy and accountabilities should not only clearly identify the actions individuals should take in the management of the company's IP, but also provide guidance to facilitate decision-making.

Decision-Making Systems

Decision-making processes and bodies would not approve a proposal if it omitted appropriate financial data; nor should approval be given without a fit-for-purpose IP plan. Ultimately, IP should be one of the key topics addressed within proposals submitted to decision-making processes. Clearly the contents of such IP plans will vary according to the nature of the proposition. For example:

- Project approval routes should, amongst other issues, consider

whether patent protection is necessary for commercial success, and if so, whether this protection has been sought.

- Bid-no-bid processes should, amongst other issues, look at the consequences of information release to customers.

- Approval routes for the use of contractors should, amongst other issues, check how important the arising know-how is to the company, and whether the work should be carried out internally to ensure such expertise is held in-house.

In some instances the IP plan may need to do no more than confirm the absence of issues, For example:

- That no proprietary or confidential information is being released to third parties.

- That the ownership of arising IP rests with the company.

- That exploitation of IP will not expose the company to significant liabilities.

In the extreme an IP plan can, therefore, be addressed using a series of tick boxes, with detailed information only demanded if an "unsatisfactory" response is given to any of these questions.

However, in many instances a more complex IP plan is likely to be required. For instance in the case of a proposal in which patents are important the following may need to be described:

- The role and importance of patents. i.e., to restrict competitor, customer, supplier or distributor's commercial freedoms; to provide collateral in cross licensing; etc.

- Which technology areas should be patented and which should be addressed by secrecy or publication.

- The timing of patent filings and the merits of accelerating or delaying prosecution.

- Which territories need to be blocked to make copying by third parties uneconomic.

- The amount spent on patents and the funding source.

- The timing of, and key words to be used within, searches for third party patents (alternatively confirmation should be given that these are already included within existing patent monitoring processes).

- How potential infringement will be monitored.

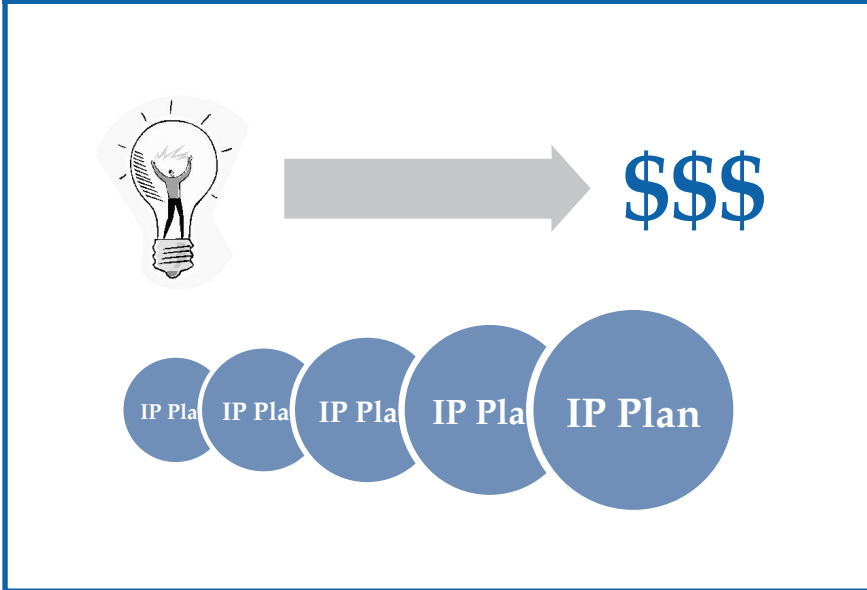
It should also be recognised that these IP plans are not static documents but will evolve as the project they underpin matures. At a project's conception only the most basic issues may need to be addressed, but as the financial commitment increases the rigour of the analysis will need to grow apace. (See Figure 1.)

In practice, simply mandating that proposals submit an IP plan will rarely result in key issues being identified and acted upon. Unfortunately, those preparing and challenging proposals will frequently not have a full understanding of the issues that need to be addressed in such a plan. However, there are a number of approaches that may be useful in ensuring fit-for-purpose IP plans are both prepared and challenged, these include:

- Simple trigger questions can be used to highlight projects that need to be the subject of detailed challenge.

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Figure 1.



- Guidance notes can be prepared and made available to both decision-makers and those charged with preparing proposals. These can take the form of “crib sheets” identifying the type of issues that project reviewers should raise, in addition “model” IP plans can be provided.

- Where companies use formalised questions within decision-making systems, then additional criteria focused on the management of IP can be introduced.

- The company’s existing system of accountabilities can be modified to define clearly the responsibilities for commissioning, challenging and implementing IP plans.

