

# 2011 CIPO Event Innovation Games® Research Report Prepared For Joff Wild

By The Innovation Games® Company

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## Table of Contents

<b>Executive Summary</b> .....	<b>2</b>
<b>My Worst Nightmare (CIPO) Game Results</b> .....	<b>4</b>
IP Policy Pendulum ( <i>IP Policy, International Cooperation / Open Innovation</i> ) .....	4
IP Air Balloon ( <i>IP Transaction Marketplace</i> ) .....	5
Multi-System Failure ( <i>Corporate Functions / Role of the CIPO</i> ) .....	6
Alien Landing ( <i>IP Policy</i> ) .....	7
The Road To Ruin ( <i>IP Policy/Role of the CIPO</i> ) .....	8
Leave Your IP at the Door ( <i>International Cooperation / Open Innovation</i> ) .....	9
IP Policy Prism ( <i>IP Policy</i> ).....	10
Return of the IP Dinosaurs ( <i>IP Policy / Role of the CIPO</i> ).....	11

## Executive Summary

Chief Intellectual Property Officers must successfully perform a myriad of complex tasks in an ever-shifting global landscape of legal, organizational, and technological change. While guided by the CIPO Manifesto, all members of the IP Community benefit when CIPO leaders from around the world gather to engage in critical and thoughtful discussions on current issues.

On June 19<sup>th</sup>, 2011, a group of global CIPO professionals met at the IP Business Congress to play a series of Innovation Games® to deeply explore the potential threats associated with the ongoing evolution of the CIPO as we head towards 2015. Key goals for IAM Magazine in this engagement included the following:

- Continue to build knowledge and awareness of the CIPO.
- Continue to position IAM as the leading source of information about the CIPO.
- Drive excitement and attendance by structuring a much larger set of Innovation Games® for this event.

This report presents an overview of the 2011 CIPO games, including the game design and the key insights that emerged from playing these games. The games were designed and produced by Luke Hohmann, CEO of The Innovation Games® Company, and facilitated by a team of Innovation Games® Trained Facilitators. A second report will detail the games played with a larger group of CIPOs, Industry Experts, and Service Providers.

What's unique about this report is that represents the third year in a row that IAM Magazine has played Innovation Games® with leaders in the IP Community. This multi-year commitment to understanding and driving innovation within the IP Community has provided all members with an unprecedented perspective in how the role of the CIPO is changing – where it was, where it is, and where it is likely to be.

CIPOs were asked to play the game *My Worst Nightmare* to create vivid depictions of the most negative outcomes that they could imagine occurring by 2015 in the following areas:

1. IP Policy
2. IP Transaction Market Place
3. Corporate functions / role of the CIPO
4. International Cooperation / Open Innovation

By understanding their worst nightmares, we could help CIPOs could best position themselves to anticipate the challenges and avoid the negative outcomes.

CIPOs were organized into three tables and then choose to subdivide into smaller groups so that more topics could be covered. Eight unique pictures were created. Joff Wild published this summary of our outcomes immediately after the event (<http://www.iam-magazine.com/blog/Detail.aspx?g=2d32bac5-cc2b-490f-9c65-9de7086b8639>):

- A new downturn leading to cutbacks and a downscaling of in-house IP functions. This is something that will make it harder to implement effective IP value creation strategies.
- Reporting to the general counsel, as opposed to reporting directly to senior, non-legal management or to the board. GC's focus on risk minimisation and this makes it much more difficult to run IP as a centre that can make a positive strategic contribution to the business.
- An increasing disconnect between patents and business. In building a specific market for patents so that NPEs, banks, hedge funds and other investors can use them to make money, costs for companies will increase. This will adversely affect profitability and put sustainable growth, product development and job creation at risk.
- Legislators creating an environment in which it becomes increasingly less attractive for business to invest in the creation and exploitation of intellectual property. In Europe especially, there is a risk that well-organised and highly motivated anti-IP pressure groups will influence policy.

