

## CUSTOM CONTENT

# Procopio Advisors Prepare Life Science Success Strategies

## LIFE SCIENCE: Proper IP Protection, Planning Important in Current Economy

■ By JEFF CLEMETSON

For life science companies in uncertain economic conditions, strategy is the key to success.

“A company needs a strategy – both an IP strategy as well as a business strategy,” says **Jeff Morton**, a partner at **Procopio** who leads the firm’s life sciences practice and co-leads its licensing and technology transactions practice.

For companies in the life sciences industry, intellectual property (IP) has always been important, but right now is even more important “both from a perspective of getting solid investment into your company or in situations where companies are not doing well in the current environment,” he said, adding that shoring up IP allows companies to sell off or license assets or make themselves attractive for mergers and acquisitions deals.

“It’s important for companies that are both going to do well as well as companies that are going to have to pivot or change based on more challenging market circumstances right now,” he said.

Signs of more challenging circumstances in San Diego’s life science industry began with a slowdown in the red-hot market for lab space and life science facilities, said **Dennis Doucette**, Procopio partner who specializes in corporate finance transactions.

“So, a lot of these biotechs, even the public ones who have a lot of money, are starting to think, ‘Should we start selling or subleasing some of our real estate? Should we start downsizing? Should we change what we’re doing, change our strategy?’” he said. “And we’re starting to see some of that. Even the large public life science companies and others who have a lot of money in cash, they are having challenges.”

That’s where the importance of an IP strategy comes in.

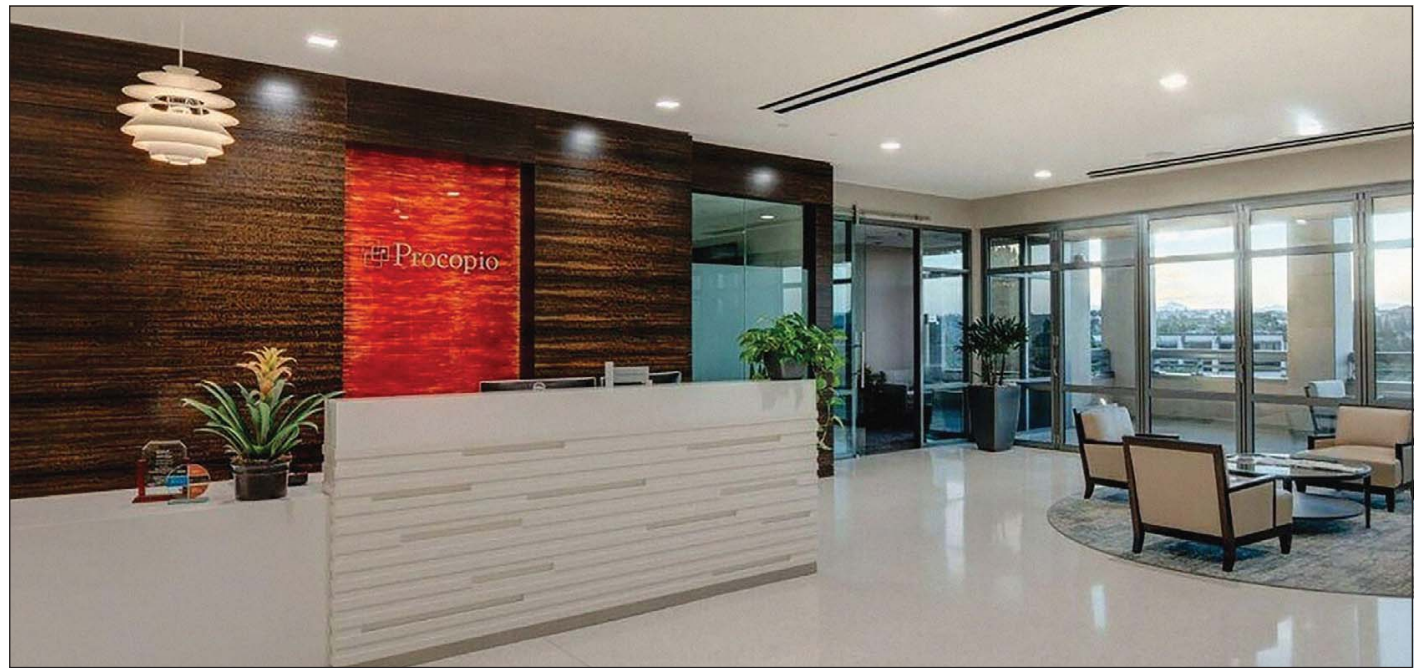
### Importance of Advisors

Morton said the best advice for founders of life science companies is to sit down with a sophisticated IP attorney early and then meet often with them “because things change.” An IP attorney will help develop a strategy focus that looks at what a company’s potential assets are and determine the best way to protect them based on many factors – including present and future finances.

