

An Obstacle in Licensing-out Inventions: People

Licensee = Partner (Parts 1&2)

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Sun Tzu was the formidable military commander of the Wu dynasty. A nephew of Confucius, he came up with some beautiful one-liners. One of them, "know your enemy and yourself," is a great admonishment for those intent on getting their invention to market.

In the last article I took the microscope to the relationships forged in promoting your invention. Now it's time to apply the same clinical instrument to licensees. They're not the enemy, but they sure aren't your friends, at least initially. It's not just your invention that makes for a winning deal, but how you approach it. *The key is to underpin your approach to a potential licensee with the idea of partnership.* Get it into your head that you're approaching a prospect so *together* you can make money out of the marketplace. Each of you as a partner must bring something of value to the table. Neither money nor an idea alone will make a commercial success.

Your invention, when coupled with a company's customer base, has to be seen as a three-way win. Their customers win with a product that is newer, better or cheaper. You and your licensee win by the income your invention generates. How you two will each share in this newfound wealth is simply a matter of the licensing agreement. Now what could be easier?

Forming that perfect licensing agreement, however, is like peeling an onion. It's one layer at a time with gasps and tears in between. But before the nuptials both you and your prospective partner have to decide that you want to dance. It's during the first meeting, when everybody is checking each other out, that critical impressions are formed. The prospective licensee may ask you what you want. Actually, they are interested in learning where you are coming from. It is too early to discuss terms for an agreement. So, statements about up-front fees and recovering expenses simply send the wrong signal.

It is a long road from a *proof of concept* prototype to a commercial product. You've already made an investment in time, creativity and dollars to get your idea to where it is. Yet more tasks remain that progressively get more expensive to do. And each task carries its own risks of knocking your project out of the box. A prospective licensee should have the demonstrated expertise to get your product to market. After all, once they pick up the baton, your success is inextricably linked to theirs. Financially and emotionally, it is also easier for them to write-off a project than it is for you, so pick wisely.

But lets backup a minute. Companies in the licensing-in business have specific *fields of interest*. These are primarily defined either by a particular technology or a specific market. In looking for a prospective partner, look for those with an established customer base matching your field of invention. Ideally, you want to approach companies that are one or two notches down from being the top player in that market where your invention fits. These are often the ones that "try harder" and are less susceptible to NIH (the Not Invented Here syndrome).

In finding potential suitors, focus on market driven companies with established channels of distribution. Just as a patent provides no assurance of success, neither does a licensing agreement, especially with a company that has no position in a market. **Deals with contract manufacturers for instance are typically tickets to nowhere.** Without distribution these companies must rely on others to market the product. It is like a three-body collision, tough to pull-off and then too many players looking for a slice to satisfy anyone.

Just as those in the licensing-in business have focused fields of interest, they also seek a high volume of *deal flow*. That is a stream of new product submissions from which they hopefully can cull out winners. It's a numbers game, and they have to move fast. In the consumer products market, it is estimated that only one out of 20 new product concepts is deemed worthy of test marketing. Only one product concept out of over 500 will result in a commercial product that stays on the market for 10 years. And the business development chaps don't waste much time deciding which ideas to cut. It never ceases to amaze me how many ideas are out there looking for a sponsor. As soon as one idea is turned down, there are two or three more ready to take its place. The challenge becomes then how to present a new product concept to a prospective licensee so it makes a strong first impression. How do you present your product concept so the prospect takes the time to understand the opportunity it offers?

Numbers also work for you, the marketer of an invention. There are many companies that need new products to remain competitive in their marketplaces. To be effective in placing an invention requires research to find those companies that should have a natural interest in your invention. Next comes the task of talking with each company to find the person responsible for new product acquisitions. This may be a product manager, marketing manager, or director of new business development. Usually you'd explain the nature of your submission, why it should be of interest and request a confidentiality agreement. Other times this may be necessary by letter. Your objective is to gain as much information on what the company is looking for so you can tailor your presentation. You also want to find out as much as possible about their evaluation process and the players involved. Sometimes the technical credentials don't match the task. Other times, marketing is conspicuously absent. This is the time speak up to set the stage in your favor **before** the evaluation.

In making a formal approach to a company, it is best to lead off with a well-crafted submission package. This document should begin to establish the technical merits and commercial value of your invention. If cast correctly, it will give you important credibility. This should be followed with a face-to-face meeting. Where that meeting is held is decided as much by tactics as logistics.

We need to visit this notion of credibility, a touchy issue. Credibility has tremendous influence on the outcome of the initial evaluation. Perceptions of self-importance and arrogance are deal killers. New products are launched by people. In the human dynamic, people have to relate to one another. The first two things that need to happen are the prospective licensee's people "buy-in" to your invention and into you. *You, likewise, have to buy-in to them.* Part of this is accomplished by sounding out each others expectations and getting a feeling if you can work with each other. I recall one first meeting that was an absolute bust. The presenter was the inventor of a medical device. Besides being a physician he was also a practicing attorney. He had what might be a good product once a few marketing/design glitches were worked out. Unfortunately the guy was so insufferable it killed any chance of a deal.

I think most inventors don't realize what it takes to get a product to market. You have to anticipate the need for a close working relationship throughout the development and product launch phases. This is where the idea of "partnership" and "making money together out of the marketplace" are so important.

Finally there are only two outcomes of the initial "show and tell"; there is or isn't interest. With an expression of interest comes the due diligence process. Here's where the layers of the onion begin to be peeled away. The interested suitor sets off to assess the product's market potential, its probable pricing, the pathway to launch, technical and business risks, the project's economics and the patent situation. They also will start to explore possible licensing terms. Sometimes these undertakings are like slipping into a

black hole. So find out: Their priorities for what they believe needs to be done; Who's going to do the work; And, at what point will decisions be made. Get involved and keep apprised of each step.

Somewhere during this phase between an expression of intent and a licensing agreement, a product champion will emerge. Watch for him. This is the person who believes in the product and whose enthusiasm becomes contagious within their organization. Without a champion the chances of your product going to market are slim to none.

The due diligence process is a hazardous time in a product concepts life. Of the 95% of product ideas that don't make it to market this is where most of them fail. Some companies will intuit a winner and head straight for a licensing arrangement. This can be heady, but be careful. Finding a problem after a deal is made can still be fatal. Only now you're locked into an agreement that blocks you from pursuing a solution with another company. And another point, just as companies keep culling their deal flow for winners, keep submitting your invention to likely prospects. Because a prospect wants to dance doesn't mean you're going to get married.