To these general trends, we add the following:

- CIPOs remain extremely sensitive to organizational structure. They seek seats at the executive table and disdain reporting to the general counsel, or, even worse, HR.
- CIPOs understand the delicate balance that effective global IP policy must create to sustain a successful IP marketplace.
- Concerns over IP rights in China and Compulsory seizing of IP assets remain very high.
- There are also concerns with the how hard it would be for a corporation to *recover* from the lack of continued investment in IP. One analogy is similar to rebuilding a dam that has broken – it can be more expensive tearing down a new dam and from scratch when a region has become accustomed to the benefits provided by appropriate water management. CIPOs seemed to express a similar belief – “restarting” an IP program that was allowed to go fallow is perceived to be an expensive and painful process.
- CIPOs may not be fully leveraging the power they wield as a group in establishing IP policy.

This remainder of this document represents our detailed analysis of each nightmare. It is designed to be used in conjunction with the photos and other event artifacts to help participants gain an understanding of this role.

We'd like to recognize the contributions of our facilitation team in preparing this report:

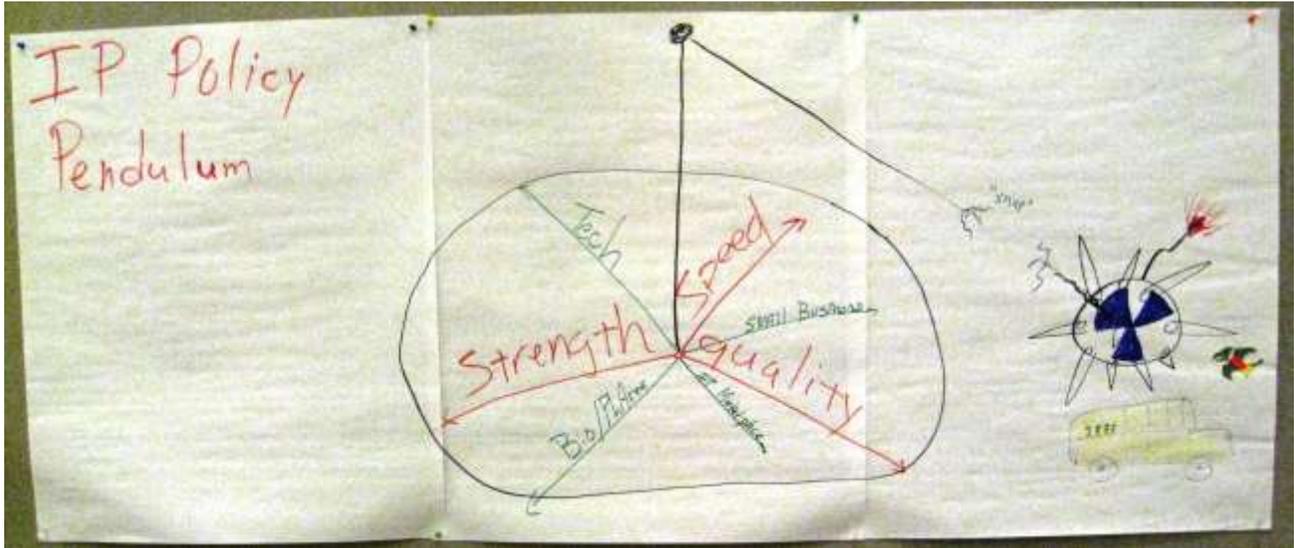
- David Carter, Patent Agent and Innovation Games® Trained Facilitator
- Greg Cohen, 280 Group Consultant and Innovation Games® Trained Facilitator
- Raj Datta, Silicon Valley Entrepreneur and Innovation Games® Trained Facilitator
- Julia Feng, Market Research Consultant and Innovation Games® Trained Facilitator
- Francine Gordon, Market Research Consultant and Innovation Games® Trained Facilitator
- Brad Waugh, Attorney at Cooley

The Innovation Games® Company would like to thank IAM for allowing us to participate in this project. We look forward to working with you on future projects.

## My Worst Nightmare (CIPO) Game Results

In this section we briefly review key results of the Innovation Game® *My Worst Nightmare* in which industry executives created vivid pictures of their “worst nightmare” CIPO.