Strategy

For an IP strategy to be of value it must provide a vision that assists the businesses to take decisions on the protection, maintenance, licensing and disclosure of IP. Such a strategy should, therefore, address issues such as:

- What market sectors are to be exploited directly through the sale of products and services, and which will be exploited by licensing IP to third parties.
- How IP underpinning the company’s key differentiating and enabling capabilities is to be managed.
- Where there are gaps in the IP portfolio and how these are to be corrected.
- etc. (See Figure 2.)

An intellectual asset strategy should, therefore, define the role of licensing. Specifically, where is licensing simply to be pursued to generate revenue and where it has a role in supporting core business, i.e.:

- To enable access to third party’s intellectual property via cross-licensing.
- To establish your technology as an industry standard.
- To share risks and uncertainties.
- To provide for faster/wider market entry.

In addition, a decision should be taken on whether the company is interested in exploiting intellectual property, through licensing, in areas that are not aligned with its existing business activities. If such a step is taken, then accountabilities and resources must be allocated as required to achieve this aim.

However, for most companies, the critical area of their IP strategy is likely to concern the management of IP that underpins its differentiating and enabling capabilities.

Differentiators are capabilities to which an organisation wishes to have unique access (these are critical to companies in the private sector).

Enablers are capabilities, with limited availability, that are essential to product and service delivery (here the focus is on ensuring secure and cost effective access, rather than pursuing the creation of a unique capability).

Differentiating and enabling capabilities can range from disciplines such as project management, to technical expertise such as an un-

Figure 2.

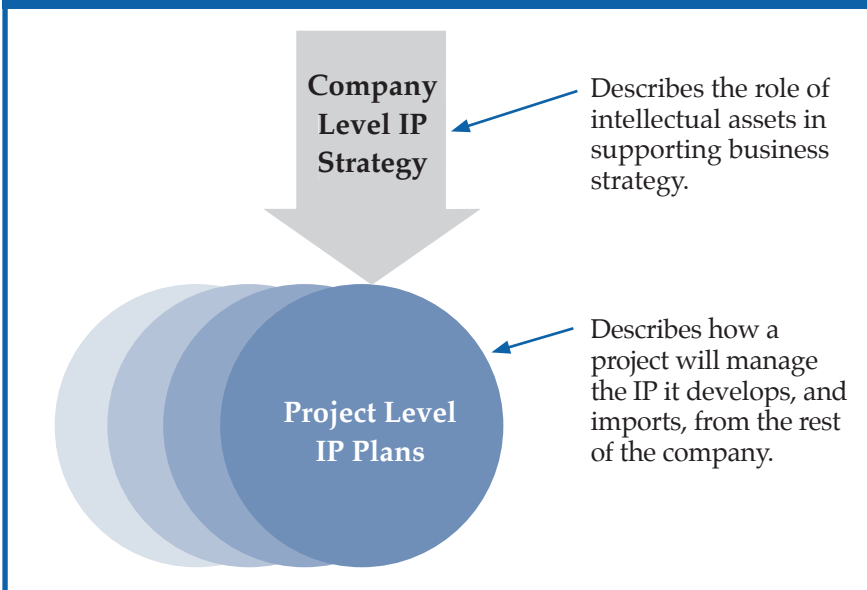


Figure 3.

