

Intellectual asset strategy and the board of directors

Changes to the way in which corporate governance is approached mean that boards of directors will spend more time on IP management issues than they have in the past. For intellectual asset professionals, one of the challenges this presents is helping senior decision makers focus on the right areas

By **Rob McLean**

As an intellectual asset executive, you have worked hard to ensure that your company has an effective intellectual asset strategy. However, developing a good intellectual asset strategy is not in itself sufficient if it does not influence decisions at the highest level of the organisation. Traditionally, intellectual assets have not been a priority item on board agendas. But given the increasing strategic importance of intellectual assets, that needs to change. How can you ensure that your board of directors both understands and supports that strategy?

To begin with, it is important to identify the level of engagement the board in a company has with the intellectual asset strategy. Consider the following four alternatives:

1. In general, the board is unaware of the importance of intellectual assets and intellectual asset strategy to the overall corporate strategy or to competitive trends in the industry.
2. The board is peripherally aware that intellectual assets have some importance in strategy and competitive trends at the corporate level.
3. The board has a high-level understanding that intellectual assets have some importance in strategy and competitive trends at the corporate level.
4. The board has a detailed understanding of the role that intellectual asset and intellectual asset strategy play in strategic plans at both the corporate and business unit level.

If they are being honest with themselves, most companies today would situate

themselves at level 1 or 2. But while they may have got away with this level of engagement in the past, it is not satisfactory for the future. And here is why.

Governance trends

In the North American business world, we are in the early stages of a tectonic shift in corporate governance. We are all familiar with the high-profile scandals of previous years – Enron, Worldcom and so on – that triggered regulatory initiatives such as Sarbanes-Oxley. But, to shift metaphors, SOX is only the tip of the iceberg. As the baby-boom generation moves into the boardroom, we are going to see just as many changes in governance in the next 10 years as we have seen in intellectual asset management over the past decade. One thing is absolutely certain: it will not be business as usual.

Among these changes will be:

- The professionalisation of corporate governance: as professionals, directors will be expected to demonstrate that they have been properly trained to assume their responsibilities, that they have appropriate experience, abide by a code of professional conduct, and update their knowledge and skills through continuing professional development. It is not out of the question that some form of certification may evolve as a consequence of this.
- An explicit recognition that effective governance arises from the coordinated interactions of various professionals – directors, management, corporate secretaries, legal counsel, internal and external auditors – combined with the evolution of clearer processes, guidelines and standards by which to

coordinate these interactions and evaluate their combined effectiveness.

- A shift from seeing governance as meeting-centric (ie, as a process that takes place mainly within meetings), to activity-centric (ie, as a process where periodic meetings are used to plan, coordinate and assess various asynchronous activities which comprise the bulk of the work that directors undertake). This will be supported by extensive adoption of information-technology-enabled tools to support and facilitate all of the other changes in the governance process.

Recent legislative developments in Canada reinforce these trends. Due diligence at the board level used to be a collective responsibility. However, under certain circumstances, directors in the province of Ontario are now exposed to liability if they cannot demonstrate the steps they took personally to demonstrate that they were duly diligent in performing their oversight responsibilities. These and similar developments in other jurisdictions point towards a significant evolution in what is considered to be best practices in corporate governance.

While changes in attitudes to corporate governance may be creating headlines in North America at the moment, this does not mean that companies and their boards in other parts of the world will be immune from similar developments. At a time when business borders are rapidly coming down, it is almost inevitable that what emerges as best practice in one region will – if that region is significant enough and if the new way of operating is seen to benefit shareholders – eventually become the norm elsewhere as well.

Larger corporations operate across the globe now and so find themselves subject to a wide range of regulatory regimes, while those that invest in any company have access to information that enables them to compare best practices when it comes to running a business and to demand changes if they feel this is the best way to protect their investments.

In many ways, therefore, companies operating in, say, Europe or Asia are actually at an advantage as they can see what is happening in North America and learn the lessons before any new requirements are actually imposed on them; so saving time and money when the day the regulations change does come.

