The Government Collaborative Workplace and the IP Challenge

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Linus Pauling once said, "The way to get good ideas is to get lots of ideas and throw the bad ones away." A collaborative workspace embodies Mr. Pauling's observation that brainstorming generates solutions. Bringing talented people together to discuss, analyze and offer solutions accelerates innovation. From the perspective of gaining the best solution and doing so efficiently, a collaborative workspace makes a great deal of sense.

The challenge arises when credit for the solution needs to be allocated. When a company launches an internal collaborative workspace, the allocation of credit, or in context of this discussion, rights, is well determined. Rights in intellectual property created by employees, subcontractors, consultants and the like are generally governed by agreements established long before the collaborative process begins. In the end, the company benefits from the creative environment.

Allocating Rights When Multiple Entities Collaborate

A clear path to innovation becomes a bit murkier when contributors to the collaborative workplace associate with different entities. Imagine if all key engineers from Boeing, Lockheed, Airbus and BAE sat at a table and worked together to create a new aircraft design. Each brings key insights into their respective trade and the collaboration synergistically benefits by the input from those normally outside their sphere of influence. Undoubtedly the result of such a collaboration would yield impressive results. Yet when a solution is achieved, what rights exist and to whom are they vested?

It is well established that two or more individuals can be named as joint inventors on a patent application and a work of art (software for example) can be associated with more than one creator. In such instances, both parties, and arguably the companies with which they have established agreements,

possess rights in the underlying creation/innovation. But by doing so, each individual company relinquishes its singular competitive advantage in favor of a common advantage.

This relationship must be well understood and established before collaboration begins. There must also be an understanding of what rights are conveyed when one party brings to the group pre-existing technology that may form the foundation of that which is newly created. Lacking this underlying collaboration agreement, the participants will be reluctant to share their insights for fear they are giving away that which is rightly their own and derail the entire process.

Considerations in Government-Sponsored Collaborations

It is not surprising that the government recognizes the advantage of these types of environments. Gathering a number of government contractors together in a government-sponsored collaborative workplace can produce amazing results. And as the rights gained by the government are well established through the FAR and DFARS, there is no question as to the privileges conveyed to the government based on such an enterprise. But the government, when acting as a sponsor of a collaborative workplace, does not step into the shoes of an employer as in the commercial markets. Rather, the government only gains a license to the technology with the inventors/creators retaining title.

So, we are faced with the same dilemma as to whom credit is apportioned especially when the government is not the only customer for resulting innovation. Government contractors must proactively negotiate rights among co-collaborators prior to beginning the collaborative process and recognize that the government's interest in the collaborative workplace may not be aligned with that of each collaborator. Not doing so may unknowingly result in a significant loss of competitive advantage.

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