

Think globally & strategically about IP



(Photo credit: pshutterbug: <http://www.flickr.com/photos/pshan427/>)



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Generic Medicines Australia 2009 # 1
19 May 2009

Duncan Bucknell Company?

- 6 people, so far, AU, IN – CN, US...
- Global IP Strategy
 - ~50 countries in past 3 years
 - Local law & patent attorney firms
 - Clients – EU, Nth America, India, Asia
- Blog – all time most popular IP (Justia)
 - Global Week in Review
- Podcasts, etc



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY



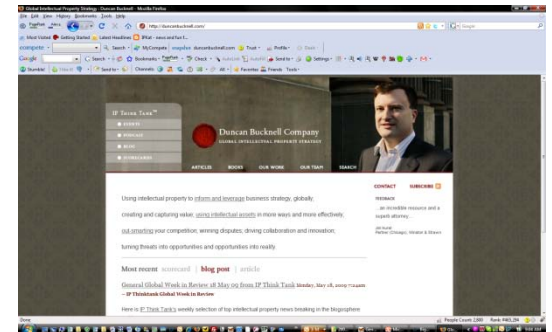
Copy of this presentation?

<http://duncanbucknell.com/articles>

And perhaps a podcast...



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY



Generic Medicines Australia 2009 # 3
19 May 2009

The key take home message

- Greater collaboration may well win the day
 - Even in IP...
- Thanks for coming – off to drinks...
- If you stay:
 - Then
 - Please
 - Heckle

*(Photo credit: ul Marga:
http://www.flickr.com/photos/ul_marga/)*



Contentious IP Strategy (in brief)

- (If) you must litigate...
- Art of War article 2006
 - Top law firms
- Follow up Article next edition of IAM
 - In House Counsel

Feature Management Report

Global litigation strategy and the art of war

By Duncan Bucknell, IP strategy consultant, Melbourne

The ultimate goal in a global IP dispute is rarely to fight and win every case in every country in the world. This is usually a waste of time and money. Instead, the goal is to use the situation to obtain the best commercial result – better than before the dispute arose. As Sun Tzu said in The Art of War: "For, to win one hundred victories in one hundred battles is not the acme of skill. To subdue the enemy without fighting is the supreme excellence."

All manner of opportunities arise in the context of a potential IP dispute. The following five step approach is designed to put you in the best possible position to identify and seize these opportunities and, if necessary, to go out there and win the litigation as well.

In a global IP dispute, two critical factors will play a large part in determining your fate: choosing and coordinating the jurisdiction(s) in which you litigate and the outside counsel you use in each country.

Assuming that your strategy dictates litigation in a particular country, and you have chosen your advocate, then the next three steps to checkmate are: relentlessly seeking and analysing the facts; devising and implementing a consistent strategy; and making sure the team runs smoothly.

To make this article more interesting for you, I asked IP litigators from nine jurisdictions the following question: "In your experience, what is the single most important thing for your clients to focus on to maximise their chances of winning a major IP case?"

The answers reinforce the suggested approach and provide some interesting additional insights.

Where and when to litigate
If you have the choice, then clearly you should litigate where you will obtain the

greatest strategic advantage. Where is that? Well, it depends on your situation. The take-home message here is that the better you understand the options available in various jurisdictions, then the better you can make the most of them.

Here are some examples of factors to consider in designing your strategy – as you can see, they must be combined into a single, coherent strategy based on your particular circumstances.

Local procedural rules may act in your favour. For example, for years IP owners had been commencing proceedings in the courts of the Netherlands because of the courts' willingness to grant cross-border injunctions across Europe (this practice is now in serious doubt, although it has not been specifically ruled invalid under the present Brussels regime by the European Court of Justice).

Similarly, if you are seeking to enforce a patent, you may wish to take advantage of the split systems in China or Germany which (usually) require separate courts to hear cases relating to infringement and validity. Such a system removes invalidity of the IP right as a defence in the infringement proceedings. So you can usually obtain a fast result on infringement, and subsequent remedies, such as injunctions. Of course, the defendant is still able to challenge validity and, if successful, have a finding of infringement become useless at a later date. This does not detract from many of the strategic advantages of having a fast infringement result, however.

You may want to make the biggest impact where the greatest commercial effect will be evident (other to seek an injunction against an infringer or to get the attention of the IP right owner). Clearly, this is dictated by standard commercial factors such as the market size in various countries.

