



IP Transactions Bootcamp: Day 2 – Patents October 14, 2021

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- The opinions provided by the speakers are their own and do not represent legal advice. Any sample agreement clauses are provided only to facilitate discussions and are not meant to be utilized in practice.

Ownership of IP from Different Types of Transactions

- Fee for Service
 - Ex.: Vendor A providing services to Company B
 - Typically, Company B pay for services by Vendor A and owns patent rights
- Collaborative Research
 - Ex.: Company A bringing expertise X, Company B bringing expertise Y to jointly develop Z
 - Patent rights may be jointly owned or may divide based on each party's contributions
- Asset / Technology Transfer
 - Ex.: Company A sells technology and related patents to Company B
 - Typically, patent rights are assigned from Company A to Company B

What IP rights may be generated?

- Data
- Copyright
- Software
- Know-How
- Design
- **Inventions / Patent Rights**

Considerations for Patent Ownership in Collaboration

- Contributions of parties
 - Funding
 - Materials
 - Background technology
 - Expertise
 - Equipment
 - Personnel
 - Tax
 - Inventorship
- **Impact to core business of parties**

Background IP

- Access to Background IP
 - Consider enabling license to Background IP to the extent necessary to carry out collaboration and to practice Agreement IP
- Typically excluded from ownership transfer
- Defining Background IP:
 - Ex.: IP rights owned or controlled by party prior to effective date of agreement or is generated other than through performance of agreement

Patent Ownership Scenarios in a Collaboration

- Joint ownership
 - Each co-owner can use and grant non-exclusive license
 - Need all co-owners to grant exclusive license or to sue
- Ownership divided based on inventorship
 - Conception is the touchstone of inventorship
 - Definite and permanent idea -- when the inventor has a specific, settled idea, a particular solution to the problem at hand, not just a general goal or research plan he hopes to pursue.
 - *See e.g., Burroughs Wellcome Co. v. Barr Lab. Inc.*, 40 F.3d 1223 (Fed. Cir. 1994)
- Ownership divided based on subject matter
- One party owns everything
 - Consider asking for grant-back license

Assignment Clause – which one?

- Any inventions conceived by Party A under this agreement shall be property of Party B
- Any inventions conceived by Party A under this agreement, shall be the property of Party B, and all rights thereto will be assigned to Party B by Party A
- Party A agrees to assign to Party B all inventions under this agreement
- Party A agrees to grant and does hereby grant all inventions conceived by Party A under this agreement

Future vs. Present Assignment

- Any inventions conceived by Party A under this agreement shall be property of Party B
 - Statement of a future intention to assign. *See Omni Medsci, Inc. v. Apple Inc.* (Fed. Cir. Aug. 2, 2021)
- Any inventions conceived by Party A under this agreement, shall be the property of Party B, and all rights thereto will be assigned to Party B by Party A.
 - Agreement to assign, not a present assignment. *See Arachnid, Inc. v. Merit Indus., Inc.*, 939 F.2d 1574, 1580 (Fed. Cir. 1991).
- Party A agrees to assign to Party B all inventions under this agreement
 - Promise to assign in the future. *See IpVenture, Inc. v. ProStar Computer, Inc.*, et al. 503 F.3d 1324 (Fed. Cir. 2007).
- Party A agrees to grant and does hereby grant all inventions conceived by Party A under this agreement
 - Present automatic assignment of a future interest. *See FilmTec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568, 1573 (Fed. Cir. 1991).

Assignments – Practice Tips

- Keep terminally disclaimed patents together

PTO/SB/26 (08-08)
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TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT	Docket Number (Optional)
In re Application of: _____	
Application No.: _____	
Filed: _____	
For: _____	
The owner*, _____ except as provided below, the term of the full statutory term of the instant application shall be the expiration date of the full statutory term of the prior patent and 173, and as the term of said prior patent granted on the instant application shall be the expiration date of the full statutory term of the prior patent and 173, and as the term of said prior patent agreement runs with any patent granted on the instant application shall be the expiration date of the full statutory term of the prior patent and 173, and as the term of said prior patent	

“The owner hereby agrees that any patent so granted on the instant application shall be **enforceable only for and during such period that it and the prior patent are commonly owned.**”

Assignments – Practice Tips

- Existing patent rights
 - Confirmatory assignment for recordation at USPTO within 3 months
 - 35 U.S.C. §261: “An interest that constitutes an assignment, grant or conveyance **shall be void as against any subsequent purchaser or mortgagee for a valuable consideration**, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.”
- Future patent rights
 - Obtain assignment with first patent filing
 - Assignee estoppel does not apply to broader claims obtained after assignment. *See Minerva v. Hologic*, 594 U.S. ____ (June 29, 2021).

