

Media Expert: Lawyers Missing Big Picture

By Robert Ambrogi

Given that he is one of the world's leading experts in digital video, audio and imaging, it is ironic that Cliff Reader believes lawyers often come to him wearing blinders.

So narrowly focused are they on the technology involved in a case, they fail to see the broader sales and business environment in which it is marketed. Yet sometimes, it is this broader context that holds the key to a case.

For Dr. Reader, his ability to see how the technology fits within the broader business context is central to his value as an expert, he believes. He has experience in both areas, having not only developed digital-media products but also having worked in the thick of product sales, marketing and distribution.

"People contact me for my technical skills," he explains. "They initially cast the problem to me as how can they take the right technical approach to minimize their combined technology and licensing costs. I'll tell them they're missing a piece – the marketing.

"From the very outset, my career always had one foot in the technical side and one foot in the business-development side," he says. "Until 1990, the greater weight was on the technical side, but then it switched to sales and marketing."

A Licensing Work-Around

By way of example, Dr. Reader recalls a company that faced prohibitively high licensing costs to market a new product that included a DVD player. The company's core products were outside this market, so it was not party to any DVD patent-pooling or cross-licensing agreements.

Its main competitor for the product would be a major consumer electronics company that was a member of the pools. By all estimates, the company faced a licensing cost of at least \$10 per unit more than its competitor. In the intensely competitive consumer electronics market, Dr. Reader recounts, this would have put the company at a horrible cost disadvantage.

Initially, the company's solution was to have the component manufactured in China, where production costs were the lowest. But the Chinese manufacturers also had no patents in the pools or cross-licensing agreements, and could not provide any indemnification.

Dr. Reader provided technical and marketing expertise while a financial-services company did the modeling. Brainstorming in that way, they devised an alternative approach to recommend to the company.

Rather than subcontract the manufacture of the component directly to China, the company would contract it to a major manufacturer that was already a member of the DVD licensing pools. The contract would provide for that manufacturer to subcontract to designated companies in China and provide indemnification. That

would reduce risk and keep both manufacturing and licensing costs low enough for the company's product to be competitive.

Avoiding Crisis Mode

This example illustrates how an expert with technical and business experience can help a client take a broader view of a problem. But Dr. Reader believes that law firms often overlook another key strength that he and other technical experts bring to the table – a talent for project management.

Project management is an area in which lawyers sometimes lack strong skills, Dr. Reader says. Engineers, in contrast, are particularly adept at this, and their aptitude carries over into the litigation context.

"When we're talking about very technical patent litigation, where you need to do an enormous amount of technical management, you have something that has a lot of characteristics of an engineering project."

Dr. Reader recalls numerous cases in which the lawyers and he were working up to the wire. Some of these crises were unavoidable, but others could have been avoided through more careful project management, he believes.

The danger of working in crisis mode, of course, is that time can literally run out – the deadline arrives before the work is ready. Short of that, the worry is that the pressure of deadline will leave something overlooked or result in a strategic miscalculation.

"That doesn't normally happen, because usually everyone goes into a crisis mode successfully," Reader says.

Still, working in crisis mode also causes cost concerns. "If you're doing everything in crisis mode, then you're not working efficiently," he explains.

To the extent that project management can help avoid last-minute scrambles, lawyers should take advantage of their experts' skills by engaging them in the planning, Dr. Reader advises. "I can make the process more efficient if I am brought on in a timely way and given a more authoritative role in how to manage the whole activity."

Of course, that does not mean that the lawyer should turn over the reins entirely to the expert. "It has to be a team effort," Dr. Reader says. "Experts should be relied upon to give critical input as to strategy."

"Experts should be used in a project management role," he continues. "Engineering experts have experience in project management. If you bring them in as part of the team, it should produce a better result."

Background

With more than 35 years in the field, Dr. Reader is often the go-to guy for lawyers and businesses needing high-level, top-down digital-media expertise.

But while he started his career with a focus on the technical aspects of media, he soon found himself becoming more involved in the business side. It started with his work writing bid proposals for government projects. Later, he took on direct responsibility for marketing, direct sales and product management.

Since 2001, he has worked independently as a consultant and expert witness. Much of his focus is on projects involving patent litigation, licensing, prior-art searching, and portfolio development.

Among his most interesting projects are those that draw on both his technical and marketing expertise. Often these involve issues of product licensing and development. Here is where he is most able to help attorneys see the forest when they are focused on the trees.

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