

THOUGHTS ON HOW TO PRESENT IP AT THE BOARD AND BE UNDERSTOOD

Dear Reader, thank you for your interest in this topic. As it just so happens, I had prepared a lengthy and detailed presentation only to jettison it in favor of a more impromptu and personal interaction with the audience. Working from memory of our enjoyable exchange, I have compiled the following text. I hope you find it useful and am standing by to engage in further conversation should you wish to share some thoughts and comments.

By way of background and introduction, I am an American trained patent attorney with a background in Applied Physics and Law. My professional career has been split between the US and Europe with a good portion of that time having to answer in one form or another to at least one member of the Board. Currently, I have the pleasure of being the Global Head of IP at Linde, representing this global gas and engineering concern directly before the US and European patent offices (not to forget the DPMA, EUIPO, etc.) and heading up 5 teams working on patents, trademarks, licenses and the like.

Leaving the hard facts to your professors, the focus of my talk will be on sharing observations and experiences. To start with, let me say that communication is rather dependent upon personal style. There is no right or wrong style just

effective or ineffective style. I have found success with simply being authentic.

In addition, communication is the art of being understood and not necessarily the art of being right all the time. To illustrate this point, let me tell you a short story from the American past.

Abraham Lincoln, one of the finest US presidents ever, started out as a circuit lawyer, namely, he was a lawyer who traveled within a particular geographical circuit representing various persons within that circuit before various circuit judges who also traveled the circuit. Now at the time, believe it or not, the US did not have many lawyers or judges, so it was not uncommon for the same lawyer to appear before the same judge in a different part of the circuit regarding a different case. This just so happens to have been the case with Abraham Lincoln. One morning, he was before a judge and forcefully argued a particular point. That afternoon, in a different part of the circuit, he appeared before the same judge and argued the exact opposite point. Now the judge had a pretty good memory and asked Lincoln how he could argue one point in the morning and the opposite in the afternoon. Lincoln answered, "Well, your honor, this morning, I was wrong."

It was a funny answer but not necessarily helpful to Lincoln's case. One can imagine how the judge felt and likewise what such an answer did to Lincoln's

credibility – at least before that judge. Furthermore, this answer runs contrary to one of the first things they teach you in law school which is never to annoy the judge. You will most likely lose your current case along with possibly the next 10 ones. Judges should be taken seriously and respectfully as do Board members.

For many lawyers, as exemplified by the Lincoln story, there is a feeling or need to be right all the time regardless of the circumstances. To essentially always have the last word and/or an answer for everything. Tempting as it may be, after all, we are the experts on our particular topics; we should avoid such behavior at the Board. We are after all taking up their time and generally wanting decisions, guidance and the like. So, humility supported by frankness does get you far without upsetting anyone on the Board who may not share your sense of humor or is otherwise having a bad day.

Now, in my experience, quite a number of senior executives get their information from journals and other such publications. Journals have been kind to IP in recent years extolling the virtue and value of patents and trademarks to companies while not exactly doing a great job of explaining why they are so valuable. This is where we come in. We help turn the intangible into the tangible. Whenever possible, turn your presentation into a value add proposition and sell yourself, your team, your work and your value to the organization. You don't need to try too hard or

be too obvious. Board members will normally understand the basic value of having a good and reliable patent attorney managing their IP. Don't be shy about showing them that you are one of the good ones.

Here's another tip; a common concern at the Board is the financial well-being of the company, namely, income. So, try to connect what you are presenting to an easily measurable, defined and predictable revenue stream. Reduce it to Euros and cents where possible. Couch what you are presenting and what you want in terms of the familiar and uncomplicated. This will help the Board listener be more at ease when quantifying what you are doing and fit it into their general decision matrix they will have before them.

Be prepared. I cannot stress this point enough. And by prepared I do not mean being able to quote the law. That type of preparation and presentation is for your professor. Here, I am referring to what I would like to think would be an American lawyer style preparation. Go in three layers deep. Try to anticipate what questions will come up, what follow up questions will come up, and then what follow up questions to the follow up questions will come up. Have prepared, easy to follow and legal light answers for each and please do not ever lecture the Board. Yes, you may very well know more than they do which is why you are there in the first place. Remind them of this and it may well be your last time

there. Further, you are there to build up their trust and confidence in you. For this, honest and open showing of your knowledge, proposals and the like will go a long way. I have seen folks try to pull one over on the Board and believe me, it did not go as planned. So, be prepared and play with open cards that have been thoroughly worked through and prepared.