### IP Policy Pendulum (*IP Policy, International Cooperation / Open Innovation*)



IP policy can be thought of as a delicate, multi-dimensional pendulum in which the path of the bob represents the balance that must exist in the various dimensions of global IP Policy that must be managed in order to create successful outcomes. Key dimensions captured in this diagram include:

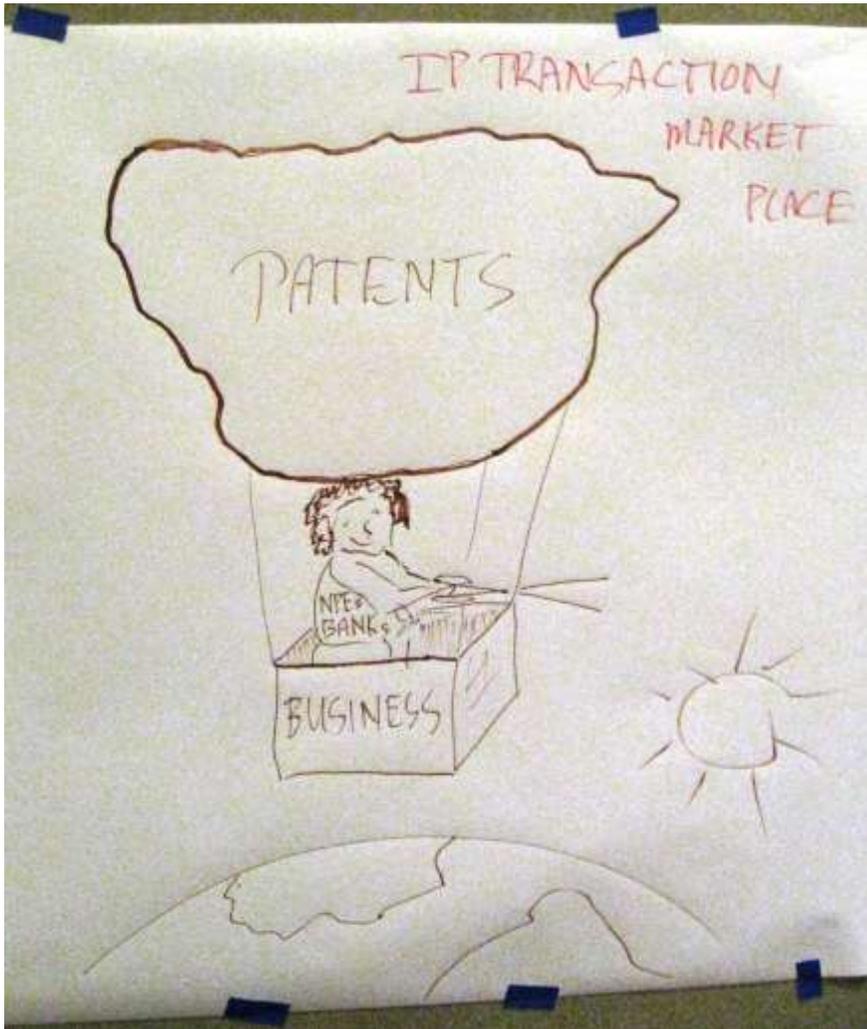
- Domains: Technology, Biotech/Pharma, Small Business, and the IP Marketplace
- Qualities or Aspects Influenced by IP Policy: Strength, Speed, Quality

In the lower right the picture depicts that will happen if any one dimension becomes too powerful: the bob will snap and become a terrible bomb that will destroy our future (as represented by a school bus filled with children).

In discussing this picture, the participants noted that part of the motivation of the metaphor was the acknowledgement that IP policy must be balanced between competing interests. Specifically, if IP policy becomes too favorable to the technology industry, it will “snap” because it will fail to meet the needs of the Biotech / Pharma industry. Similarly, if IP Policy is changed to emphasize “Quality” of IP (notably patents) over the “Speed” of patent-processing, innovation may suffer because it takes too long to secure protection. Conversely, emphasizing speed over quality creates too much “junk” IP.

Participants were well aware that they are often paid to advocate positions that favor their domain or perspective at the risk of causing the bob to “snap”. Participants expected that governing bodies would continue to manage the balancing act represented by the multi-dimensional IP Policy Pendulum.