License

- Exclusive License -- Licensee is the only party permitted to use
- Non-exclusive license -- Licensee is permitted to use by does not preclude other parties
- Restricts on License
 - Field of Use – *e.g.*, for treating COVID-19
 - Geographic Region – *e.g.*, North America
 - Term
 - Research Use vs. Commercial Use
- Sublicense
- Consideration / Royalties

License

- Exclusive License

Sample:

[Party A] hereby grants to [Party B], and [Party B] accepts, an exclusive, royalty-bearing license, with the right to Sublicense, under the Patent Rights to import, make, have made, use, and sell Licensed Products in the Territory.

License

- Non-Exclusive License

Sample:

[Party A] hereby grants to [Party B] a non-exclusive license in the Territory to practice under the Patent Rights to make, have made, use, import, sell and offer to sell Products in the Field. This license shall be non-transferable and non-sublicensable, except that [Party B] is entitled to grant sublicenses to practice under the Patent Rights (i) to its Affiliates, and (ii) to third parties, but solely to the extent necessary to enable such Affiliates and third parties to make, have made, use, import, sell and offer to sell Products in the Field together with [Party B] or on [Party B]’s behalf (entities in (i) and (ii) referred to as “Sublicensees”). Sublicensees include, as an example, third parties or Affiliates that license intellectual property rights to Products from [Party B] in addition to any sublicense under the Patents.

Exclusive vs. Non-exclusive: Standing to Sue

- Exclusive licensee with “all substantial rights” can sue alone
- Exclusive licensee without “all substantial rights” need to join patentee
- Non-exclusive licensee do not have standing

Exclusive vs. Non-exclusive: Standing to Sue

- Exclusive licensee with “all substantial rights” can sue alone. See *Morrow v. Microsoft Corp.*, 499 F.3d 1332, 1340 (Fed. Cir. 2007)
 - Factors may include:
 - Scope of licensee’s rights to sublicense
 - Reversion of rights
 - Duration of license grant
 - Control over litigation
 - Limitation on licensee’s rights to assign its interest
 - Possible availability of obviousness type double patenting. See *Immunex v. Sandoz*, 964 F.3d 1049 (Fed. Cir. 2020).

Exclusive vs. Non-exclusive: Standing to Sue

- Exclusive licensee without “all substantial rights” need to join patentee.
 - *See Propat Intern Corp. v. Rpost, Inc.*, 473 F.3d 1187 (Fed. Cir. 2007)
- Non-exclusive licensee do not have standing

Part (ii) Control Of Generated IP

- Prosecuting patents / enforcement of patents
 - Who controls/pays?
 - Timeline for reporting/disclosing invention
 - Timeline for disclosing 3rd party infringement activity

Right to Prosecute (Who Controls/Pays)

Why it is important: sets out expectations/responsibilities directed to who is protecting IP based on joint activities.

Sample:

[Party 1] has the right to assume sole responsibility and sole control, at its expense, for the filing, prosecution and maintenance of patents and patent applications claiming [technical subject matter] and the uses thereof;

Provided, however [Party 2] will have the reasonable right to review and comment on patent prosecution matters.

What if Party 1 does not want to act on this right or wants to give up the right during prosecution?

Reporting on the Development of Patentable Subject Matter

Why it is important: the U.S. is a first to file jurisdiction (35 USC 100, et seq.).

Sample:

[Party 1] will promptly notify [Party 2] each and every invention is conceived or first reduced to practice during the term, regardless of whether such intellectual property is independently or jointly conceived.

Conception and RTP both matter; the invention scope can change.

Timeline For Disclosing 3rd Party Infringement Activity

Why it is important: enable to mitigate damages early on.

Sample:

Each party shall inform the other party promptly if it becomes aware of any infringement or potential or threatened infringement of any intellectual property rights related to the technology.

Who has the right to control litigation?

