Licensing a Product

by Sarah Ryan

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What is meant by licensing?

A license Is a legal binding agreement from a licensor (owner of the intellectual property e.g. a patent) to a licensee (usually a manufacturer) authorizing the manufacturer to manufacture, market and distribute the products or services embodying the intellectual property (IP) in exchange for a monetary royalty.

The term â€œlicenseâ€• can apply to technology licenses, publishing and entertainment licenses, trademark, software and merchandising licenses. In the context of this article, licensing refers primarily to technology licenses). The license also specifies the manner in which the intellectual property can be used, the time period and territory or region. The licensor typically retains ownership of the IP asset and licensing is a way of creating a return on the asset. (WIPO/ITC (2005) Exchanging Value â€“ Negotiating technology licensing Agreements).

When would you consider licensing as a path to market?

It may not be in the IP ownerâ€™s interests to manufacture and market the product directly. They could have a full time job or no capacity to exploit the IP commercially. In this case the options for exploiting the IP are licensing or an outright sale of the IP rights.

Licensing works best when the IP is an incremental improvement on an existing product, technology or service and where it would not be profitable to compete with incumbents in the market place on the basis of the IP alone.

Disruptive technologies can also be licensed but it is important to note that it is more likely to work if the licensee will use the disruptive technology or product to enter new markets or fields of use. By disruptive I mean, as skype was to telephony â€“ a completely different way of dealing with a problem than exists.

An outright sale or assignment of the IP is a â€œone-offâ€• transaction where the technology is bought or sold for an agreed price. For products that are untested in the marketplace and have little or no market history, an outright sale of the IP is relatively uncommon because of the difficulty in quantifying the value of the IP to the satisfaction and expectations of both buyer and seller.

The major advantages of licensing a product or technology are as follows:

- Access to established manufacturing, marketing and distribution capabilities

- Roll out of the technology can be achieved simultaneously in multiple national and international territories and fields of use often much quicker than the IP owner could do directly

- Licensing can be used to legalise infringers or competitors

- The ability to generate a revenue stream without the making the same quantum of financial investment as a licensee.

The disadvantages of licensing for a licensor are primarily non-performance and or infringement by licensees which can often be larger, better funded, geographically distant and/or litigious.

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