## IP Air Balloon (IP Transaction Marketplace)

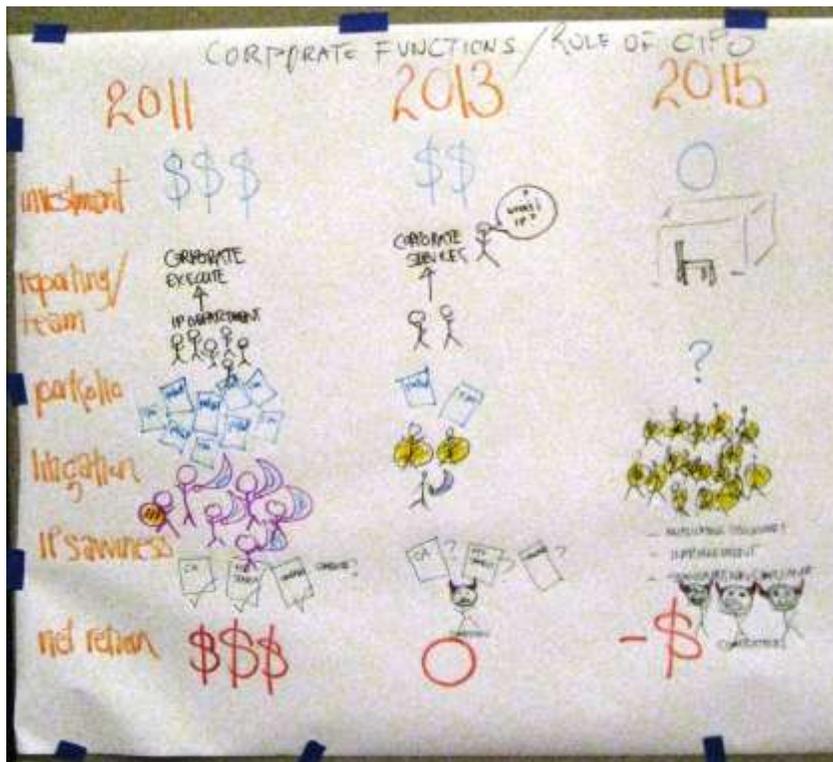


The IP Air Balloon represents the dangers that can happen when patent holders allow their assets to become disconnected with from their business. In other words, the IP Transaction Marketplace suffers the most when patents are no longer used to create successful products and services, but instead become used only by NPEs and banks for making money.

The long-term outcome is that businesspeople who experience a short term gain will crash to the ground in a spectacular failure.

To prevent this outcome, CIPOs must continually demonstrate the connection between IP and business outcomes.

## Multi-System Failure (*Corporate Functions / Role of the CIPO*)



One of the most central themes from the past three years of Innovation Games® exploring the role of the CIPO is that corporations must continually invest in the active development and maintenance of their intellectual property. Specifically, IP should not be thought of like buying a house, where you make a big down payment and just pay off the mortgage on a single large asset. Instead, IP should be thought of as a fruit orchard, where you make a modest investment up front to get started while ensuring that you have enough money to make the continual investment needed to tend your garden and bear fruit.

This picture captures a myriad of negative outcomes of a corporation who fails to make continual investments in their IP:

- **Reporting / Team (Organizational Structure):** As investments in IP decrease, the CIPO moves from being a member of the executive staff to a member of a corporate service unit (such as HR) and finally into oblivion. The decline includes the lack of understanding that IP is a strategic executive function.
- **Portfolio:** The portfolio dwindles from many powerful patents to none.
- **Litigation:** The company is forced to move from the offensive (represented by a single leader managing many warriors carrying swords) to the defensive (represented by a group of lawyers who are carrying shields).
- **IP Savviness:** The diagram shows a well-funded CIPO who can perform PTO searches, CAs, standards reviews, and even competitive assessments, to ensure sound choices, to competitors (stick figures with horns) who take advantage of a defenseless corporation.
- **Net Return:** The IP portfolio transforms from one that is capable of enabling powerful products and services and generating significant cash to one that is losing money because the corporation can no longer defend itself.

