

Some Thoughts about the Importance of Negotiation for Patent Attorneys and Licensing Managers

Today the importance of interdependency and networking in business is greater than ever. Even large companies cannot achieve all their goals on a stand-alone basis anymore. The resulting web of increasingly tight relationships between individuals, groups of people or corporations represents a source of opportunities and conflicts at the same time.

This is particularly true as far as intellectual property is concerned. On the one hand, it is more and more difficult for a company to develop in-house all the technologies that it needs. And even when the basic resources could be made available internally, it is often less costly and quicker to license-in some specific technologies. On the other hand, a company can maximize the return on its R&D investment by licensing-out some of its own technology either for applications unrelated to its own activities, or even to its competitors in order to speed up the adoption of the technology on the market or to reduce their incentive to develop competing technologies.

Under those circumstances, negotiations play a key role for patent attorneys and licensing managers. First, the success of any corporate activity depends upon good internal teamwork, which implies the ability of the team members to combine constructively their own ideas and skills goals in pursuing a common objective. Second, a technology transfer agreement reflects - almost by definition - the results of a negotiation. As a matter of fact, the quality of such an agreement is directly related to the quality of the preceding negotiation process. Third, patents and licences often give rise to conflicts. Such disputes can of course be settled through litigation. However, taking into consideration that litigation is time-consuming, costly and damaging on the relationship between the parties concerned, negotiation-based dispute resolution mechanisms generally represent a much more attractive proposition.

Although negotiation takes place every day, it is not easy to do well. Some people try to avoid personal conflict and so make concessions readily in order to reach agreement. Others see any negotiation as a contest of will that they strive to win. Both strategies often leave people dissatisfied, worn out, or frustrated - and frequently all three. There is however a third way to negotiate; i.e. by applying the method of *principled negotiation* developed in the framework of the Harvard Negotiation Project. This method is to look for mutual gains whenever possible, and where the interests of the parties conflict, to insist that the solution be based on some fair standards independent of the will of either side.

In any case, good negotiation skills are of critical importance for patent attorneys and licensing managers. In order to strengthen those skills, training may be a first step in the right direction. In some cases, the assistance of a negotiation process consultant as coach, facilitator or mediator may be worthwhile to consider.