Implications for intellectual asset professionals

These trends and the related changes will bring both opportunities and challenges for intellectual asset professionals.

The good news is that if the senior decision makers in your organisation choose to be at the leading edge of these changes, you can expect the board to spend more dedicated time, inside and outside meetings, on strategic issues, including the intellectual asset strategy and its fit with the business strategy. In addition, you can expect that some board members will be recruited in part because of their sophistication in IP and intellectual asset matters.

The challenge and opportunity lie in the increased level of board scrutiny of the intellectual asset portfolio and strategy. Confident intellectual asset professionals will welcome insightful questions from committed and engaged board members, and will seize every occasion for constructive debate with the board on the intellectual asset strategy and its alignment with the overall corporate strategy.

Of course, even today boards are frequently drawn into intellectual asset issues, particularly when there is a crisis, such as a lawsuit involving IP rights. Fewer boards, however, deliberately allocate time to intellectual asset issues as a matter of course. Rather than wait for a crisis, an obvious question is: how can you encourage engagement of the board on a proactive basis? If your response to the scenarios at the beginning of this article was to place your company in level 1 or 2, what can you do to start moving it towards 3 or 4?

Questions directors should ask about IP

One place to turn is a publication sponsored by the Canadian Institute of Chartered Accountants (CICA), as part of its “20 Questions” series for boards of directors. Responding to the needs of directors for concise guidance on a broad range of topics such as executive compensation, pension liabilities and corporate strategy, the CICA commissioned experts in various technical areas to provide boards with an overview of the top 20 questions they should be asking. In the words of the Institute’s president and CEO: “We want boards to ask management and themselves the tough questions, and to know when to dig deeper if necessary.”

The CICA concluded that directors needed technical guidance related to intellectual assets, and that an initial focus

20 Questions Directors Should Ask About IP

The company's overall positioning with respect to its IP and IP management practice

1. How important are innovation and invention in our industry?
2. How does our innovation and invention capacity compare to our competitors?
3. How large are IP portfolios held by the leaders in our industry?
4. How do our IP portfolio size and quality compare to our competitors?
5. How sophisticated is our industry with respect to IP management practices?
6. How does our IP management level of sophistication compare to our competitors?

The company's IP strategy, how it relates to the business strategy and the maturity of the IP management function

7. What is the importance of IP and IP management to our business strategy?
8. How are IP and IP management positioned in our latest business strategy document?
9. What is the positioning of the IP management function?
10. What is our speed of adoption of IP management best practices?

A high-level assessment of the company's capabilities with respect to IP management, relating to:

11. IP generation and protection.
12. IP portfolio management.
13. IP value extraction and commercialisation.
14. Strategic leverage from IP management.
15. IP management performance measurement.

The company's stance with respect to leading edge practices and new frontiers in IP management

16. Intellectual capital management beyond IP.
17. New business models relating to IP.
18. Managing IP across organisational boundaries.

Level of investment and investment returns from IP and IP management.

19. Investment and returns on IP assets.
20. Investment and returns on IP management activities.

on IP was a good place to start.

For help in refining the 20 Questions *Directors Should Ask About IP*, the CICA turned to the ICM Gathering, which includes among its members companies such as Boeing, Dow, Dupont, Microsoft, Thomson and 30 other international corporations. The ICM Gathering meets three times each year to exchange ideas and best practices on intellectual capital management.

Gathering members dedicated time in three separate meetings to consider what issues should be focused on at the board level. The 20 questions about IP that emerged from the resulting dialogue fall into five groups:

- The company's overall positioning with respect to its IP and IP management practices. From the perspective of Gathering members, the questions in this section identify the strategic significance of IP in the industry and the relative positioning of the company, and thereby set the context for all the other issues.
- The company's IP strategy, how it relates to the business strategy and the maturity of the IP management function. In the experience of the Gathering, companies that are successful in leveraging their IP give prominence to IP in the strategic plan and ensure that there is a business function in place that is empowered to take action.
- A high-level assessment of the company's capabilities with respect to IP management. From the perspective of Gathering members, this assessment focuses beyond the basics such as generation and protection of IP and portfolio management, to the mechanisms that exist for extracting value and achieving strategic leverage.
- The company's stance with respect to leading-edge practices and new frontiers in IP management. Gathering members know that this is a rapidly evolving field, requiring continued efforts to keep on top of the latest developments.
- Level of investment and investment returns from IP and IP management. In the view of the Gathering, it is essential to be able to justify the investment in IP and IP management based on the returns on that investment.