To prevent this outcome, CIPOs must strive to keep a consistent level of funding and seek to avoid damaging “swings” in the IP funding that drives their businesses.

## Alien Landing (IP Policy)



The Alien Landing picture represents three aspects of IP Policy in three relatively unrelated pictures.

### *Picture 1: Moth-eaten IP leads to “alien” IP*

This picture consists of three images that tell a story of dwindling IP investment.

- In left most image, the corporation fails to invest in their IP, resulting in a dusty, musty, and moth-eaten IP portfolio.
- This leads to the next image, which shows value flowing down the drain. Note the many currency symbols used to illustrate the global decline of value.
- The final image represents the somewhat failed attempt to reinstitute IP into the corporation. In this image, the IP professional appears as an alien to the corporation, representing how *foreign* the concept of effective IP management can appear to corporations who must (re-)discover IP management.

The symbolism and story of this picture is consistent with the general theme that effective IP is based on the consistent management and investment of resources.

### *Picture 2: Tail Wagging the Dog*

This picture represents the opposite situation of the first picture, one in which IP becomes too powerful, and IP is found to be the tail wagging the “business dog”. Similarly the dog can’t run too far or fast and is unable to overcome the IP weight. To counteract this problem, it is critical that IP remains aligned, but not superior, with the business.

### *Picture 3: IP Fire Extinguisher*

In this picture we find a representation of the thoughtless and reactionary approach that many corporations take to dealing with poor IP assets. The corporation is likened to a high-rise building built too quickly and perhaps unsafely. The result is that when a fire breaks out (e.g., a lawsuit) the executives frantically search for an immediate resolution through an IP Fire Extinguisher.

## The Road To Ruin (IP Policy/Role of the CIPO)



The *Road to Ruin* represents a slightly different take on the dangers of pursuing certain IP policies, and suggests that CIPOs must consider both the legal and the non-legal implications of current and future choices.

The metaphor is that the groups that advocate dramatically reduced to zero IP rights, represented by John Perry Barlow, the EFF, the IP Abolish Act of 2015, and the GPL v3 Bible, will set corporations and IP rights holders down a road that will cause them to stop investments in R&D because there is no return on these investments.

This, in turn, will cause the corporation, in this example a Pharma company, to eventually fail and send people to unemployment. This will also lead to a significant decline in employment across the ecosystem, including PTOs around the world.

To prevent this, corporations and CIPOs must continue to monitor the movements of "IP Rights Anarchists/Competitors" so that appropriate competitive responses can be enacted. Related to this is the need to conduct internal education, and perhaps the development of an industry consortia to educate a larger groups of people on the dangers of weak to nonexistent IP rights.

## Leave Your IP at the Door (*International Cooperation / Open Innovation*)



*Leave your IP at the Door* captures with quite vivid clarity the IP challenges facing corporations who seek to do business in emerging markets. In China, for example, foreign corporations must routinely forego their patent rights in order to gain access to Chinese markets and manufacturing prowess. And while corporations routinely cry foul of this practice, we see that they are unwilling to lose the opportunity represented by a billion dollar market.

The second picture in this series represents the theft of IP assets by judges in countries that simply privatize or otherwise take ownership of IP. These judges protect infringers by invalidating patents, reducing awards, and generally ignoring the rights of the patent owners.

These situations represent extraordinarily challenging situations for the CIPO, as they can occur in any corporation regardless of the IP budget. Simply put, in some circumstances the opportunity represented by emerging countries is simply too compelling.

While not discussed by the CIPOs, we suggest the following counter-measures:

1. CIPOs should continue to educate business strategists on the IP-related implications of pursuing growth in an emerging market. Some markets have proven to be more friendly to the needs of business than others, and such data may help provide guidance on the prioritization and sequencing of market adoption.
2. CIPOs should continue to participate in global efforts that motivate the proper use and respect of IP rights in emerging countries.