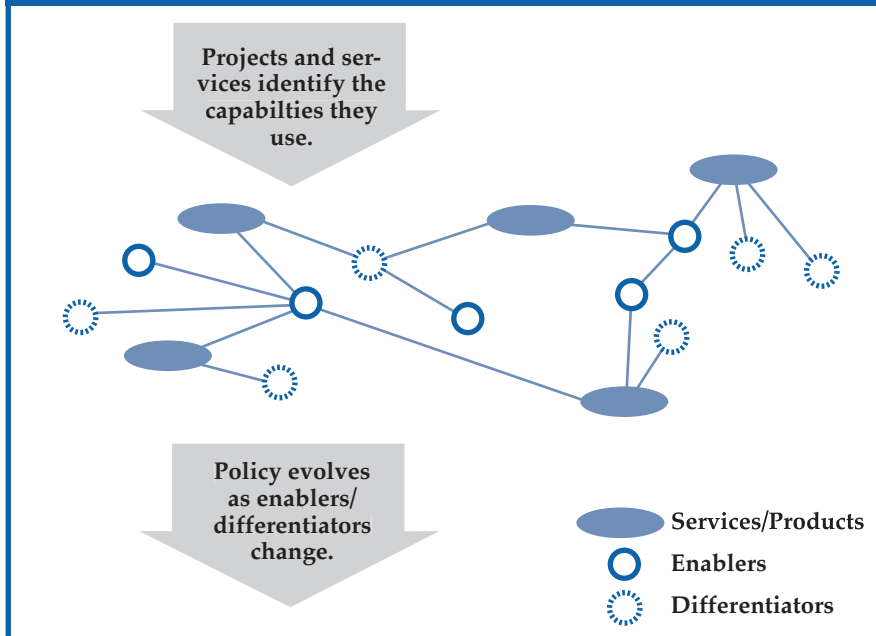
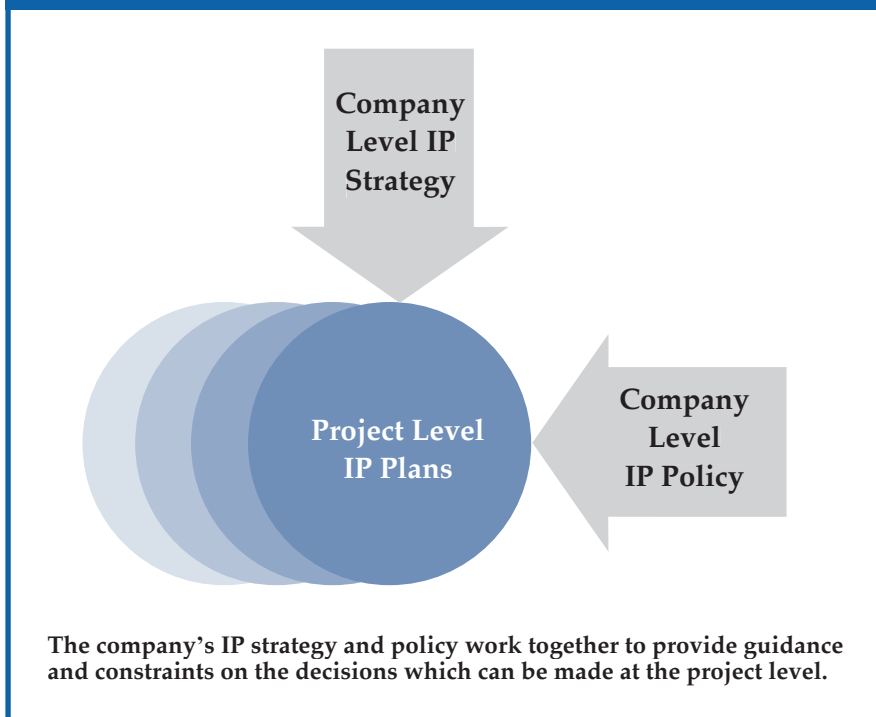


Figure 4.



Understanding of specific chemical reactions. Enablers and differentiators are likely to exist in the following areas:

- Product manufacture/service delivery.
- The supply chain and its management.

- Customer management (attraction/retention/interface).

Clearly, individual projects should not be allowed unlimited freedom on how to manage the IP underpinning the company's enablers and differentiators. The strategy must, therefore, provide a framework to

guide decisions and actions. For each enabler or differentiator the IP strategy should therefore: identify whether contract labour can be used in these areas, identify whether inventions should—as a default—be patented or kept secret, identify any individual responsible for decision-making, etc.

Earlier I proposed that decision-making processes should be adapted to encourage projects to prepare IP plans. There are two areas where there is an interaction between these project level IP plans and the company level IP strategy:

- Decision-making processes should seek confirmation that a project's IP plans are compliant with the company's IP strategy.
- The IP plans should identify the key capabilities and IP their project accesses, this will enable the list of differentiators and enablers captured in the IP strategy to evolve. (See Figure 3.)

Projects, therefore, help drive the evolution of the company's IP strategy, as well as operating within the framework it provides.

Policy and Accountabilities

Whereas strategy provides a framework to assist decision making, policy describes the principles the company will follow in managing its IP. (See Figure 4.)

There is inevitably considerable variation in the detail presented within different companies' IP policies:

- Some companies may decide to limit their policy to a series of statements of principle. However, policy statements of this type are often little more than motherhood statements that rarely aid in the running of the business.

- Conversely some companies' policies contain detailed procedures describing not only what should be done, but how. Policies of this type are often ignored because of the sheer volume of information users must navigate.

The most effective policy frameworks are normally structured as follows:

- A number of short policy state-

Table 1.

Policy	IP will be deployed, protected and shared so as to secure maximum commercial benefit to the company as a whole.
Accountability	Business Group directors will introduce auditable, fit-for-purpose, processes to ensure that IP is deployed, protected and shared so as to secure maximum commercial benefit to the company as a whole.
Delegated Accountability	Project managers are accountable for commissioning and implementing fit-for-purpose IP plans. Gate Keepers are accountable for challenging the adequacy of project's IP plans. Etc.
Minimum Action	Project review processes will mandate the submission of fit-for-purpose IP plans. IP triggers are to be used in decision-making systems to identify projects requiring detailed review. Etc.

ments are given defining the principles the company will follow in the management of its IP.