Part (iii) Managing Investment/Payment

- Royalties:
 - Valuation
 - Tiered – sales milestones
 - Reporting
 - Auditing rights
- Development
 - Milestones
 - Failure to meet

Royalties: How To Determine

Other licenses for same or similar IP

Market size projections (growing/shrinking)

Industry CPM: comparable profit margins

Remaining life of patents

Scope of claims, including prosecution history, to determine design around options

Business cycle (expansion/recession)

Quality of potential build

License restrictions (geographic/field of use)

Is royalty tied to other IP (tradename)

Is there active litigation (courts or IPR)

Will there be joint development with the other party

Hire an expert, consult with your business development teams

Royalties: How To Determine

No perpetual royalties for patent

- *See Aronson v. Quickpoint Pencil*, 447 U.S. 257 (1979)
- *See Lear, Inc. v. Adkins*, 395 U. S. 653 (1969)(held a person licensed to use a patent may challenge the validity of the patent, and that a licensee who establishes that the patent is invalid need not pay the royalties accrued under the licensing agreement subsequent to the issuance of the patent).

Royalty Payment Schedule-Tiered Payments

Why it is important: easier to collect after a market has matured.

Sample:

Subject to the terms and conditions of this Agreement, [Party 1] shall pay to [Party 2] a royalty, on the scheduled payment dates for the calendar year, on net sales of each licensed product in the territory on based at the following rates:

Aggregate Net Sales in a Calendar Year	Royalty Rate
1. [x]	[x]
2. [x]	[x]
3. [x]	[x]

Should the royalty payment be less than [\$] for any calendar year, [Party 1] shall pay to [Party 2] the difference therebetween at the last scheduled payment for the calendar year

Audit Rights

Why it is important: proper accounting of earned revenues.

Sample:

[Party 1] shall, both during the term of this Agreement, and for at least X years following termination or expiration of this Agreement, keep accurate records sufficient to permit determination of the payments due hereunder and shall, during such time, make such records available for examination by a third-party auditor designated by [Party 2] and reasonably acceptable to [Party 1], following reasonable advance notice...

If any such audit discloses underpayments of the amounts that were actually due, [Party 1] shall make an additional gross-up payment to compensate for that underpayment (plus interest as determined under Code § 7872(f)(2)(B)) within 10 days of the date the amount of the underpayment is finally determined.

Development Milestones

Why it is important: prevent dilatory licensee from maximizing revenue of your intellectual property.

Sample:

[Party 1] shall use diligent efforts to achieve development milestone events specified in Schedule X by the dates set out therein.

In any instance in which it becomes apparent that a particular development milestone will not be met due to regulatory, technical, safety or efficacy-related reasons or Force Majeure event, the Parties in good faith will agree upon an appropriate adjustment of such milestone and any subsequent milestones.

If it becomes apparent that a material development milestone cannot be achieved within a reasonable period of the dates set forth in Schedule X, then [Party 2] shall have the option to terminate the Agreement for cause.

License Modification For Failure To Meet A Milestone

Why it is important: minimize risk of loss with an otherwise potentially reliable licensee.

Sample:

If [PARTY 1] fails to achieve the Milestone on or before [date or schedule], then at [PARTY 2]'s election in its sole discretion, (a) the license granted by [PARTY 2] to [PARTY 1] shall become non-exclusive.

Part (iv) Common Agreement Terms

- Confidentiality
- Reps/Warranties
- Control of indemnification.

Define Confidentiality

Why it is important: removes disputes as to what is subject to obligations.

Sample:

“Confidential Information” shall mean any information whether disclosed verbally, visually, in machine-readable or written form, that is communicated by the disclosing party to the receiving party, including but not limited to ideas, discoveries, inventions, specifications, formulae, programs, plans, drawings, models, samples, requirements, standards, presentations, software and supporting documentation, financial data, trade secrets (including manufacturing and know-how), customers lists and data.

Identify Exceptions

Why it is important: narrows scope of confidential information, identifies burden to show exclusions.

Sample:

Confidential Information excludes information that, the party can show in writing:

- (i) was generally known to the public prior to disclosure to the other party;
- (ii) becomes generally known to the public through no wrongful act or failure to act by the other party; or
- (iii) is disclosed to the other party by a source other than such party, which disclosure is not in breach or violation of any law or any obligation to such party or any other person or entity.