“We get a lot of companies that come in here and we look at the portfolio and they’re protecting IP in places they don’t do business, they have no competitors, and they have no interest,” he said, adding that for most companies, superfluous IP protections in jurisdictions where the company is not doing business is a sign that the advisors are not communicating well with the companies. “That’s one thing we do very well at this firm. We’re every integrated into our clients’ businesses and we meet with them regularly.”

Doucette added that unlike Procopio’s integrated approach, many patent lawyers take an “in box, out box” approach of just filing patents as needed.

“A better way is to look at how the IP protection will add value – how it



Procopio’s Del Mar office where the firm’s specialists in life science are headquartered. Photo courtesy Procopio

will get to the next milestone, how it’s going to help fund the company,” he said. “Founders don’t always focus on the strategy and make sure it is aligned with what’s going on with the economics. They need experienced science advisors and also business advisors for success.”

Advisors fill various roles for life science companies, depending on where the company is in its growth process.

For very early-stage companies, advisors such as Procopio can help determine the viability of the science they are working on.

“There are a lot of brilliant scientists here in San Diego, but not all of those great ideas are businesses or companies,” Doucette said. “One thing we spend a lot of time doing is helping evaluate the IP; help evaluate the science and seeing whether that is a company or a business that people will invest in. Sometimes great research should stay great research, but others really are great economic opportunities.”

For science that does lead to a startup company, the role of an advisory board is to lend validation to the science.

“These very early companies may not even have patents yet and it might take a year or two to get them, but if they can get some well-known scientists – whether it’s cancer, whether it’s diagnostics, whether it’s therapeutics – who are thought leaders or have previous success, having them on your scientific advisory board can give some of that legitimacy, some of that validation,” Doucette said.

As life science companies mature, advisory boards become less about validation of the science and more about helping establish new partnerships or to make introductions to pharmaceutical companies for potential deal making.

“And on public company side, an advisory board’s role is further credibility, but it’s also opportunity and strategy,” Doucette said. “A lot of these scientists that have the experience will not just give the scientific advice, but some of the business advice as well.”

### Business Strategies

Advisors with business experience are helpful to companies as they mature and are faced with decisions such as whether to pursue building out the science all the way to producing a drug or therapy in house or to pursue acquisition.

“I think this whole buy it or build it strategy is fundamental to every company,” Doucette said. “If the company has the scientists, has the resources, has the people, it is much more cost effective to build it yourself sometimes.”

However, if a company finds another in the same space that is further along in developing the science or the production of the drug or therapy, “it may make sense to buy that and bring that technology, those molecules, those drugs in,” he added.

A major struggle facing life science companies is that even if they get a product approved or a drug approved and it is their only product, they generally have a hard time lasting long term because eventually that patent is going to expire.

“And if they don’t have a second, third drug or compound in the pipeline, it really makes it a challenge,” Doucette said, adding that sometimes companies need to do an acquisition or two to get the tools needed to get to the next level because it could take too long to build inside the company.

Another business strategy for life science companies is to pursue licensing deals for their IP.

“There are a lot more novel licensing deals going on right now than I’ve seen in the past,” Morton said.

Licensing is a lucrative avenue for companies with unique technologies but have no desire to pursue building them into drug products.

“We’ve been able to structure some creative deals where the licensing transaction is set up between the smaller company and the company that is going to build the IP out as a commercial product,” Morton said, adding that in addition to the normal licensing fees and royalties in the deal, Procopio has been successful in getting its

clients “some neat consulting services so that all the know-how and knowledge the founders have worked so hard to develop can now benefit the company that’s acquiring the IP through the license.”

### Raising, Managing Money in Current Market

In addition to creative licensing deals, institutional investment is still available for companies with good science and sound IP strategy.

Morton advises companies to get new IP developed and protected to push their runway further for exclusivity, “which then hopefully attracts more investors when they realize that the science isn’t just a one-trick pony; there’s actually a pipeline that they can invest in.”

Doucette pointed out that even with great technology, IP patents and even FDA approval, companies without huge revenue increases are currently having a harder time raising institutional investments.

“Two years ago, companies would get multiple term sheets; multiple offers with favorable valuations,” he said. “Now, they are prepared to take less valuable valuations and terms. That’s just the reality.”

The reality of less institutional money going into life science startups has led companies to look ways to save money by cost cutting, and to look to other means of fundraising such as bootstrapping and exploring funding other means outside institutional investors.

“Fortunately, the federal government, the NIH, they’re still making grants, they’re still doling out money and that’s a great way to have non-diluted financing. Not too many strings attached to that,” Doucette said. “Companies need to try all different avenues to get funded.”

One of those avenues is seeking out international investors.

“It’s hard to get money out of China into the U.S., but if the fund has already moved the money to Europe or wherever, there’s opportunity to come here,” Doucette said. ■



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