Intellectual Property Management in Asia: The Human Factor

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Outline

♦ Pre-introduction

♦ Introduction

♦ Basic “business culture” factors

♦ Recent trends

♦ Recommendations
Reminders / Announcements

♦ This series produced by US-Asia Technology Management Center
  ♦ Slides archived at http://asia.stanford.edu

♦ Financial support: Squire Sanders Dempsey LLP

♦ For-credit students:
  ♦ All materials must be submitted prior to scheduled exam time of this course
  ♦ Email both to <shirley dot sun at stanford dot edu> and <rdasher at stanford dot edu>

♦ On-line course evaluations

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Discussions of the various types of IP
- Patents
- Copyrights
- Trademarks
- Trade secrets
- (Technology standards)

Different countries:
- Different legal systems, although trend toward harmonization
- Different enforcement patterns
- Have impact on IP strategy, even down to how one writes patent claims

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Review of series - 2

♦ Presentations on representative cases
  ♦ Technology development in China
  ♦ Software service businesses in India
  ♦ Stanford technology licensing to companies in Asia
  ♦ Two different cases of standards in China
    ♦ Wireless communications (WAPI)
    ♦ Chip design specifications (VSIA)
  ♦ Cisco Systems
  ♦ Outsourcing and offshoring
We need to consider the human factor(s) in IP management

- For example, what is a patent worth?
  - Method of calculation
    - Value it brings to product(s), value of those product(s) in market(s)
    - Defensive value of the monopoly right: competitive advantage
    - Value to subsequent research of the knowledge that the inventors gained
    - Pro rated value as part of R&D portfolio (for costs as well as market value)
  - A lawyer friend said, “Nothing, until you’ve demonstrated that it will hold up in court.”

IP value depends crucially on human factors: negotiation, business and management strategy

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Human factors in IP management
Obvious: Negotiation Patterns

- **Haggling over price**
  - “Bazaar” tactics -- may not work well for establishing value of abstract things (like IP)
  - Instead, may reduce apparent credibility
  - Important to give reasons to justify demands

- **Sequential problem solving (U.S.) versus leaving everything on the table until the end (Asia)**
  - Asia-style: minimize negative impact (loss of face) of public compromise
  - U.S.-style: give something up early to show good faith
Less obvious: what negotiation is all about (the end state)

<table>
<thead>
<tr>
<th>U.S.: Building a machine</th>
<th>Asia: Getting married</th>
</tr>
</thead>
<tbody>
<tr>
<td>♦ Establish absolute rules for business relationship</td>
<td>♦ Maintaining the relationship is more important than the rules</td>
</tr>
<tr>
<td>♦ All details in contract; expect no changes unless new negotiation</td>
<td>♦ Contract more symbolic; expect partner to bend terms for you (somewhat)</td>
</tr>
<tr>
<td>♦ Violations: appeal to outside authority to establish responsibility</td>
<td>♦ Violations: use bargaining to reach a new working solution</td>
</tr>
<tr>
<td>♦ May lead to insufficient attention to relationship</td>
<td>♦ May lead to accusations of unreliability</td>
</tr>
</tbody>
</table>

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Deep “Business Culture” Factors

- Basic goals of the company
- Basic concept of the business process
- Market motivation
- What motivates the people across the table?
- Decision making and implementation (throughout the organization)
- Conflict and crisis management

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Basic goals of the company: What is a board member to do?

- **U.S.**: Increase shareholder value (leads to focus on regular revenue and profit increase)
- **Japan**: Company is a primary social institution & belongs to the community
  - Responsibility for maintaining employment, stable economic growth
  - Profit is society’s reward for a job well-done
- **China (GC)**: Company is an extension of the (Confucian) family
  - Conflicting goals may lead to surprising board decisions

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Basic concept of the business process

♦ **U.S.:** Basis is the transactions
  ♦ Flexibility in choosing new partners
  ♦ Expectations from current partners
  ♦ Negotiations to set rules of game (see earlier slide)

♦ **Japan:** Basis is the long-term relationships
  ♦ Distinct persuasive arguments: future business is an important incentive
  ♦ Tendency to form groups (e.g. keiretsu) -- close relationship with one customer may limit other market opportunities

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Market motivations:
beyond demographics

♦ **Example:** car-navigation systems
  - Popular among young, early adopter markets in Asia, slow to penetrate the U.S. “auto superpower” market
  - Why? What is the basic “meaning” of owning a car?

