

THE INTELLECTUAL PROPERTY IN THE PROCESS OF PLANNING THE RISK MANAGEMENT FOR A PROJECT

PhD. Student **Mircea NEGRUȚĂ**,
Professor PhD. **Ion NAFTĂNĂILĂ**,
The Bucharest Academy of Economic Studies

ABSTRACT

The intellectual property management science has evolved in the past few decades and it is becoming more and more important in the context of knowledge economy. As a part of this science, the intellectual property management in the field of project management has just started. It is related to intellectual property components that appear, interfere and result from the project management processes.

KE WORDS: *Intellectual property (IP), copyright, industrial property, trade secrets, project management, patents, marks, industrial models, project management process, project risk management, innovation.*

Introduction

As the project management science evolved, becoming one of the most important management fields, the influence of intellectual property components over the general objectives of the projects, has increased. In the same time, the general recognized rules and standards, in the field of project management, were established, offering the base of studying the intellectual property in the project management. In a research project, the main aspects related intellectual property were presented in the „Guide of IP rules for the FP7 Projects”, issued by the European Commission. Other approaches were made in the field of innovation studies, but they are not covering all the aspects the new recognized project management international standard reveals. This paper is briefly examining the influence of intellectual property aspects over a small part of the project management: the process of planning the risk management.

1. The process of planning the risk management:

According to the PMBOK Guide – Fourth Edition [13]: “Project management is the application of knowledge, skills, tools, and techniques to project activities to meet project requirements.” This application of knowledge requires the effective management of appropriate processes. In the same document, the process groups of a project are: initiating, planning, executing, monitoring and controlling, and closing. All these groups have together 42 processes. They are also divided in 9 project management knowledge areas.

One of these project management knowledge areas is the project risk management, which has the following processes:

- Plan Risk Management (which is a part of initiation group);
- Identify Risks (which is a part of planning group);
- Perform Qualitative Risk Analysis (which is a part of planning group);
- Perform Quantitative Analysis (which is a part of planning group);
- Plan Risk Responses (which is a part of planning group);
- Monitor and Control Risks (which is a part of monitoring and controlling group).

The present paper is focusing only on the Plan Risk Management Process.

2. Intellectual property

Regarding the intellectual property, it is often divided in two categories: industrial property and copyrights [14].

The industrial property includes: patents, utility models, industrial models, layout designs of *integrated circuits, marks, commercial names, geographical indications and unfair competition prevention* [14]. In the national legislation, the intellectual property components that are managed by the national patent office are: patents [6], utility models [12], marks and geographical indications [7], designs and models [8], layout designs of integrated circuits [5] and plant species [5]. Moreover, there is a law regarding the unfair competition preventing [4], and a law that points out, for the first time in Romanian legislation, the term of „commercial secret” [10].

Other kind of intellectual property components are those related to confidentiality agreement conditions.

Regarding the copyrights [11], they are made of copyrights and related rights [3].

In this paper, all these intellectual property components are generically called as „intellectual property components”

3. The intellectual property in the Process of Planning the Risk Management for a Project

The process of planning the risk management for a project is the process of „defining how to conduct the risk management activities for a project” and the risk is defined as „an uncertain event or condition that, if it occurs, has an effect on at least one project objective” [13].

Taking into account the fact that the „risk management is not a strictly serial process, where a component affects only the next one”; the risk management is considered „a multidirectional iterative process where almost all the components can influence the other” [1].

The present paper is examining the intellectual property issues and a real case, following the structure of the planning risk management process in the PMBOK – Fourth Edition [13], as: (A) inputs, (B) tools and techniques and (C) outputs.

(A) – Inputs: the considered risk management planning process inputs are: project scope statement, cost management plan, schedule management plan, communications management plan, enterprise environmental factors and organizational process assets.

Therefore, there are some intellectual property components that could enter into the process and other that could appear during the analysis and planning meetings. They all need to be identified and protected.

The project manager, and the management team, needs to identify those intellectual property elements that could enter into the process, paying attention, at least, to the following:

- For the project scope statement:

Regarding the intellectual property, the project scope statement could contain actions or information regarding the need of buying patents or licenses, the use of some research results, the limited access to some information or documents during the project, and so on. In the same time, in the project scope statement one could find some project or process descriptions. Also, the project scope statement could contain confidential agreement conditions that describe characteristics, processes, standards, specifications or other such kind of information.

