

Making money by licensing your intellectual property

Alastair Swanwick of Innovate Product Design reviews an option for transferring the risk and cost of your IP without relinquishing overall control.

Perhaps the best-known route to market for entrepreneurs and SMEs with a new product idea is to start up a business around it or expand an existing one into a new area. However, for many this is out of reach – it is a huge commitment in terms of both time and money. For those with little knowledge of the related industry, and few business contacts, it can become an uphill struggle.

There is an alternative that removes much of the associated risk and capital outlay: by licensing the intellectual property (IP) rights of your product to a larger firm, you can successfully launch a new idea at a fraction of the cost, whilst transferring the risk to another organization.

What is licensing?

Essentially, by licensing your intellectual property you are authorizing others to utilize your intellectual property rights, normally in exchange for some form of returns.

Let's say that you had invented the biro and successfully been granted a patent for it. Ordinarily, anyone else producing or selling the biro would then be infringing upon your intellectual property rights. However, you could allow an existing company to use your intellectual property rights, and produce or sell the biro, by entering into a licensing

agreement with it. In this situation, you would become the ‘licensor’ and the company with which you make the agreement would become the ‘licensee’.

The terms and conditions of a licensing agreement do vary; there is no standard agreement. It may be that the licensee will pay the licensor a lump sum in exchange for the use of the intellectual property, or alternatively the licensee may pay royalties. In some cases, the agreement may include both. The deal could be exclusive to one organization or non-exclusive, indefinite or time-limited, or restricted to certain geographic areas or industries. Exactly what a licensing agreement entails depends very much on the requirements, expectations and bargaining power of the two parties involved. Before pursuing this route, it is important to consider whether it complements the needs of your project or business, and exactly what you wish to gain from an agreement.

Why should I license?

For entrepreneurs and SMEs, the greatest benefit from licensing is the possibility of reducing the costs of taking a new product to market whilst still retaining overall control of your intellectual property. Entering into a licensing agreement means that you can transfer the costs – and therefore the risks – associated with manufacturing, marketing and selling the product on to the licensee while still receiving some form of payment in return. For many individuals, the prospect of funding the manufacture of a product can be extremely daunting. Licensing is often a great way of cutting out these costs.

Some entrepreneurs may have little or no experience of the market in which their product would be sold. If they license the IP to an organization specializing in that market, the product can benefit from a greater level of expertise and an existing distribution network. These can be exploited to generate much greater revenues, resulting in higher royalty payments if they are stipulated by your original licensing agreement. Consequently, licensing can also expand the potential applications of your product. Most new products are developed with a particular market or utility in mind, but in certain situations many can also be beneficially applied to a variety of different industries for different purposes. Licensing the IP to a number of companies, across a range of industries, can therefore allow you access to a wider clientele and, once again, help to maximize revenue.

However, licensing may not be the best way forward for every product idea. Some SMEs and entrepreneurs may be confident enough to commercialize their intellectual property themselves. If your budgets and capabilities allow for this, it may be better to keep the intellectual property rights ‘in-house’, so that revenue generated by your product is not being shared between numerous parties. If you do still choose to proceed with licensing, it is important to ensure that the organization to which you license the IP has the capability to generate greater revenues than you would be able to yourself.

Finally, some companies may wish to gain a licence on particular IP rights simply to bury them and ensure they cannot harm their existing products or services. In such cases, the licensor may offer an exclusive licence, in exchange for royalty payments, without knowing the true intention of the potential licensee. The licensor would be unlikely to see any returns from the product at all; if the licensee is not selling the product, there will be no revenue and hence no royalties. This is certainly something of which to be aware.

How can I get a licensing agreement?

The first step towards gaining a licensing agreement is to conduct a detailed market analysis to identify potential licensees. You will need to determine which companies have a market presence in the target area, or areas, for your idea. It is also worth assessing whether your product would complement, extend or compete with the product ranges of those companies identified, by taking a look at what they already have on the market. This will very much influence whether you decide to approach a company and, if so, how.

Having generated a list of potential targets, the initial approach is usually best made by post. Draft a short letter, perhaps one page as a maximum, providing brief details of your product and an outline of its intellectual property protection. You may also wish to include some relevant market statistics, to highlight the benefits your idea would have for their business. If you are writing to a small organization, the letter should be addressed to the managing director; bigger organizations often have departments dedicated to looking for new product ideas, so do look out for this. Send your letter to around five companies to begin with, and wait for two or three weeks for a response. Should no one respond, give them a call or, if this is not possible, send another letter. This may not be a quick process, and some companies will take a few months to reply. During this stage, it is important to be both patient and persistent!

Once a company take an interest in your product, they will most likely request that you present it to them in person. For an effective presentation, you should use a computer package, such as Microsoft PowerPoint, to communicate clearly the results of your market research, as well as more in-depth details of your idea. It is always advantageous to have a professional representation of your product, demonstrating how it could look, how it might work and how the user would interact with the product. In some cases, a product may be best represented by a working prototype. However, in my experience, the vast majority can be ably demonstrated through CAD design boards developed by professional product designers; these are usually more cost-effective. The ultimate decision on this is down to you, based on whichever method makes you feel most comfortable and accretions possible in reflection of your budget! Do bear in mind that the presentation is not simply an opportunity for the potential licensee to evaluate your idea, but also a chance for you to assess whether entering into a licensing agreement with that company would be right for you.

Should the company take a further interest and wish to negotiate a licensing deal, it would be best to seek the advice of a licensing practitioner. Contract negotiations can be tricky, particularly if you are an individual in discussions with a large corporation. Licensing practitioners are lawyers experienced in drafting licensing agreements and can help to ensure that the terms and conditions of the agreement will provide you, and your IP, with sufficient protection. Licensing negotiations can take time, but once all the details are determined you can sit back and wait for your product to appear on the market.

Conclusion

For many smaller businesses and entrepreneurs, there are great advantages to licensing a new product idea to a larger operation. You are likely to reduce both initial costs and

risk, whilst benefiting from the expertise and contacts of an organization already well placed in the relevant industry. This method isn't for everyone, however, and you may be better served by commercializing your IP yourself.

If you do choose to license your intellectual property, there will still be hard work, and it will take time to reach an agreement you are happy with. The rewards, however, can be well worth the effort.

About the author

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