♦ **Example:** Internet cellphone services
  - Slower to penetrate U.S. market than in Japan, Korea, China
  - Major external factors: NTT DoCoMo policies toward 3rd party service providers, telecom deregulation in Korea
  - Led to quite different patterns of use: cellphones as primary platform for email, etc.
What motivates the people across the table?

♦ **Japan (and Korea):** tradition of lifetime employment for managerial track in large firms
   ♦ Main motivation: promotion up the pyramid to get best possible retirement situation
   ♦ Illiquid labor markets: no mid-career opportunities outside own firm
   ♦ Result: even more risk-averse behavior as eligibility for promotion time approaches

♦ **China:** personal risk management in a changing social structure (economy + politics)
   ♦ Importance of *guanxi* (favor-based relationships)
Decision-making patterns

♦ **Japan:** consensus
  ♦ The entire group is a “key person” -- need to eliminate roadblocks as well as convince (a) champion(s)
  ♦ Persuasion and decision-making occur in different settings, both processes largely happen off-stage
  ♦ Formal meetings for validation of informal agreements (but discretion must be maintained)

♦ **China:** Confucian patriarchy with Taoist dynamics

♦ **Korea:** apparent lack of progress in negotiations until the very end; then multiple concessions and trade-offs

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How are conflict and crisis managed?

♦ **U.S.**: appeal to outside, objective authority
  ♦ Establish responsibility and designate punishment

♦ **Japan**: find a new equilibrium for both parties
  ♦ Stage 1: open conflict avoided or communicated through silence
  ♦ Stage 2: negotiate (off-stage) appropriate offers of compensation for damage, distress
  ♦ Stage 3: make a sacrifice to equalize suffering (so that perpetrator suffers, too)
    ♦ President resigns, etc.
Some recent trends
Filings in world top-ten patent offices

Source: WIPO Statistics Database

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WIPO report, 10/16/2006
PCT (international) patent filings via WIPO

Source: WIPO Statistical Database

Patent filings by residents in NE Asia

Source: WIPO Statistics Database

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WIPO report, 10/16/2006
Patent filings by non-residents in NE Asia

Source: WIPO Statistics Database

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WIPO report, 10/16/2006
IP trends in context

- Increasing importance of Asia for technology-intense businesses
- Increasing importance of international business perspectives (non-resident patent filings)
- Business contexts:
  - Growth of Asia (especially China) markets
  - Growth of Asia-wide supply chains (e.g. components are shipped to China for assembly, then exported to U.S., Europe, rest of world

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Final points
Important take-away points

- It is important to consider your IP in Asia, even if you don’t plan to do business there right away
  - Need to file internationally for international protection
  - Need to watch Asia to see what kind of related business is going on -- possible opportunities, possible competitors

- IP management in Asia requires several skill sets
  - Knowledge of the IP and its technical context
  - Knowledge of local markets, business opportunities (e.g. for product localization, to ID potential licensees)
  - Knowledge of local business culture

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Local business partners

- Don’t assume that just because (A) is a resident of (X), s/he knows how to manage your business in (X)
  - Should demonstrate market and business knowledge, prior track record
  - Follow up on names of contacts that are given

- Interview study of Silicon Valley start-up teams (2005): strong preference to form teams around people the entrepreneur has worked with before
  - But, returnees to Asia may have difficulty with *new* business culture elements there

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Recommendations, continued

- Develop more than one cultural mentor
  - Importance of local legal knowledge

- Continue to be actively involved after the project has started
  - Travel budget, time budget

- Watch for changes
  - In the markets, business environment
  - In the motivations of your business partners

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