Another thought - know your audience. Try to understand who they are, how they think, what is driving them and why are you really in the room.

Let's start with the 'who'. No doubt you would have done your homework in assessing the identity and job functions of the persons on the Board. Having an ear towards the internal relationships among the board members can be quite helpful if the IP topic you are presenting somehow touches upon an open point of contention. The last thing you want to do is find yourself in the middle of an interpersonal power struggle at the Board – not good for one's career; plus, no matter what you say and how you say it, you will most likely be viewed with skepticism for potentially interfering in a sensitive matter beyond your job description. Whatever message you thought you would convey will most likely get lost and whatever it was that you may have wanted from the Board will probably not happen in the near future if at all.

Next, the 'how' (does your audience think) and the 'what' (is driving them). Is there a true long term strategic thinking and planning going on or is the focus more on the next six months in terms of profits, headcounts, major deals and the like. Are you going to get blindsided with an existential question about all those people working in IP, ghastly outside counsel bills, your view on a merger or recent event in your business sector, political sphere and so forth. While it would be a bit simplistic to think that the Board generally concentrates on only one theme at a time, there tends to be dominant themes that rise to the surface and garner the most attention. Try to understand what is keeping them awake at night and factor that into your presentation so as to support progress or avoid construction sites altogether. Here too, your message could get lost in a swirl of information neither surrounding an otherwise messy situation not of your making nor promoting a solution thereto.

Lastly, the 'why', please try to keep in mind why you are there. The Board is extremely busy and need to justify their time and existence just like the rest of us. To be blunt, if you come in wasting their time by not addressing the issues you were expected to address with solutions that fit the current climate, you embarrass yourself, your boss, your teams, your supporters and even your Board sponsor. So do come in prepared by knowing in straight forward terms why you

are there in the first place so that your presentation hits the relevant facts and provides useful and on-point solutions.

How does one go about collecting all this information? The simple answer would be networking. Stay informed. Make a name for yourself and your departments and in exchange create alliances and allegiances that can help you with everything from information gathering, to headcount promotion, budget protection and the like. For now, let's focus that answer on information gathering. Your colleagues have gone before the Board. What were their experiences? What questions did they face? What was the mood of the Board? Who looked engaged and who could not take his/her eyes off their Blackberry? Who asked intelligent questions and who looked bored or annoyed? Who looked well and who looked like they could use a vacation?

By the way, if you get the opportunity, try doing a pre-read. Make an appointment with your Board sponsor and run your presentation past him/her asking for their feedback, thoughts and comments with enough lead time before your actual presentation in order to update your presentation accordingly. If anyone can tell you how your Board thinks and acts, it is your Board sponsor.

Something I have run into more than once is that boards generally want IP but do not want to pay for it. A reason I often hear for this is that IP does not provide an immediate, direct and tangible return that can be baked into the budgeting process (in the plus column naturally), thus making IP disconnected from the traditional ROI thinking.

Some actual questions and comments I have encountered from senior managers:

- What would happen if we eliminate the entire IP budget?
- What would happen if we just ignored that cease and desist demand letter?
- Do you really need all those people in your department?
- How hard is it to really get a patent, come on, I have seen your team and they are not really working that hard, are they?
- Cut your budget by 15% and increase the size of the docket by 15%
- Go to China next week and put an immediate stop to all that copying
- Go enforce that patent by Friday and spend as little as possible
- We have not been sued in the last 10 years, stop spending money on IP
- The world has too many patents, just ignore them all.

With basic communication thoughts in mind, let's take a look at IP management in a hypothetical situation. Your company is going through a merger of equals. A

term sheet has been presented to the capital markets and the future combined company board constellation is still being worked out. What role does IP management play? What role should you expect to play? Why would the Board want to hear from you?

Now, in a merger of equals, rival business units or departments and the like need to present themselves to the future powers that be in order to be selected as the dominant player in the newly formed company. Any overlap that may result in layoffs should be borne by the other side. So, it would be important here, when presenting yourself and departments before the Board to show off your IP Management knowledge and the IP structure in place to execute it. Let's take a quick dive into IP Management and give a think as to how we might present it along with the structure needed to support it.