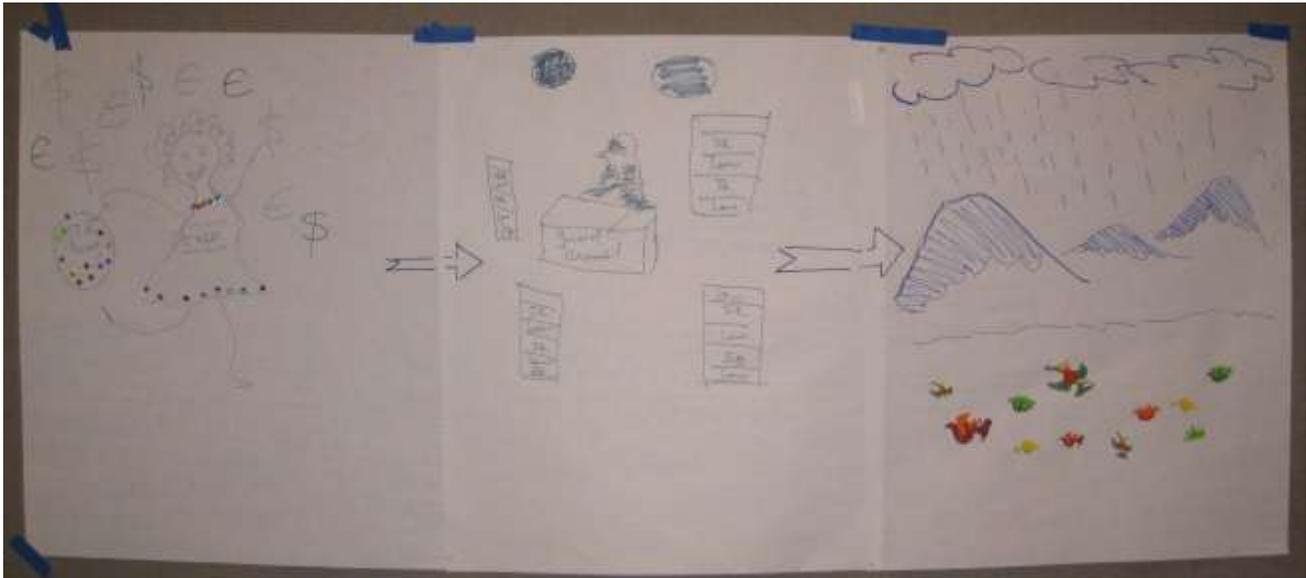
## IP Policy Prism (IP Policy)



The *IP Policy Prism* continues to build on the theme of the danger of failing to invest in IP. In this vivid diagram, a robust practice of IP investment dwindles to such a point where the corporation is placed into the “investment desert”, placing the IP rights holder at risk of the compulsory bandits.

We invite you to pay special attention to the race car – it is driving at high speed *in reverse*, heading *towards* “Nowhereville”, a place where it is impossible to create a solid IP solution.

## Return of the IP Dinosaurs (*IP Policy / Role of the CIPO*)



In this picture we find ourselves returning to the theme of a lack of investment in the CIPO and IP resources resulting in the decline and decay of IP within a company.

In the first panel, the happy CIPO (as noted by Beatrix de Russe, the CIPO is a woman ☺), is able to leverage her “bag of IP” to produce a healthy profit for the company. This bag of IP does not emphasize a specific kind of IP, but, instead, a collection of assets that can leveraged. The world is bright and sunny.

In the second panel, we start to see the results of the declining investment in the role of the CIPO and the broader devaluing of IP in the corporation. As commonly expressed by CIPOs, this is represented by the CIPO reporting to, or being replaced by, the general counsel. This concern about organizational structure and reporting relationships is clearly one of the most consistent concerns of CIPOs, and has been significant factor in all of the Innovation Games® played with CIPOs since 2009.

In the last panel the devaluation of IP is complete, and the corporation as returned to the age of the IP dinosaurs. Note that all of the dinosaurs are *upside down*, reflecting their painful death. Note also the symbolism of the sky: it changes from a bright and shining sun in the first panel to dark clouds in the second, concluding with rain pouring from the sky in a violent storm.

The prevention of this nightmare is consistent with the prevention of the others – a consistent funding model to ensure that IP can be managed effectively within the corporation.