Permitted Disclosures of Confidential Information

Permitted to Disclose Confidential Information when:

- the Receiving Party is obligated to disclose in order to comply with applicable laws or regulations, or with a court or administrative order, provided that the Receiving Party (i) promptly notifies the Disclosing Party, and (ii) cooperates reasonably with the Disclosing Party's efforts to contest or limit the scope of such disclosure.

Reps and Warranties

Why it is important: enables a party to learn information about activities of the other side.

Also enables a party to rescind or void the terms of the contract, then go on to obtain funds for recovery of the time and money spent as part of the transaction.

If do not use at all: common law warranty (e.g., under UCC) may apply.

Sample:

The receiving Party understands and agrees that the disclosing Party makes no representations or warranties, express or implied of any kind to the receiving Party, including those of *merchantability* and *fitness for purpose*, with respect to any provided confidential information; including without limitation with respect to the accuracy or completeness thereof.

Reps and Warranties

- (a) Licensor has an ownership interest in the Patent Rights and the list of the Patent Rights contained in Schedule A is accurate and complete in all respects
- (b) Licensed Patents are free and clear of all liens or third-party claims
- (c) Licensor has the right to use and convey any interest in all of the Licensed Patents without payment to or consent from any third party
- (d) Licensor has not granted any licenses under the Patent Rights which would conflict with the rights granted herein
- (e) Licensed Patents are in full force and effect, are validly existing under the laws of the United States of America.
- (f) To Licensor's knowledge, the Licensed Technology does not infringe on the intellectual property rights of third party
- (g) To Licensor's knowledge and limited to the time of the Agreement, the Licensed Patents have not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any intellectual property rights of third parties
- (h) To Licensor's knowledge, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any proprietary intellectual property rights of the Licensor in regard to the Licensed Products

Indemnification

Why it is important: IP litigation is very expensive.

Sample:

To the maximum extent allowed by law, [Party 1] shall indemnify, defend and hold harmless [Party 2] from and against any and all third-party claims, including reasonable attorneys' fees and expenses incurred in responding to such Claim, resulting from, arising out of or relating to any alleged infringement or violation of any IP Rights by:

- (i) any product made according to a specification provided by [Party 1];
- (ii) a modification of any product of [Party 2] to meet the operating environment, business requirements, or other needs of [Party 1];
- (iii) the use of any product delivered by [Party 2] in any way not accordance with [Party 2]'s then-current published specifications (including altering, modifying or converted the same without written authorization of [Party 1]).

Indemnification Procedures

Why it is important: avoid having another party implicate your guilt or require to you make payments to settle an action.

Sample:

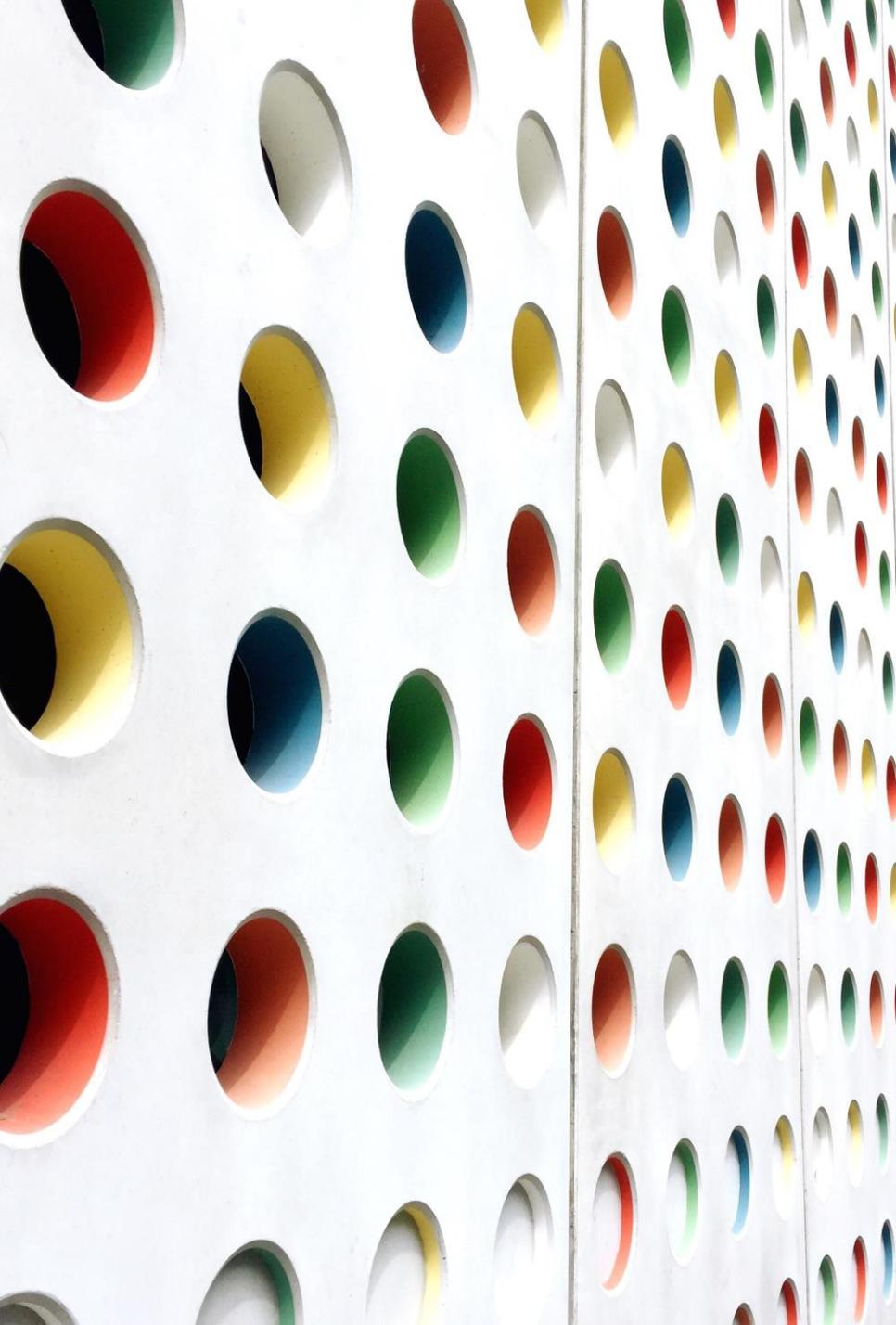
[Party 1] shall control the defense of any Claim; provided that any settlement requiring the [Party 2] to make any admission of liability, pay any amount, or be subject to any injunctive or continuing obligation shall be subject to [Party 2] prior written approval.

Government Funding / Contracting

- Federal Funding – *e.g.*, NIH or NSF grants
- Bayh Dole Act (35 USC 202-212)
 - Reporting / election requirements to retain ownership of government funded inventions
 - Government has a license
 - Government can request title if requirements are not met
 - Government has “march-in” rights
- FOIA availability of grant applications
 - Possibility of being available as prior art

Government Funding / Contracting

- Federal acquisition regulations
- Government not able to indemnify
- Authorization and consent



Patent Transactions: a view from the “inside”

Nicole Woods

VP, Assistant General Patent counsel

Eli Lilly and Company

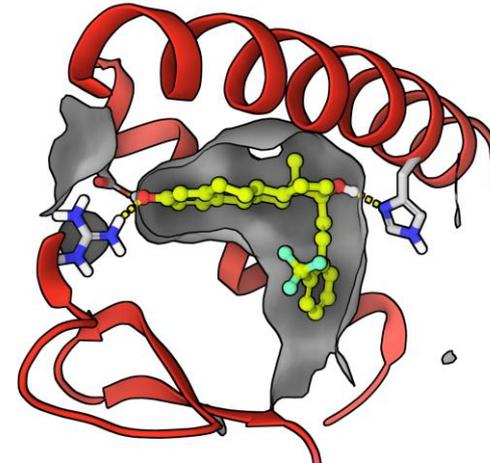
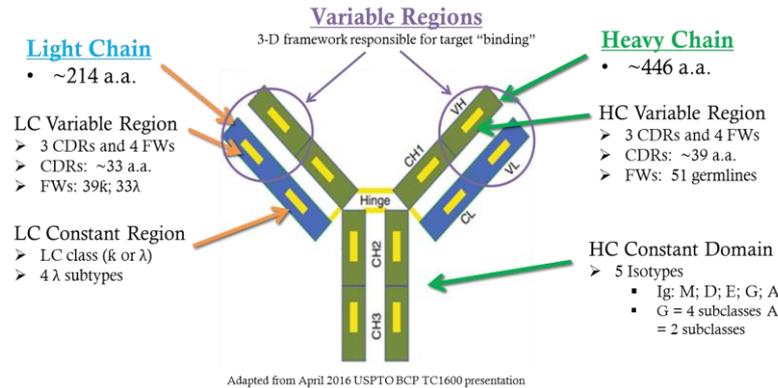
October 14, 2021

A hand is shown moving a black chess piece on a chessboard. The background is a blurred chessboard with other pieces. The image is overlaid with a semi-transparent grey rectangle on the right side, which contains the text. There are blue and black diagonal stripes in the bottom-left corner.