- Each IP policy statement is accompanied by clear accountabilities, identifying both those responsible for policy implementation, and the actions that need to be undertaken to ensure compliance.

- Supporting procedures can be prepared where necessary. However, in general these should be kept outside of the policy framework.

Table 1 shows an example to demonstrate this approach:

This structured approach provides a clear description of: the company's policy, the minimum actions needed to ensure compliance, and identifies those responsible for policy interpretation and ensuring compliance.

Targets and Challenge

This is probably the most important area to address when seeking to improve IP management in large companies. Once strategy, policy and accountabilities are clear, then the process of making visible the performance of accountability holders is an extremely effective lever for change.

Senior management, or the corporate body, should therefore routinely

challenge how effectively IP is being managed by the operational businesses. Metrics or other indicators can be of considerable use in this process of challenge and can both:

- Make visible the alignment of the company's IP portfolio to business strategy. i.e., measuring the "role" and "utility" of existing IP in each business area.

- Make visible the quality of the businesses' IP management.

Monitoring the Quality of IP Management

Here the choice of Key Performance Indicators (KPIs) is critical. The correct KPIs can be used not only to identify areas where improvement is required, but more importantly serve as guidance on the activities that should be undertaken to improve performance.

Some targets will take the form of simple checks, which will have a "yes" or "no" answer, for example:

- Are accountabilities clear, and, if delegated, are approval and reporting structures clearly defined?

- Are IP responsibilities captured in appropriate job descriptions, and are routine assessments made of whether individuals have the necessary skills?

- Have the business's key enablers and differentiators been identified, and are they addressed by an IP strategy?

Metrics can also be developed—for example showing the number of projects passing or failing any triggers used within decision-making systems.

Monitoring the Quality of the IP Portfolio

It is obviously not possible to review the alignment of all IP to business strategy. Instead the process of challenge should probably pay particular attention to the "health" of that IP underpinning the company's key differentiating and enabling capabilities. It may be useful to develop a system of metrics to help in this process. Although the terminologies used can vary, IP has two basic characteristics that should be examined:

- *Role.* Here metrics will seek to measure the potential importance of a given asset to business success (e.g., the extent to which trademarks can create a differentiated product).

- *Utility.* Here metrics will seek to measure whether a given asset is fit for purpose, and if its longevity is consistent with business need (e.g., whether your trademark has, and

will continue, to create a differentiated product).

The IP underpinning each capability will therefore have two characteristics, defining respectively its Role and Utility. If metrics are used to represent these characteristics, then any misalignment between the Role and Utility scores will highlight potential problems that need to be considered by management.

The Role of the IP Department

Clearly decisions on the maintenance, protection, disposal, licensing and abandonment of IP should be taken by the businesses. Equally clearly the IP function, whether based internally or outsourced to private practice, will be responsible for managing the legal processes implied by such decisions. However, in addition there is a need for an additional managerial role to:

- Review and challenge the businesses' decisions.
- Develop and monitor compliance with company policy and strategy.
- Provide assistance to those preparing and reviewing IP plans.
- etc.

Care needs to be taken in deciding where these responsibilities should be placed. In most companies, the IP function acts as a service provider, and as such may not be well placed to assume this role. Further a company may decide that the management of IP and knowledge need to be coupled, in what would effectively be an intellectual asset function.

Intellectual asset management seeks to:

- Minimise third party access to, and freedom to exploit, key intellectual assets.
- Ensure ongoing access, and freedom to exploit, key intellectual assets.
- Raise the visibility of, and ensure full exploitation of, key intellectual assets.

These goals closely match those of IP management. Indeed, Intellectual asset management, like IP management, must be addressed by its integration into existing business processes. For example:

- Project approval routes should check whether projects are both managing and protecting their key intellectual assets.

- Internal management processes should make visible both the strength of intellectual asset portfolio and the quality of its management.

- Policy and accountabilities should clearly define responsibilities for the management of intellectual assets.

Intellectual asset management can, therefore, be addressed, at least in part, by the tools and processes described above. In essence this approach seeks to imbed the management of knowledge and IP into existing policy, strategy, accountabilities and decision-making processes.

It should be recognised that this approach, in the main, effects change by adapting existing business processes, rather than by introducing new ones. This ensures that, regardless of their size or structure, companies can make the changes needed to improve both IP and knowledge management quickly and simply.