- For the cost management plan:

In general, the way of carrying out the budgets and the way of defining the reserves and management expenses could imply aspects that the previous projects have tested and registered, and they could be a part of the commercial secret.

- For the schedule management plan:
The same, it could contain drawings, time graphs or activities networks that were used in the previously projects and that are considered commercial secrets.
- For the communication management plan:
The communication management plan could contain information regarding access rights, information flows, used software and documents, that could be also considered commercial secrets.
- For the enterprise environmental factors:
They could be some organizational documents, specifying different approaches for the current risks of the organization and that are parts of the commercial secret.
- For the organizational process assets:
There could be some definitions, concepts, terms, plans, drawings, decisional fiches and other information that need to be protected.

Example:

A company producing soft drinks may initiate a project which aim at promoting the brand, product or corporate image, through the use of advertising umbrellas (for the table, the beach or for personal use) to be distributed free to its customers. Thus, under any of the planning risk management process input documents can be found some references to the types of umbrellas to be used, how to obtain them (own production or purchases), the information or images that will be protected in order to be displayed on those umbrellas, the proposed duration for this promotion methods, the geographical extension of this activity, the financial resources available for the project, specific ways of organizing the work, possible legal issues that can occur, etc..

One of the potentially generating risk situations, which are associated with these types of information, entering into the planning risk management process, may be related with the use of intellectual property elements that are not belonging to the project organizer. Therefore, for these situations that could generate potential risks, it is appropriate to detect the favored risks, which may impact the project. Thus, if the management team observe potential generating risk situations or elements that can turn into issues that can positively or negatively influence project outcomes, they should consider redesigning the way the risk management activities are conducted.

Such a project was initiated by a soft drink company in Romania (SC Coca Cola HBC Romania SRL) which observed that a patent is registered at the State Office for Inventions and Trademarks (S.O.I.T.), with the title: "umbrella" [2], by Gheorghe Salan from Targoviste.

In this situation, the company was forced to initiate court proceedings for cancellation the patent in question [15] because the patent office issued it without detailed analysis in the past and because its protection covers aspects that were not real inventions. This was recorded at the Five Civil Court Bucharest in December 14, 2007, with the number of file 45330/3/2007, and in March 5, 2009, the court ruled: "Court decided the cancellation of the patent no. RO 110026 131, with the filing date 16/12/1994.

Enrollment has mention to publish the decision to cancel the patent in the National Register of Patents. The S.O.I.T. will register this decision and will publish it in the Official Bulletin of Industrial Property within 60 days after the decision was registered."

Thus, considering this example, one can easily observe that in the process of planning the risk management for a project, the team had to report such a case, to consider the possibility of delaying the project or requiring additional costs (to resolve situation in court or to pay the additional costs for the patent holder's claims, if the court would have decided so).

As a result, in the process of planning the risk management, the team had to consider such a situation and provide both, the proposed methodology for addressing these types of risks, and the responsibilities, budget, running time and the description of these risks.

(B) – Tools and techniques: regarding the intellectual property, the analysis meetings in the planning risk management process would have as inflows, the process inputs specified above, and the contributions of each participant. One of the risk cause, related to intellectual property, in this point, could be the use of detailed protected information, without ensuring the owner rights.

(C) – Outputs: taking into account the structure of the project risk management plan document and the presented example, the main aspects related to the intellectual property could be presented as follows:

➤ Methodology (to approach the risk management):

For the considered example, the risk management plan needs to include information regarding the risks of using rights that are not belonging to the organization. Therefore, this chapter could include information regarding the proposed methods of obtaining the rights, like: the negotiation with the present owner, the contestation of its rights, the asking for their cancellation, and so on. In the same time, in this chapter, the risk management plan needs source information for the proposed scenario.

➤ Roles and Responsibilities:

The risk management plan document needs to include information regarding intellectual property competences and skills, the responsibilities the external consultants in the field of intellectual property have, their level of implication and other information related to the specific intellectual property activities.

➤ Budget:

The risk management plan will contain information regarding the specific expenses related to diminish or eliminate the considered intellectual property risks.

➤ Timing:

The time graph for the risk management plan needs to include activities related to intellectual property, in accordance with the scenario the team was considered to obtain the intellectual property rights.

➤ Risk breakdown structure:

In the risk breakdown structure chapter, the risk management document should specify the risks of non obtaining the rights to use the umbrellas. Therefore, according to the considered scenario, they could be included in the external risks, induced by the subcontractors or suppliers (for the scenario the team intends to negotiate with the actual rights owner), or in the external risks, induced by the regulations (for the scenario the team intends to sue the actual owner in court).