Having done all of this, it was then a matter of preparing the questions that should fall under each of the areas identified. The full list is boxed out on the left.

The questions about IP online: initial benchmarking results

Building on the CICA's 20 Questions initiative, a cross-border collaboration between ICMG of Palo Alto (the convenor of the ICM Gathering) and BenchmarkAction of Toronto has adapted the 20 questions about IP into an online benchmarking service. Users are invited to specify, for each of the 20 questions, their current and desired future positioning on a continuum similar to the alternatives presented at the beginning of this article. After responding to the 20 questions, they can download a real-time report that compares their selections with those of other companies.

For many, the principal value of benchmarking a company's IP management practices and capabilities against other organisations is to show the leadership team where the company is positioned relative to its peers and competitors. Most experienced intellectual asset managers have a reasonably good understanding of their company's intellectual asset-related strengths and weaknesses. But that knowledge frequently does not extend to other members of management, let alone the board of directors.

As a sample of the insights available from the online benchmarking process, consider the top pair of charts dealing with IPM competitive position, which summarise the combined results from the six questions dealing with the companies' overall positioning with respect to IP and IP management practices. On these charts, the vertical axis provides a relative indication of the company's competitive strength with respect to IP and the horizontal axis provides a relative indication of the importance of IP to overall competitive positioning.

Directors reviewing the results of this analysis can see two major trends:

- Looking at the vertical axis, in the current chart, at least half the companies in the sample rate their own IP/IP management competitive strength as low; but all of these companies plan a major upgrade in the IP-related competitive position by the Future 2 timeframe, which is four years into the future;
- Looking at the horizontal axis, all of the companies in this sample anticipate a significant increase in the importance of IP to overall competitive positioning over the next four years.

What is the significant of these insights to a company's board? If the board agrees that these trends are directionally accurate, there are major implications for resource allocation

in future budgets relating to developing the IP portfolio and to plans for enhancing its IP management capabilities and practices.

The second pair of charts dealing with the IP strategy summarise the results from the second group of questions dealing with the company's IP strategy, how it relates to the business strategy and the maturity of the IP management function. On these charts, the vertical axis provides a relative indication of the positioning of the IP management function within the company and the horizontal axis provides a relative indication of the prominence of the IP strategy in the corporate business plan.

What can directors learn from the analysis in these charts?

- Focusing on the vertical axis, we see that over half of the companies rate the current positioning of the IP management function as relatively low and almost all anticipate a major improvement within the next four years;
- In over half of these companies, the IP strategy has relatively low prominence in the business plan but this is expected to change significantly in future.

The online benchmarking reports offer similar insights with respect to each grouping in the 20 questions framework, as well as the ability to drill down deeper into the comparative analysis by examining the pattern of responses to each one of the 20 questions. The in-depth analysis can:

- Show whether the company is falling behind or catching up with peers and competitors over time.
- Provide an indication of the extent of the change effort required to achieve targeted future positions.
- Measure the level of consensus within the leadership team about the IP strategy, if each member completes an individual assessment.

