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Forget Waiting For Legal; Why Big Bets Won The Race

The Editor interviews ***Steve Harmon****, Director of Legal Technology Solutions Group, Cisco Systems, Inc.*

Editor: Tell us about your role and background.

Harmon: I am Director of the Legal Technology Solutions Group and a technology licensing attorney by training. The mission of the group is to identify opportunities to apply technology to improve the quality of legal services and the productivity of the lawyers that we support. Our general counsel, Mark Chandler, is a progressive leader in legal services automation and processes. My education in law and technology, including an Information Systems degree, helps me deliver on his vision.

Editor: Please tell us about the Big Bets Program.

Harmon: Cisco's sales model is primarily indirect; we sell products through multiple tiers of distribution. These distribution partners then re-sell to our end customers. Cisco's Big Bets program identifies channel partners capable of delivering technology-specific product sets. Often these new advanced technologies require a high degree of specialization and training.

These new programs are typically very attractive to our channel, and each new product launch generates a dramatic need to quickly contract with large numbers of partners simultaneously.

Most companies would approach this problem by relying heavily on outside counsel in a staff augmentation role since staffing needs directly correlate to the number of simultaneous product launches and negotiations. We elected to automate the process and reduce our dependence on outside counsel.

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Editor: What types of agreements are used to govern your relationships with the distributors involved in the Big Bets Program?

Harmon: The two principal agreements are the Memorandum of Understanding (MOU) and Marketing Development Agreement (MDA). The preparation of these documents is automated to a point where they can be tailored by a Cisco account manager to the circumstances of the relationship with a particular distributor. Our account manager, working with the distributor, simply answers questions on a form – with a very light touch by Cisco legal services. In many cases it is no touch. Even when Cisco lawyers do need to get involved, it is usually after 90 percent of the negotiations have taken place. The DealBuilder ContractExpress document assembly application we license from Business Integrity supplies the business logic software that makes this possible.

Editor: Why did Cisco decide to automate the contracting process?

Harmon: Maybe it would be helpful if I contrasted the way most companies now handle a similar contracting exercise. In a typical product launch of this type an organization must quickly contract with multiple parties simultaneously. Typically, every new product launch creates a form of race condition in that each sales person is highly motivated to make sure their particular channel partners are first out of the gate to offer the new product. In the worst cases this degenerates into a relationship game as salespeople jockey to have Legal service their partners first. In a resource-constrained environment, the focus should be on identifying the partners best suited to be successful. Using automation to service all partners simultaneously eliminates the need to do such pre-qualification.

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Editor: So the legal department would be faced with all these conflicting demands and it would be hard put to satisfy everyone?

Harmon: That's right. The legal department is a natural choke point because it has to somehow fairly allocate scarce legal resources to meet the conflicting demands. The business certainly has an incentive to get these contracts in place as quickly as possible because that is the way to maximize revenue and actually start selling the products. You typically don't have clear business rules about how to decide which sales person should get priority. It becomes a squeaky wheel game.

Please email the interviewee at sharmon@cisco.com with questions about this interview.

You will be lucky if you start with one standard form or the template. But then, because you've got let's say ten different lawyers negotiating these deals trying to service as many sales people as possible, you are likely going to end up with at least ten different permutations of your standard form agreement as different concessions are made as lawyers use different decision criteria in hopefully compatible but not always identical ways. If you are lucky you have an online repository of those contracts that makes it easy to find agreements, but many organizations don't have that either.

Your rollout time frame tends to be much longer without automation. You have much less predictability in terms of what the outcome of the various negotiations will be. You have to go through multiple levels of approval after the contracts are negotiated. When you are selling new products, one of the key issues is how you are going to recognize revenue. For example, if each one of these contracts is negotiated by a different lawyer and ends up with different positions, someone in finance then has to go in and ascertain the proper revenue treatment resulting from that contract. You have a cascading effect where lack of predictability and lack of standardization tends to flow down throughout the organization and get in the way of an effective product launch.

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Editor: Describe the typical use of DealBuilder by an account manager in the Big Bets program.

Harmon: The Cisco account manager will go into the system, specify the opportunity, identify her distributor partner and go through a series of gating questions to determine whether that distributor is qualified to participate in the program. You can think of this as a series of trap doors. If she answers properly, she is allowed to continue through the contract creation process. If she falls out of a condition, let's say that the partner wants to sell an export control product into the wrong geography where export licenses are a problem, then the automated process is stopped, because lawyers have to get involved.

The template has built-in logic that calculates the appropriate predefined discount which will result in a standard revenue treatment. Factors in the calculation include such things as the size of the partner's marketing investment and the number of specialists it has trained in the specific Cisco technology. The responses to the interview generate a contract that is ready for acceptance by both sides. Finally, the electronically executed contract is automatically put into a repository where it is always available for evidence of the arrangement. If the questions are answered in such a way that it does not create the need for an external review, a Cisco account manager can sign up a distribution partner in an hour or less.

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Editor: What is the current volume of contracts being handled in the Big Bets Program?

Harmon: The Big Bets program is only one place where using DealBuilder increases our efficiency. We're doing about 125 contracts a quarter in the Big Bets Program. We use the same approach to handle much larger volumes of contracts – take nondisclosure agreements. We do about 200 NDAs a month and we have over 10,000 NDAs in the system now.

Once you understand the document assembly logic implemented in DealBuilder, the next template effort is much more efficient; the task becomes a question of tweaking to make small modifications to reflect business and risk model changes. Our ongoing use of DealBuilder over a number of years in somewhat similar applications enabled us to roll out the contract aspects of the Big Bets program from start to finish in a relatively short time. We spent less than two weeks on the technical piece using only two people – a business analyst and an IT analyst.

> "It allows the lawyers to pursue core issues because they can leave the grunt work to DealBuilder…. "

Editor: In the automated environment you describe, does the account manager have any negotiating flexibility?

Harmon: Although there are certain terms that cannot be changed, Cisco account managers have the ability to make certain modifications and adopt certain fallback provisions at their discretion because they're deemed to be business issues. A second layer of issues are traditional legal concessions requiring attorney review. I'm not going to claim that this type of model works for every type of contract, but in the Big Bets scenario that we're talking about we tend to be oversubscribed in the number of partners who are interested in selling these products. We have more partners that want to sell than we can accommodate.

Editor: Please sum up.

Harmon: We have ended the race to the legal department. At Cisco, attorney resource allocation is not a function of who has the best relationship with the lawyers to figure out which sales manager is going to be serviced first. Knowing that our systems are capable of supporting simultaneous negotiation with all potential channel partners, our salespeople have the opportunity to be strategic about which distributors they want to pursue first instead of worrying about whether scarce legal resources will be allocated to them. At the same time our legal management has predictability about required staffing levels. It allows the lawyers to pursue core issues because they can leave the grunt work to DealBuilder and its NDA counterpart.