



Taking it to the top

Rebecca Evans finds out which sectors lead the way when it comes to putting IP strategy at board level, and how this approach can lead to business benefits



When colleagues of Marty Wikstrom, Richemont's chief executive of fashion and accessories, nominated her for the *Intellectual Property Magazine Awards 2010*, they praised her proactive stance on intellectual property.

Wikstrom, who has headed up the division at the Swiss luxury goods group since June 2009, had pushed a number of IP-related projects, including spearheading a plan to archive the designs of Azzedine Alaïa. Her roster of achievements over a single year helped Wikstrom beat her rivals to be named Chief Executive of the Year.

Wikstrom, who also sits on Richemont's board, says that putting intellectual property first is "part and parcel of the integrity of what you have to do in our industry. Any time you collaborate, or you add a named or iconic product or develop anything that's of value to the brand long-term, then intellectual property is really at the heart of any of those developments."

While Wikstrom has long been involved with IP issues (she has a long career in luxury goods including stints at top-tier retailers Nordstrom and Harrods), she says it has "never been more thoughtfully implemented nor a higher priority than it is at Richemont". Both the founding Rupert family and Richemont's IP team have been particularly thoughtful and skilled about IP issues, Wikstrom says. "Because it's such a high priority with the company as a whole it further puts it in the limelight for all of us."

The financial performance of Wikstrom's division has already improved, following her appointment. And while there are many other companies that have already made the link between top-level IP involvement and business success, others seem to be lagging behind.

"The pharmaceutical companies are outstanding when it comes to putting IP issues in front of the board," says Henrik Wistam, partner and IP specialist at Swedish law firm Lindahl. "Otherwise, from a Swedish perspective, there is no branch or part of industry that is better than another. On the contrary, I would say that companies are often terribly bad at discussing IP at board level."

Wistam says many of the companies that are not doing so well have IP at the heart of their business "I'm talking, for example, about fashion companies, car companies – and that's why I'm quite surprised.

For them, wouldn't it be a logical step to have IP discussed in the boardroom?" he says.

Room for improvement

Wistam says the problem in Sweden is historical. Pharmaceutical companies happen to be good at IP because they have been filing patents for a long time and are used to dealing with it. And fierce competition within the pharma industry also forces them to use their intangible assets to the maximum. But many companies often do not have a clear IP strategy, and responsibility for it is bounced from boards to staff lower down the chain of command. "They ask who is going to take care of IP, then various people say 'I can't do it' so they make the marketing manager or the in-house counsel take care of it. Senior management can perceive IP as being something that just collects costs and is quite difficult to handle," says Wistam.

Nancy Edwards Cronin, principal partner at Vermont, US-based consultants IP Capital Group, says board attitudes to IP vary dramatically in the US. "It has a lot to do with the historical evolution of each sector," she says. "If you look at high-tech and semiconductor industries, they have been using intellectual property for decades. Pharma has been using intellectual property for decades and they are quite good at it. Other industries have simply not had to deal with patents as much; they haven't seen it as a business tool."

Perception is also a problem, says Edwards Cronin. "Historically, companies have viewed IP as a cost alone and one that resides in legal. It's basically a box to be checked off a list to make sure that proper patents have been filed. And they don't see it as a business tool because they haven't been taught that it can be used that way in negotiations, in protection of core products, in protecting new markets for competitive advantage. If they knew that, I'm convinced they would see it less as a cost and more of a benefit or leverage in business."

Smaller, privately-owned firms often do a better job with IP than corporations, Edwards Cronin adds. "The smaller companies recognise even more readily the use and utility of IP because that's often their ticket to raise funds, to be strategically acquired or reach the next level of their objectives. Often a small company simply doesn't have the cash, capital or distribution channels they need so they have to use their



intellectual assets wisely. We're actually seeing that they get it faster than some of the larger companies who are used to business as usual."

In the US, venture capitalists and equity banks demand that a start-up company has a solid and well-protected IP portfolio in place before they will even consider investing, she adds.

The picture is similar in the UK. Consultant Dr Michael Ellis of Scotland's Ellis IP advises smaller firms, from start-up to mid-sized companies. They typically have two to five people on the board with two or three management staff. "Medical and pharmaceutical companies are much more aware of the necessity for IP, often because it's clear from an early stage that they're going to need it to raise funds," he says.