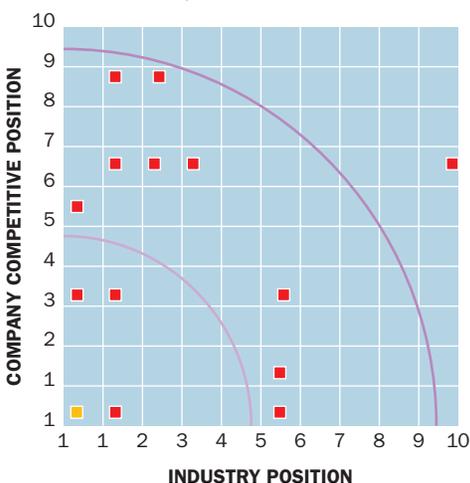
Towards active engagement on intellectual assets

Exposure to this type of benchmarking analysis provides directors with the opportunity to ask a series of more detailed questions.

Ultimately, the purpose of the 20 questions about IP initiative is to create an opportunity for intellectual asset professionals to begin engaging with the board on these and similar questions. Each of the 20 questions presents an opportunity for the board to drill down and ensure they truly understand what is going on within the company with respect to some critically important strategic issues. They are

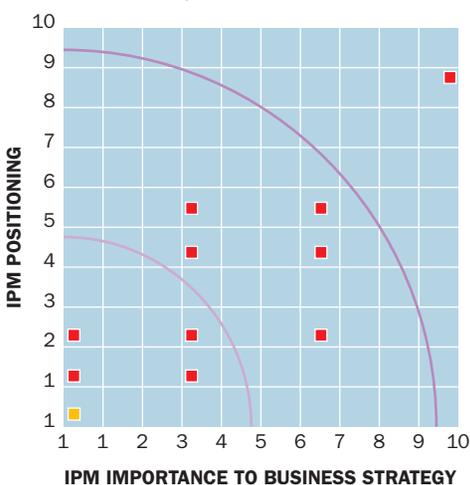
IPM competitive position

Chart 1: Grid comparisons – Current



IP strategy positioning

Chart 3: Grid comparisons – Current



■ OTHERS ■ YOUR POSITION

Chart 2: Grid comparisons – Future 2

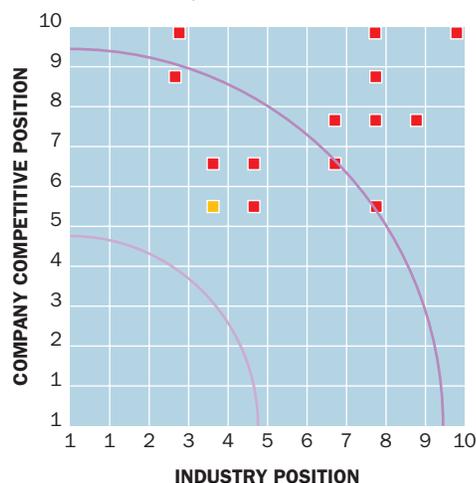
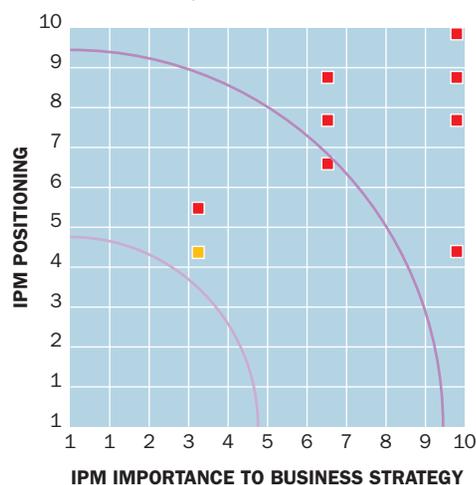


Chart 4: Grid comparisons – Future 2



also neutral, in the sense that, because they have been put together by people outside the company, they cannot be seen to be merely a loaded means of driving forward the agenda of particular individuals inside the business.

The management of intellectual assets, including IP, is becoming a vital component of the oversight that boards of directors must perform to satisfy the expectations of the shareholders, and stakeholders, whose interests they represent. The opportunity for intellectual asset professionals is to play a central role in helping them to do that. ■

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IAM magazine readers are invited to take advantage of a complimentary subscription to the online version of 20 Questions About IP, which will enable you to benchmark your company's positioning relative to others. For details, please refer to: <http://icmgtools.com/IAM>