IP Management – delivering exclusivity by making the intangible tangible. A good place to start would be to understand what Marketing wants as a premium upsell product or service. Then comes R&D into view as they would need to use their know how to create the actual physical product or service. Then comes the IP department which would need to support the creation process with IP intelligence (prior art searches, FTO studies, etc.), ring fence the actual product or service and otherwise convert the intangible into the tangible. If the state of knowledge

and/or strategic direction is a bit fuzzy or there is an opportunity for IP strategy to play a role, you can always consider identifying white spaces for the company to play in and/or which current playgrounds could benefit from more IP and make this information available to Marketing.

As we would tell our story to the Board, try to let the facts do the self-promotion.

Present the information in a manner that highlights your benefits, their weaknesses and couch all in terms of monetary benefit to your company. To be more specific, consider three pillars upon which a good modern IP department stands: IP strategy, IP intelligence and IP portfolio management. In brief, IP strategy is an inward looking analysis of what to grow, maintain or divest as with respect to relevancy to the current market and business/R&D strategy. IP intelligence is the forward looking analysis of where your company might play in the future, including white spacing, product clearing, FTO and blue sky analysis. IP portfolio management is the actual physical management of the patent and trademark docket.

Keep the presentation simple. Start with one high level diagram which in a straight forward, direct and uncomplicated manner depicts your vision of how the aforementioned three pillars come together to the benefit of the company. Be sure to cite monetary benefits here and whenever/wherever practical. Lastly,

squeeze in your structure into the slide if possible. I realize the aforementioned may be contradictory in that I am advocating squeezing a lot of information into one slide for simple presentation. Herein comes a challenge as to what to include and what to leave out. To further complicate matters, this one slide could then be used as the road map guiding the reader into slide sets detailing each of the three pillars as they apply to the organization you built and which your team inhabits and produces value for the company. I will touch on each of the three pillars in a bit more detail with the caveat that there are a multiple of different strategies, intelligences and managements and it would be up to you to apply the one that best fits your organization and up to your professors to walk you through each of them in detail. The following is merely a high level example for conversational purposes only.

Let's say IP Strategy looks inwards into existing IP assets, catalogs them and maps them to the current product/service portfolio. No doubt your IP covers your products, so take the opportunity to highlight this in a useful easy to follow diagram. Map your IP to your products, technologies and the like. Color coding is always helpful and gives you a shortcut into limiting the amount of information you have to put up on the screen in order to support your message. A good highlight here should also show off your team structure arranged to execute your

strategy; a structure which is of course better than your rivals. Diving deeper via additional slides, consider presenting the guidance you would give R&D on where to create more IP to cover unprotected products and prune IP that covers products which are out of date. A specific example is helpful, especially one which you have already taken the liberty of executing. Here you will a concrete example of how you have already added value; something the other side will have to answer if they hope to compete with you. Lastly, close and effective interactions between R&D and IP are expected at the Board and here would be your chance not to disappoint them.

Let's say IP intelligence would be, in turn, looking outward. Take a critical look into the technical spaces into which the products play – any white spaces to grab? Likewise, how are those mega-trends doing? Keep the presentation of information consistent whether you are looking inwards or outwards. Try to develop a particular style of presenting the information, so that what you show starts to become familiar and more quickly/easily taken up by the Board.

Let's say portfolio management would be the execution part. Again considering showing off your structure and how integrated you are with other teams. Names, faces, personalize it. A human touch is nice. Remember, you want to sell yourself as the better alternative to the other person in the other company. So, give the

Board as many quick facts in your favor as possible. Repetition is not necessary, just a good story. Lastly, here, don't get bogged down in the details of the execution. The Board knows you are spending money. Showing them where, why and how; and please do so in a positive and optimistic manner. You are efficient and ever watchful for a price competitive proposition. Let them know this. Consider being less about prep and pros and more about costs and output.

Some last thoughts: keep your eye on the message and keep the heading of your presentation pointed in the direction of your message. For example, in the aforementioned, you would want the Board to see that you have an inward looking understanding of what you need and what you don't need; you have an outward looking understanding of what can be patented and what needs to be designed around; and you have a structure that is well integrated into the rest of the organization to maximize know how in the creation of and maintaining of only the IP which your company needs. Uncomplicated and direct pictorial messages supported by hard data and analysis and you should be fine.

In conclusion, to summarize how I would explain this to the Board could be found with the old adage of how porcupines make love – very carefully. Thank you for your time and attention. I am happy to take any questions, thoughts and comments and welcome your feedback.