But other small companies are not doing as well, mainly for cultural reasons. "The software sector in my experience has a fairly low belief that it's necessary to have any IP protection...especially those companies that are led by software engineers," Ellis says. Software firms can get very confused about the role of patents and copyright unless they get proper advice, he adds.

Partner Allan Poulter, branding and trademark specialist at Field Fisher Waterhouse (FFW), London, deals with companies of all sizes including the entertainment, media and transport sectors. He says: "Things are improving but I still think there's a long way to go and many companies need to place greater emphasis on IP."

While company approaches vary from sector to sector and by company size, IP specialists have noticed that interest in IP protection is increasing, even from the very top levels of companies that were previously lagging behind.

Lindahl's Wistam says: "Some of the old, traditional, engineer-led industries in Sweden are starting to ask if we can come and see them, describe what we're doing and tell them how they could work with IP. They want to know about anti-counterfeiting programmes and are interested in starting to work with IP in a different way than before.

There is an emerging and promising sparkle of life.

"I go out and lecture about IP and some of my talks are attended by company board members who appear to take the question seriously. Swedish companies also are taking note of what is happening with IP in the parts of the world in which they are active. They are realising that IP is not only a matter of cost — it's a benefit generator when treated in the correct way."

IP Capital Group's Edwards Cronin has also noticed an increase in interest from the US engineering sector. "We've found recently that industries that make equipment — everything from components, valves and bearings, all the way through to the system levels...are seeking ways to increase margins and increase competitive advantage and they are discovering IP. Until now, they typically acted more as a vendor and have been behaving more at the commodity end of the business spectrum."

The picture in Scotland is similar. "People in engineering-led sectors like renewable energy technologies probably have been less IP-aware — although it's a mixed picture — but they are increasingly aware of the need to get an IP portfolio in place," says Ellis.

And cross-industry trends are encouraging. IP Capital Group's Cronin says that in the US, the "importance of IP to boards is definitely increasing. Primarily that's either the fear or greed side of operations — the risk of losing revenue or the attraction of gaining revenue from intellectual assets".

Larger, publicly-listed companies are learning from others' success, Cronin says. "If you look at the 10 to 20 largest companies, they tend to also appear at the top of rankings on revenue, innovation and number of patents filed. There's an awful lot of overlap on those three lists. Other companies see that and ask 'How can we have what they have?'"

"The top 10 companies have been doing intellectual property for many years, so it's an everyday thing for them. The tougher sell is for the next 50 companies behind that. Those are the companies where they either need a champion that steps in, or some education to help them discover what can be done.

FFW's Poulter says: "We're seeing much more interest in IP, the valuation of IP assets and protection of brands in particular, but I still don't think it gets the recognition it should do. I often see the brand as a company's most valuable asset, particularly when you're talking about companies involved in the provision of services."

"The top 10 companies have been doing intellectual property for many years, so it's an everyday thing for them. The tougher sell is for the next 50 companies behind that."

Board composition

When publicly-listed companies search for new board members to recommend to their shareholders,

they look at overall business experience rather than specific intellectual property knowledge. "The most important factor with any board member is the expertise they bring to the organisation based on their background," says Richemont's Wikstrom.

But if candidates have been involved in successful, IP-rich business deals this could increase their attractiveness to board members and company shareholders alike, say some commentators.

Lindahl's Wistam says: "In the near future, we could have a situation where a board candidate has an IP speciality plus all the other qualities boards are looking for and that separates them from the rest of the candidates. If you look at the tendency where IP is becoming more and more important then that should be a reasonable step."

FFW's Poulter agrees. "Anyone that has IP experience will be appreciated and recognised — increasingly so in today's climate."

Smaller companies around the world look set to continue relying on

outside expertise, though. In New Zealand and Australia, around 90% of companies are small- to medium-sized enterprises. John Hackett, a partner at law firm AJ Park says intellectual property issues are more likely to be dealt at a lower level than company boards. Even in larger companies, responsibility is normally given to marketing, who run ideas past the chief executive, who may or may not share the information with the board. "The board is generally concerned with governance issues rather than management or marketing," Hackett says. Ellis says that his clients also tend to buy in external expertise. "I don't think that too many management teams are hiring in IP expertise unless they take a lawyer on to the board," he says.

