

December 1, 2016

Trying to make money on your idea? Here are some tips.

Many of our clients prefer to license their idea or sell it outright rather than commercializing it themselves. However, finding the right purchaser or licensee is not easy and is full of traps. Here are some tips for those of you embarking on the journey of getting a deal for your idea.

Establish a Property Interest in Your Idea

It is essential to file for intellectual property protection of your idea *before* you attempt to negotiate its sale or licensing. *Do not* disclose your idea to anyone until you have done so. For ideas that are inventions, file a patent application. For works of authorship, file a copyright application. You can expect a 3-10% royalty on sales depending on the industry and many other variables. If your invention cannot be protected through patents or copyrights, licensing is not the right approach for you, but you may be able to get compensation in other ways that depend on your situation and the nature of the idea.

Identify Potential Licensees and Define Your Market

You know the benefits of your product/process better than anyone and you know its market, so the hard work of finding who you will license your idea to, is best done by you. Find as many entities in the relevant market as possible by attending trade shows, subscribing to relevant magazines and journals, and searching stores and the web. Keep a list of the company names, contacts at the company, what their contact info is, how you contacted them and what you discussed with them.

In this process of finding potential licensees you may discover competitors. Master your knowledge of the competitor's products so that you can be an expert in why your product is valuable in relation to other products in the market. Your expertise of the market will make the difference between a great deal and a mediocre one or no deal at all.

Have a Well Developed Prototype and Prepare Negotiating Materials

Who will pay for an idea without knowing whether it works and what its benefits are? Nobody. The more you have developed the product, the better, so make the best working prototype that you can. If you can't make the prototype, hire a professional to make it for you. We often refer our inventors to prototyping professionals and recommend you have the prototype agree to a non-disclosure agreement ("NDA"). A working prototype is essential.

Everyone thinks his/her product is the best thing the industry has seen, but no matter how great your product is, it will die unless you present it in a professional, purposeful, and concise manner. Prepare a one-page brochure emphasizing the benefits of your product and its value in the market to send to potential licensees. Make it really catch their eye.

Issued patents should be sent to the potential licensee. A pending patent application may be sent to the potential licensee, but do not send the claims. If potential licensees are given the opportunity to review the claims of a patent application, they can use the claims to argue for a lower royalty or can design their own competing products to avoid infringement of your claims. Of course if your application has already been published, the claims will be publicly available. For non-provisional patent applications, publication happens automatically 18 months after filing unless you request non-publication upon filing. If publication has occurred, do not tell the potential licensee the application's filing number and date. Provisional patent applications are not published and are kept secret in the patent office.

Make First Contact

Send your one-page brochure to the contacts you have found with a cover letter reminding them of any contact you have made with them and requesting a meeting to discuss the opportunity to license it. For potential licensees at large companies, it may take some time to get this information to the right people, but stay involved and track any and all contact in your list.

While it is preferable to require the potential licensee to sign an NDA (which we can prepare for you), it is rare a company agrees to confidentiality. Beware of any NDA they send to you. Keep in mind at all times that anyone you discuss your invention with is just as likely to be your competitor as they are your licensee. Maintain a record of what you disclosed to them.

If you are lucky enough to have gone so far as catching the attention of the potential licensee's decision makers, we highly recommend getting us involved at that point. Licensing negotiations are inherently legal, requiring substantive knowledge of the law surrounding the IP at issue. Before negotiation, be prepared to discuss with us what you expect to get from a license.

Best of Luck!

As always, we at Peacock Myers are here to help you in this complex process. Making your ideas come to life is our specialty.

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