Technology Licensing For Early Stage Companies: A Bridge to Innovation

ENET: Boston Entrepreneurs Network

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LJW Background

- 20+ years industry experience
- Early Stage Start-Up
  - Current Co-Founder & CEO: Amplicea Therapeutics
  - Former President & CEO: Ventaira Pharmaceuticals (sold)
  - Director of Marketing: INO Therapeutics (sold to Ikaria)
  - OptimizOR: sold to Datex-Ohmeda
- Venture Capital
  - Venture Partner – Battelle Ventures
- Big Company/Commercial Experience
  - GSK
  - Merck
  - Datex-Ohmeda
- Board of Directors: Hepregen Corp.; CDI BioScience
- Consultant: Genomic Healthcare Strategies
- Clinical Experience: Duke, Medical College of VA, U of I
- Education
  - MBA, Washington University
  - BS, Biology/Nursing, U of I
Amplicea Therapeutics, Inc.

- Privately held emerging biotechnology company developing a transformational drug delivery platform technology that harnesses the body’s own biology to amplify the delivery of drugs to the diseased site such as cancerous tumors.

- Mission: Amplicea seeks to develop cancer therapeutics that maximize the efficacy and minimize the side effects caused by systemic toxicity.
Ampicea: Value Proposition

- Revolutionary Drug delivery technology that is broadly applicable
  - Platform technology: AmpliCascade
  - Multiple product opportunities
  - In vivo POP
- World-class scientific team
- Solid experienced management and advisors
  - Expert leadership team with strong business and entrepreneurial experience
- Strong and growing IP position
  - Blocking patents
- Seminal publications
Licensing: Bridge to Innovation

Objectives

- Review general rules and principles
- Discuss payment structures
- Review general terms
- Identify key areas of focus
- Outline red flags/landmines
- Lessons learned
An Entrepreneurs Fundamental Licensing Principles

- Cash is King – start-up capital is VERY expensive
  - Develop keen respect for cash
  - Minimize any payments – dilute the impact
- Align Interests
  - Work towards win/win
  - Become partners not adversaries
    - Decrease legal fees if negotiation goes smoothly
  - Determine the end game and work backwards – not a zero sum game
- No hidden agendas
- Fair valuation of technology
- Honest and diligent representation of technology
An Entrepreneurs Fundamental Licensing Principles continued

- Do your homework
  - Know what you can live with and without
  - Devil is in the detail – read carefully
- Keep it simple – obligations/compliance
- Value created over next 5-10 years
  - Execution determines the outcome
- **NO VALUE IS CAPTURED and NO $$$ Made Without a Deal**
Payment Structures

- Upfront license fee
- Milestone Payments
- Royalty on revenue
- Equity
- Pay for (past/future) patents and related costs
Upfront License Fee

- **Upfront license fees**
  - Cash is expensive!
  - Amortize license fee over time – 3-4 years
  - Tie payments to success metrics
  - Consider trading license fee for equity
  - Credit upfront payment against future royalty
  - Large upfronts send the wrong message to Company: “You won’t succeed & we’re going to get what we can”
    - Generally they will work with you
  - Large upfronts are poor use of limited resources
Royalties on Revenue

- Royalty – structure depends on technology
  - Excessive royalties adversely affect income statement
    - Unrealistic value on initial technology
    - May prevent business model changes
    - May prevent exit or require substantial renegotiation
Royalties – Payment Provisions

- Royalty – structure varies based on technology
  - Minimum annual royalty in exclusive deals
    - Ensure company is developing product
    - Option to convert to non-exclusive if not met

- Structures:
  - Running (earned) – net sales; tiered; fixed rate based on units sold; gross sales; profit based; step up; step down
    - Define upfront and understand the long term implications
  - Fixed royalties: easiest to calculate, avoids debate over profit
  - Profit based: difficult to calculate

- Royalty stacking – reduction in royalty rates with new licenses
  - Expect a floor
  - Company margin has to make sense – set a max
  - Align interests of licensors/company
Payment Structure cont.

- **Pay for patent and related costs**
  - Expect to pay maintenance fees if you have exclusive license
    - In US they are due 3.5, 7.5, 11.5 years
    - Can be significant, so plan

- **Equity – common stock**
  - Post Series A - 2-5%
  - Non-dilutive through Series A
  - Pari passu with pay to play provision after Series A
  - Never more than 10% regardless
Key Terms

- Definitions are critical – devil is in the detail
- **Field** of Use - Broad
  - Right to retract field if not pursued
- **Scope**: Exclusivity – University cannot compete with company
  - Co-Exclusive – no one will invest
- **Territory**
- Liquidation preferences
- Terms for liquidation- provision of change of control
- **Sublicenses**
  - Grant back – two way
    - Company/University
  - Patent prosecution
    - Company controls to ensure alignment of business strategy
License Red Flags

- Large Up Front Fee
  - Significant problem due to startup’s limited cash reserves
  - Recommendation: *agree to a fair fee to show you are serious, but focus on milestones*
- Excessive Royalties
  - Adversely affect income statement
  - May prevent exit
- Lack of Exclusivity or Co-Exclusive Licenses
  - Equity ownership stakes which adversely impact the cap table
- Liquidation preferences outside of purchased preferred stock which impute the exit value
How Problem Licenses Get Created

- Contentious negotiation – high level fees/wastes time
- Entrepreneurs don’t understand the University process or University doesn’t understand entrepreneurial process
- Disconnect between Licensing Personnel and Researchers
- Misaligned interests and expectations
- Conflicts in filing for and Control of IP
- Sequential negotiations post-financing
Lessons Learned

- Research is Never a product
  - Do the diligence upfront
  - Vet the value proposition
  - Takes lots of time/$$/effort to commercialize
- Execution is path dependent and determines success/outcome
  - Onerous terms ensure failure
- VCs bet on jockeys (management) not horses (technology)
- Original patents just starting point – superseded by new IP
  - 15% of patents are critical
What startup Companies Need in Tech Licensing

- A Technology Partner, Not An Adversary
- A Win-Win Relationship, Not A Zero Sum Game
- Respect for Cash
- Agreements that Align Interests
- Fair Valuations of Technology
- Honest and Diligent Representation of Technology
  - transparency
- No Hidden Agendas
- Move faster with less bureaucracy
Review Fundamental Licensing Principles

- Cash is King – start-up capital is VERY expensive
- Align Interests
- Do your homework
  - Devil is in the detail
- Keep it simple
- Value created over next 5-10 years
- **NO VALUE IS CAPTURED and NO $$$ Made Without a Deal**
“We Had the Experience But Missed the Meaning”

TS Eliot

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