However, while IP experience is rarely a determining factor for senior appointments, it can make a senior director more attractive to smaller companies. He says: "In the life sciences and pharma sector they may not hire someone who's specifically been a patent attorney or an IP lawyer, but they would probably rate highly someone who has experienced commercialising IP and understands it."

IP Capital's Edwards Cronin adds that, in the US, selection of board members "has an awful lot to do with the personal history of the existing board members and the specific history of that company. This refers back to my earlier point about fear of litigation or desire to seek revenue sources. Typically, an existing board member may have had a good or bad experience with IP which drives them towards wanting that expertise on the board. For example, if there's a board member that has been the board of a company that has gone through a multi-year, highly expensive case with not such a great outcome in the courts, they want to make sure that never happens again. So they seek someone with that kind of expertise to sit on the board with them."

"Conversely, if they've been in a very successful company that went through a merger or acquisition, perhaps made great gains by picking up

a new company – you can look at examples like Procter & Gamble picking up Gillette, which had tremendous IP to bring on board – when they've observed those successes they want that expertise alongside. But it tends to be much more personal experience at the board level, I think because many of them haven't had direct education on intellectual property."

IP Capital is working hard to educate the upper levels of companies about the benefits of IP, Edwards Cronin adds.

Whatever the size of the company or the sector in which it operates, IP specialists are unanimous about one thing – unless the company board is fully engaged with intellectual property, there is no hope of it ever making the most of its intangible assets.

"Different board members bring different expertise, but I do think it's up to the board as a whole to drive principles and policies that are important to the organisation," says Richemont's Wikstrom. She points out that IP and legal issues are clearly important to her company, not least because chief counsel Frederick Mostert sits on the company board alongside her.

IP Capital's Edwards Cronin says: "If you don't have the buy-in at board level, if you don't have an IP champion or general agreement across the board that IP is important, then it will never manifest itself through the rest of the company. You must have that top-level buy-in that IP is a business tool or it just doesn't happen."

FFW's Poulter suggests "if companies don't have someone on the board itself who has broad IP experience, then they need to think about integrating whoever's responsible – the head of their IP legal team, for example – into the planning and strategy of their business. It is important that they are getting input from someone who does appreciate what's needed to protect the assets of the company."

Ellis, of the Scottish consultancy Ellis IP says: "I have the view that companies should look for expert advice very early. It might not be that you need to protect your IP at an early stage, but it's useful to have that advice early on so you can build it into the higher plan."

"I think there's an increasing awareness about intangible assets and the importance of it. It would be nice, though, if companies were more aware of it at the outset – often, the awareness comes when people hit a problem, like not being able to enter a market. I've come across places where I introduce the subject and the response has been 'none of our people have problems'. I have to say to them 'that's just my point'."

"Intellectual property is an item that should have board-level responsibility because it's relevant to the strategic direction of the company as a whole. It's great to have local champions within the company, but there must be a route for them to board level."

One thing is for certain – companies that allow intellectual property to languish at the bottom of their priority lists will find themselves at a competitive disadvantage as this former Cinderella subject moves to centre stage.

"We have seen monumental change over the last 10 to 15 years," says Richemont's Wikstrom. "I can't imagine what sort of issues, challenges and possibilities we'll see over the next 10 years. But I can't imagine, especially with globalisation, that intellectual property will become less important. It can only become more so."

fenixlegal
EUROPEAN PATENT AND LAW FIRM

In an ever-changing world
someone has to see the
possibilities

European
Patents, Trademarks, Designs
Internet Law
Domain Name Disputes
Copyright
Commercial Law
IP & Business Law in Russia



Stureplan 4C, 114 35 Stockholm, Sweden
Tel +46 8 4635016 Fax +46 8 4631010
info@fenixlegal.eu www.fenixlegal.eu

Author



Rebecca Evans is a former editor of Trademark World, Patent World and Copyright World, now working as a freelance author and commentator.