Mining Intellectual Property
With Development Staff Members

"Development" means vastly different things not only to different people, but also to different organizations. The very nature of one's business determines many attributes of what development means on a day-to-day basis. To a marketing services company development can mean the work-product that is needed by the next client.

To a think-tank, development means the next solution proposal to get to the bottom of a solution to a customer's problem. To a manufacturer, development means everything from a product concept to the production techniques (and all the stuff in between) that are created to mass produce that product and make it competitive in the marketplace.

Given all these views as to what development means, it comes as no surprise that programs that are applied to enhance the development process are seldom "generic". Even for organizations in the same industry, corporate culture often defines the development process, and it even varies between project teams within the same enterprise.

Then, it is obvious that the process of extracting Intellectual Property (IP) from the creative people who are spearheading "development" is tricky at best, and even more difficult to support with a policy.

These factors ultimately force every organization to seriously consider custom solutions when organically building an IP portfolio. Among the various ways to address this issue, the most popular approach is to "put up the mirror" and use the staff members themselves to help define their possible contributions to IP. Within functional groups, this often is "kicked-off" with an introductory meeting to establish some basic rules and objectives.

However, even when the technique is expertly applied by the meeting leader, the participants view it as just another interruption with no payback in the foreseeable future. As a meeting leader, just imagine yourself as a comedian facing a "tough room", no laughs. That's about it. Does the word "magic" come to mind?

In many ways, the creative process can be regarded as magic. It simply just happens. It can't be directed, much less harnessed. Of course, if every corporate leader today believed that to be totally true, there would be a lot fewer patents filed every year.

IBM's patent list would be on one sheet of paper and Toyota would make the same model cars every year. Obviously, this is not the case. To succeed, the magic of the creative process must be set aside and replaced (at least temporarily) with a process that can be repeated and participated in by development staff. All this to be done while maintaining their interest level as close to 100% as possible.

The real key is to somehow impart the excitement of developing a huge IP portfolio to a group of people who are primarily interested in developing a product or service and seeing it through to completion. In effect, the IP documentation process interferes with each developer's path to satisfaction. That's what makes it a tough room.

Without being able to communicate the reasoning behind strong IP, specifically why it's needed, what it can do for the developer, and how much it means to the organization's success, the effort will only be given lip service. It will not get very far. This is where strongly focused communication skills are most important. There won't be much time to get the point across, probably less than 3 minutes.

What's the point? Basically, that this is not some new management fad, the cold fact is, in today's marketplace, a company without strong IP is an accident waiting to happen, especially a public company. Don't patch the leak, we all go down.

Now, it's how to communicate this reality to a group of developers, and quickly. Not through threats or fear but getting back to clearly communicating an answer to the question "What's in it for Me?" up front, and in no uncertain terms, because nobody's going to ask.

A meeting leader's fist impulse is often to start reviewing the company's business plan objectives and how a strong IP portfolio is important to the company, etc. Unfortunately, most employees don't readily identify their own situation with a business plan. Especially with a business plan that, up to now, has not been shared.

Some meeting leaders offer a reward (like $500.00) for the "best idea". Now let's make a list; we can pick the best idea as a basis for our next patent application. Greed is something developers don't like to show in public. Such lists are often quite short.

Try something like this: Anybody know why I'm here with your team today? <group answers> No, not quite, but we keep getting beat by Cisco and the boss is tired of it. What do you think we can do? <group answers> Well it's a given that we can come up with better products, but what if Cisco just copies them? <group answers> Did you ever think of using IP as a way to slow Cisco down? <group answers> Right, that's why I'm here with your team today.

From that point on, the team will understand that threats come from specific competitors, it is important that we use any means to slow them down, and that it is critical that we work as a team to address the threat. There is no better team motivator than a common adversary.

Now the process of using IP from a competitive perspective can begin. Get agreement from the team as to the best way to proceed and be sure to feed it back to confirm that the approach being used is going to follow the consensus.

During this first meeting, follow the agreed process and walk-through enough ideas to get started with sufficient tangible concepts to support a solution diagram (system, process, flow, etc.).

Limit the meeting duration to 1-2 hours and schedule a follow up meeting to clarify and add to the results. In advance of the next meeting, be sure to distribute minutes and a rough draft of the concepts that are eligible for consideration for formal IP documentation.

At the next meeting quickly review the basic questions like "Why am I here with your team today?" and "Do you know how we are going to use our IP to slow Cisco down?" Then, immediately review the new ideas that were enumerated and distributed.

Go over today's agenda and be sure to expand on the ideas that are currently "on the plate". Remember, everyone has had time to think about it and there will always be more to add. Be sure to note the body language of the team members; it is best to address concerns at this stage if so indicated.

Allow for a creative discussion and be sure to reinforce "What's in it for Me" by going over any incentive plans the company has in place for inventions and new ideas. It is important at this point to make sure that everyone understands about competitive advantage, financial rewards, and the personal pride of being listed as an inventor on a patent document.

Note: These reinforcement items should be presented at follow-up meetings because inventive sessions will always be considered interruptions, no matter what. Reminders of the fundamental motivations must always be worked in.

Once the series of meetings has yielded enough material to establish documented IP, it is best to break up the concept refinements into individual responsible inventors or small inventive groups. It is not good to have the same team listed again and again on patent applications.

By keeping the inventor lists on each patent disclosure as short as possible, the number of claims will be controllable, limited, and more compatible with Patent Office requirements. For example, if there is a choice of filing 2 patents with 40 claims each or 5 patents with 15 claims each, the latter is always best. The claims will be more focused, and the number of inventors listed on each patent will be manageable (4 or less is ideal).

Next, try expanding the groups to include cross-functional teams. Include people from Marketing, Project Management, Engineering and Development. Follow the same general steps and make sure there is agreement on how to proceed. Please note that the optimal process for a cross-functional team will vary from a focused development team.

The nature of the IP will also be different with Trademarks and Copyrights thrown into the mix along with the patents. Each product's revenue contribution may need to be introduced to maintain focus and the effect of competitors will be more intense.

The process may be repeated in advance of each major product or service introduction. Be sure interruptions do not weigh on the teams and that the ongoing progress of building the IP portfolio is always communicated back to the groups clearly and frequently.

Process Focus Areas

- Project List

- Product Development

- Sales & Marketing

- Project Management

- Product Revenue List