

It's not about the Money

Understanding the Real Currencies in IP Negotiations.....



In just about every deal you contemplate, most transactions do not have to be all cash. If you trade your negotiating points for the services or assets you intend to buy with that cash, you will reduce the cash component of every deal and make it so much easier to complete. It may come as a surprise for many inventors, but many of the commercialization deals being negotiated today are completed as cashless transactions.

There are several transaction points in the IP commercialisation journey, in which third parties will provide some consideration to be part of your project or to licence your intellectual property. Arguably, negotiating for cash to commercialize is one of the hardest elements of the IP commercialization process.

It doesn't have to be this hard.....

Half of the struggle is the qualification of the potential investors. Most inventors will struggle to negotiate a trade sale of equity in their new project, for a bunch of money to buy or rent resources to get the commercialization done. What we generally tend to overlook is that the people with those resources would be more willing to give us access to those resources than part with money.

Acquiring IP without cash

Likewise, this can happen in the IP acquisition process, where you might be seeking access to a project that has been developed within a Government or tertiary environment and there may be no actual mechanism to accept money for the IP. Several years ago, I conducted an IP opportunity audit of a State Government in Australia and in that process we identified one teaching hospital which was part of their Health Department. They had their own innovation developed in their course of business, but the Health Department had no formal process to commercialize it. This opened up an opportunity for a University commercialisation team to offer these inventors an Adjunct Professorship if they assigned the IP to the University. In some cases they also funded equipment required to complete the development, which then gave them an endless feed of almost-completed projects - for next to nothing.

It could be that you identify some innovation that would complement yours and you want to negotiate with a third party to secure rights in your segment of the market. The most fundamental (but often overlooked) fact is that cash is not the only currency. In fact, in the

deals I have done over the last 6 months, there has not been one deal that was 100% cash as consideration.

One key factor in this type of transaction is to have done your research before you get into the meeting.

Situations

You may be involved in buying or licensing IP from Universities or other research-focused organisations. You may be involved in seeking funding and/or other resources for your development and/or commercialisation and you may be negotiating a licence, a trade-sale or a public listing to fund a project growth program.

I recently worked with an advanced wound care project looking for something unique to add to their portfolio. They had a single product and were looking to become a serious player in this industry, where the top 5 players in the USA were all posting annual sales in excess of \$10b per year. I found them a small company making collagen from animal skins, in a disease-free country. For the collagen company to expand into medical-grade collagen they needed secure markets and for this wound-care company to crack that market, they needed assured, exclusive supply. No money was exchanged. Instead the buyer developed a clinical protocol for extracting all of the endotoxins from the raw product and granted this process to the supplier, in exchange for exclusivity. Once volumes were established, the investment into this collaborative venture by each individual player was assured. This type of venture requires no money (assured markets can make debt finance very easy) and nobody had to dilute their ownership in their respective operations.

Types of Currencies

When firms are about to negotiate IP with a University - in most cases - the price the University commercial department have placed on the project IP could be a pure guess. I can therefore prepare a counter-offer which rewards the Department Head, who is generally the key decision-maker. Imagine securing some promising science innovation for the price of some lab equipment and 2-3 research assistant salaries per year. By rewarding the Department directly, the value becomes far more to the Department than any cash transaction to the University. Some of the more creative currencies I have dealt with include:

Use of Facilities: Secure lab facilities and use of equipment – with or without the skilled operators.

Professional/Peer Recognition: I have mentioned the example of granting Adjunct Professorships previously.

Sponsorship of a paper to be presented at a World Conference: We all have egos and in an industry based on recognition as the currency for promotion, being sponsored to prepare and present a paper on your topic of expertise, can mean an assurance of that next department promotion.

Access to markets: If I were to build a digital communications device that every mining company needed, I would be seeking a relationship with a supplier of noncompeting digital equipment to mining companies, as a suitable investor/partner. If they have hundreds of customers with a need for what I have built and a strong relationship with the third party I am talking to (as their supplier) I have a very good chance of jump-starting my sales with their client list and they can mitigate all of their risk with an assurance of instant sales, by feeding my product into their existing channel.

Access to skilled people: If you have to recruit skilled scientist or engineers, they might not be attracted to betting their career on a start-up. It is sometimes easier to collaborate with a firm that has these skills on-staff. If they are not directly engaged with you, you can more readily absorb the cost of delays in project development and approvals, given that you don't have monthly salaries which will burden your project.

Community recognition: I recently had a project involving a medical practice in a remote part of Australia (a territory twice the size of Texas) seeking to place medical imaging equipment which could save patients a flight and 2-3 days of accommodation,

to get medical imaging services when required. The investor offered to fund this as a convertible note (with a healthy interest rate) on the provision that this investor could announce to that community that they financed this life-saving equipment, to benefit the people of this region.

Being elected to the Board of a Company with someone famous: I had a real estate project which was moving to a public listing, in which the investor's key reason to invest, was to serve on the Board with the Chairman, who was well-known in Australia property fund circles.

The opportunity to socialise with the other party; Just the same as people take VIP seats at major business event to get a photo opportunity with the main act, people also will invest to have someone famous or interesting in their rolodex.

Migration: Some of the business migrants coming into Australia have to invest up to \$2,500,000 into a business venture and then plan an active role in a senior management position for at least 2 years. If the position they nominate for is export marketing, they can then return to their home city and start the marketing process, thereby buying themselves several years of dual residence.

A significant first order: I was recently involved with a project in which the most prominent investor was offering an order totalling \$10m of the product, in exchange for a sizeable percentage of the company. This enabled the project to have their development and production underwritten, as they commercialized.

In summary, whether looking for investors, collaborators, or other innovation that could complement your project, you could well ask yourself what currencies would the other party value more than cash. At the same time, you should determine if the things you are going to spend the cash (you are raising) on, can be provided by the investor, it will be cheaper and far less risk for both parties, to minimise the cash component of the transaction.

Do you have other cashless transaction stories to share? Join our LinkedIn special group "**Profit from Patents**" or share directly with us at www.profitfrompatents.com. We have a presence on Facebook, which also invites contribution.

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