If you are a relatively small player, you may first wish to seek the most cost effective litigation result. Consequently, you may elect

www.iam-nagaku.com Litigation October/November 2006 81



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Art of War (I) – External Lawyers

- Where & when to litigate
- Selecting outside counsel
 - Expertise
- Exhaustive preparation – the facts
- Expert testimony
- Global consistency
- It's a team effort

(Photo credit: Steve Punter:
<http://www.flickr.com/photos/spunter/>)



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Art of War (II) – In House teams

- Nestle, Syngenta, Google, (Lge Pharma)
- Where & when to litigate
- Selecting outside counsel
 - Cultural fit
- It's a team effort
- Think about it soberly
 - Resource intensive

(Photo credit: jurvetson:
<http://www.flickr.com/photos/jurvetson/>)



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Think about it soberly...

- Not just product by product
- But, company by company
- Industry by Industry

(Photo credit: striatic:

<http://www.flickr.com/photos/striatic/>



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

The future is not optional

- Blockbusters R.I.P.
- Biosimilars / Follow on Biologics
- Greater IP complexity?
 - Podcast – Biotech IP at the crossroads (BIO 2009)
 - Rely on Reg data while missing patent claims? Really?
 - Patent complexity
 - Regulatory / Data Exclusivity complexity, etc
- Even greater litigation spend pre-launch?



Do we need a new approach?

- Maybe we do...



(Photo credit: ChrisL_AK:
<http://www.flickr.com/photos/fnc11/>)

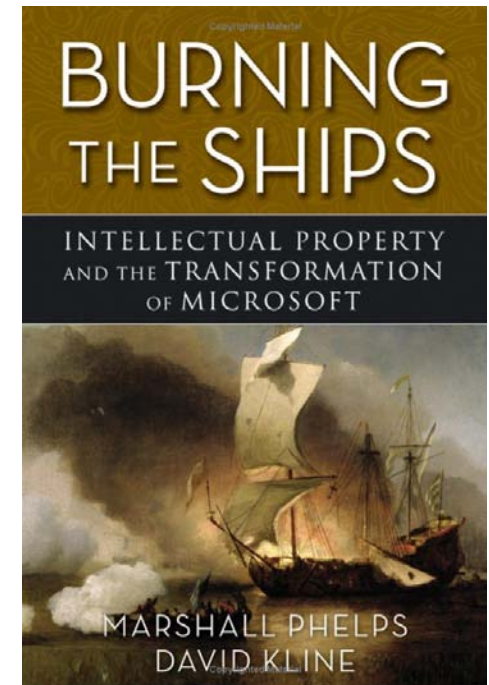


Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Generic Medicines Australia 2009 # 10
19 May 2009

What's going on in the IP world?

- Collaboration
 - (Co-opetition – Dinesh Dua)
- Burning the ships
 - If Microsoft can do it...



Collaborate with whom?

- Innovators
 - Another talk, another day...
- Other generic companies
 - In IP?
 - Yes – in IP
- You're all doing the same thing at about the same time...
 - Hence cost savings? (a la *Genericsweb*)
 - Drive profitability even though sharing the pie.
 - You're all going to do it anyway.



Early stage IP Collaboration?

- Intelligence gathering
 - successes and failures globally
 - third parties too
 - Strengths / weaknesses of cases
- Freedom to operate clearance
 - Much greater complexity
 - Doing this already?
 - Effectively?



*(Photo credit: Rob Gallop:
<http://www.flickr.com/photos/robgallop/>)*



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Generic Medicines Australia 2009 # 13
19 May 2009

IP Collaboration?

- Litigation
 - Aim is not to win the litigation
 - Aim is to prevail – ideally settle / don't litigate
 - Overwhelming force concentrated at decisive points
 - Synergies with >1 company on your side
 - A different paradigm
 - One set of lawyers
 - Two (more?) in-house instructors working together
 - Warranties / Indemnities etc. etc.



Give away the farm?

- Of course not
- Think strategically about the overall game
- Not just this product



*(Photo credit: Amymillerphotos:
<http://www.flickr.com/photos/serendipitypeace/>)*



Duncan Bucknell Company
GLOBAL INTELLECTUAL PROPERTY STRATEGY

Second last slide...

Just maybe...

Generic pharma industry will benefit
From (even) greater collaboration
Even (especially?) on IP issues



Final slide...

My suggestion?

Review your long term pipeline now
Look for opportunities to increase your
collaboration

If not now then when?

Thank you