Disclaimer

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Pharmaceuticals are COMPLEX



Patent Transactions
Do NOT Need to be Complex

The "Right" Way ...

"It Depends"



The "Proper" Terms ...



No One Size Fits All Solution

Game of Chess

1. Understand the "Board": Client's & "Opponent's" Business
2. Understand the "Game": GOAL of the Agreement
3. Understand Business Drivers: Risks & Values
4. Understand what is Essential and what can be Sacrificed: Rights, Control, Ownership, *etc.*



Key Considerations

**Be
Reasonable**

- Multiple sides
- Varying interests
- One sided consideration will preclude deals

**Think Big
Picture**

- Business strategy
- Not one size \neq Fit all
- Freedom to Operate

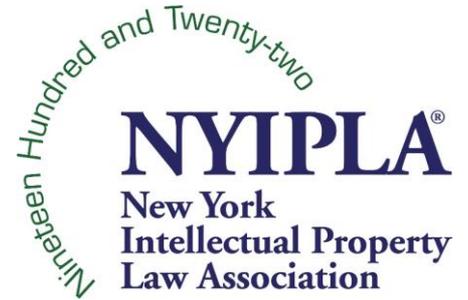
**Risk
Benefit
Continuum**

- Benefit & Value
- Risk severity
- Likelihood of risk



Practical Tips

- **Be reasonable**
- **Freedom to Operate (FTO) = Very Important Principle (VIP)**
- **Fit business strategy**
- **Rights needed will vary**
- **Further science and advance Products that matter**



Patent Scenarios

October 14, 2021

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Scenario 1

- Project "X" = NEW DEVELOPMENT
- RESEARCHER COMES TO YOU VERY EXCITED ABOUT A NEW SUPPLIER
 - "I WANT TO TALK TO THEM ABOUT XXXX THEY HAVE PUBLISHED/MARKETED TO SEE IF IT WILL MEET OUR NEEDS. XXXX MAY SOLVE MAJOR ISSUE WHICH IS HOLDING THE DEVELOPMENT BACK ."
 - "Need to discuss our project with them to find a solution"

Scenario 1 - Considerations

- Project "X"
 - Has any information already been Exchanged?
 - Value of this project?
 - Normal Development
 - BET THE FARM
 - Are portions of the development
 - CONFIDENTIAL
 - Patent-Worthy
 - Who is involved in these conversations?
 - Timeline?

Scenario 1 - Considerations

- Who is the Partner/3rd Party
 - Size
 - Location
 - US
 - Foreign
 - Commercial Entity
 - Research Organization
 - University
 - PROFESSOR OR STUDENT

Scenario 1 - Considerations

- Information
 - Where you are receiving information?
 - Does the information received have value based on the transaction?

Scenario 1 - Output

- Purchase Order
- Unilateral v. Bilateral Agreement
- Non-Disclosure Agreement (NDA)
- Confidential Disclosure Agreement (CDA)
- Secrecy Agreement
- Confidentiality Agreement

Scenario 2

- Project "Y" = Use of dataset to develop invention
 - RESEARCHER wants to use a dataset compiled by 3rd Party to develop potential Products
 - "I think this dataset is crucial to the development of invention"

Scenario 2 - Considerations

- Project "Y"
 - All of questions previously asked
 - How will Data be used?
 - Validation of Method
 - Development of Method
 - Is the information necessary for another reason?
 - Regulatory Filing

Scenario 2 - Considerations

- Project "Y"
 - Will Patent-Worthy inventions result?
 - What is the value of any potential inventions related to the data?
 - How much value does this dataset add?

Scenario 2 - Considerations

- Who is the 3rd Party
- Relationship
 - Do we already have an established relationship?
 - Is this a one-time issue or will it continue?