➤ Definitions of risk probability and impact:

The level the identified risks e related to intellectual property could affect the general objectives of the project, could be estimated taking into account the considered scenarios. Therefore, taking into account the budgets, the durations and other needed resources implied by each scenario, as well as the general objectives of the project, it is possible to estimate the level the identified risks could positively or negatively affect the project objectives.

➤ Probability and impact matrix:

Once the probabilities and impacts related to the intellectual property aspects were estimated, they could be organized in such a way that one could easily observe their cumulated impact and probability.

➤ Revised stakeholders' tolerances:

The stakeholder's tolerances could be estimated taking into account the scenarios the team has proposed.

➤ Tracking:

To ensure an effective documentation of the process and to track the evolution of each activity intellectual property related, the documents in the risk management process will permit the identification of the relevant aspects implied in the process. There is a need to include sub-chapters in the risk management plan to explain the risks related to intellectual property. In such sub-chapters the risk evolution need to be comparable and their effects correlated with different starting situations.

4. Conclusions

The intellectual property components in the process of planning the risk management of a project could appear as inputs, as elements related to the tools and techniques used in the process, and as outputs of the process.

The project management team should identify those intellectual property aspects that appear as inputs and to control the information used a processed during the analysis meetings, along with their sources and destinations, in order to ensure there is no intellectual property component used in the process without having the proper right.

The final document, the plan of project risk management, for the defined intellectual property risks, should include the methodology, the team roles and responsibilities, the budget, the timing the risk breakdown structure, the definitions of risks probability and impact, the probability and impact matrix, the revised stakeholders' tolerances and the tracking.

Therefore, the intellectual property aspects could significantly affect the process of planning the risk management activities for a project and the project general objectives.

References

- 1 Enterprise risk management integrated framework - Executive summary, Committee of Sponsoring Organizations of the Treaty Commission, September, 2004
- 2 Intellectual Property Official Bulletin no. 1 / 1991, published by the State Office for Inventions and Marks, available at: http://www.osim.ro/publicatii/brevete/bopi_1998/bopi0198.pdf (available at 10.25.2009), pg. 121.
- 3 Law 8/1996 regarding the copyright and related rights, modified and actualized by the Law 146/1997, the Law 285/2004, the E.G.D. 123/2005, the E.G.D. 190/2005 and the Law 329/2006, published in the Official Monitor no. 657 from July 31, 2006
- 4 Law 11/1991 regarding the unfair competition, approved in the senate meeting from January 23, 1991, published in the Official Monitor no. 24 from January 30, 1991
- 5 Law 16/1995 regarding the protection of the layout designs of integrated circuits, modified by the Law 337/2005, published in the Official Monitor Part I, no. 824 from October 6, 2006
- 6 Law no. 64/1991 regarding the patents, modified and completed, published in the Official Monitor Part I, no. 44 from January 19, 2007 and corrected in the Official Monitor Part I no. 351 from May, 23, 2007 (art. 7 and art. 8)
- 7 - Official Monitor no. 161 from April 23, 1998

- 8 Law 129/1992 regarding the protection of the industrial designs and models, modified by the E.G.D. 190/2005 and by Law 322/2006, published in the Official Monitor, Part I, no. 876 from December 20, 2007
- 9 Law 255/1998 regarding the protection of the plant's varieties, modified by the E.G.D. 190/2005, the Law 381/2005 and the Law 119/2006, published in the Official Monitor, Part I, no. 65 from January 26, 2007
- 10 Law 298/2001, regarding the modification and completion of the Law no. 11/1991 regarding the unfair competition control, published in the Official Monitor no. 313 from 06/12/2001
- 11 Understanding Copyright and Related Rights – World Intellectual Property Organization; ISBN 92-805-1265-4
- 12 Law 350 / 2007 regarding the utility models, published in the Official Monitor Part I, no. 851 from December 12, 2007
- 13 Project Management Institute. A Guide to the Project Management Body of Knowledge: PMBOK® Guide, 4th Edition, 2008, ISBN: 9781933890517
- 14 Understanding Industrial Property – World Intellectual Property Organization; ISBN 92-805-1257-9
- 15 http://www.tmb.ro/dosare_ecris.php?id_dosar=300000000194569 (available at 10.22.2009)