Scenario 2 - Considerations

- What do we need in order to commercialize
 - Freedom to operate
 - Exclusivity
 - Ownership
- What does 3rd party Need
 - Ownership
 - Freedom to Operate
 - Licensing

Scenario 2 - Output

- Development Agreements
- Data Sharing Agreements
- Clinical Trial Agreements
- Licensing Agreements

Scenario 3

- Project "Z" = Working with 3rd Party Expert
 - RESEARCHER wants to work with External Expert to develop and/or improve a product
 - “ this expert is at the top of the field and can really take our product to next level”

Scenario 3 - Considerations

- Project "Z"
 - What is the value of any potential contribution from 3rd Party to development/design?

Scenario 3 - Considerations

- Who is the 3rd Party
 - Conflicts of interest
- Relationship
 - Do we already have an established relationship?
 - Is this a one-time issue or will it continue?
- Where are they located?
- Where will work be taking place?

Scenario 3 - Considerations

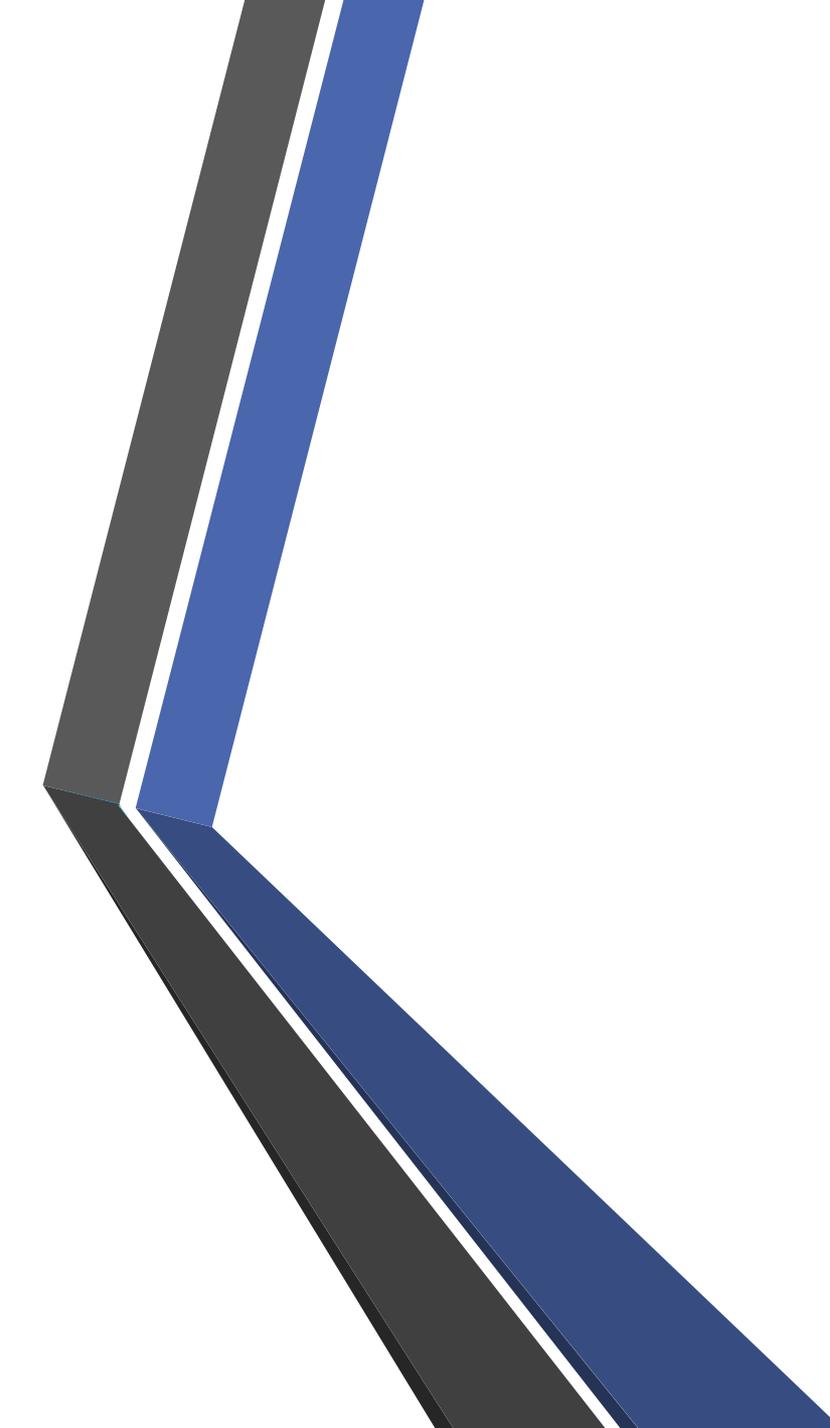
- What do we need in order to commercialize
 - Freedom to operate
 - Exclusivity
 - Ownership
- What does 3rd party Need
 - Ownership
 - Freedom to Operate
 - Licensing

Scenario 3 - Considerations

- Ownership
 - Joint
 - Single side ownership
 - License to other side for internal use, etc.
 - Concurrent development that will not lead to joint IP
 - if same idea developed separately

Scenario 3 - Output

- Joint Development Agreement
- Collaboration Agreement



Points to Ponder

Points to Ponder - Patents

- The only constant is change
- Don't judge too harshly
 - Circumstances may have demanded compromise

Points to Ponder - Patents

- Role of Attorney
 - Fact Gathering
 - Issue spotting
 - Risk determination
- Remember - Essential terms of agreement come from the business
 - Attorneys Memorialize Agreed to terms
 - Attorney don't give permission for business to move forward – just risk assessment

Points to Ponder – Patents

- Need to have an understanding of:
 - Business of both parties
 - Goal of agreement
 - Risks & Values
 - Essential Elements & Sacrificial Lambs
 - Rights
 - Control
 - Ownership

Points to Ponder – Patents

- What does Client/Internal Partner need?
 - Freedom to Operate
 - Exclusivity
 - Collaboration
 - Long-term
 - One and done

Points to Ponder – Patents

- Client/Internal Partner Considerations
 - Project Importance
 - Program
 - Specific value of Project
 - Relationship between parties

Points to Ponder – Patents

Client/Internal Partner Considerations

- Who should be involved in determining the terms of the agreement & When?
 - Business Unit
 - Scientist
 - Some points of conflict may be better understood by scientists/technicians familiar with technology
 - Attorneys
 - Inside v. Outside Counsel
 - IP, Operations (Supply Chain), Licensing

Points to Ponder – Patents

- Client/Internal Partner Considerations
 - Who are the champions
 - Decision Maker
 - Ensuring message conformity within internal team
 - Signature Authority
 - Does the person you are dealing with have authority to bind the company in this way?

Points to Ponder – Patents

- Client/Internal Partner Considerations
 - Where is the associated work occurring?
 - If IP develops – some countries require you to file first in that country
 - United States (Foreign Filing License)
 - China – If completed in China – first filing should be in China
 - France
 - Foreign Filing Licenses
 - Ownership Provisions

Points to Ponder – Patents

- Client/Internal Partner Considerations
 - Ownership Provisions
 - Location matters
 - Payments to Inventors

Points to Ponder – Patents

- Client/Internal Partner Considerations
 - Who is doing the work?
 - Specialists

Points to Ponder – Patents

- Are other 3rd parties involved?
- Funding?
 - Is any external funding being used?
 - Government, NGO, or Consortiums
 - March in rights
 - Ownership issues

Points to Ponder – Patents

- Client/Internal Partner Considerations
 - Are other 3rd parties involved?
 - Funding?
 - Is any external funding being used?
 - Government, NGO, or Consortiums

Points to Ponder – Patents

- Client/Internal Partner needs to:
 - Document what you know
 - Prior to collaboration
 - From collaboration
 - From other sources

Points to Ponder – Patents

- Partner
 - Relationship
 - Location
 - Size
 - Finances
 - Sensitivity to Publicity
 - Are they willing to go for an injunction?
 - What are they offering?
 - Internal partners – who & Positions
 - Legacy IP

Points to Ponder – Patents

Partner Limitations

- Statutory Limitations on what can be agreed to
 - Universities
 - Professor or Students - Post-doctoral students
 - State Agencies
 - Federal Agencies
- Understand Rules of Engagement
 - Ownership Restrictions
 - Representations and Warranties

Points to Ponder - Patents

- Royalties – who will track this?
 - Do you have a system in place for ensuring
 - IP is in force?
 - Follow-on IP is addressed
 - Contracts are up to date and not in conflict?
 - Upfront
 - Milestone
 - Long-term
- Termination
- Contacts
 - How and who?

Points to Ponder – Patents

- Choice of Law and Venue
 - Choice of Law = Law that Governs Rights Under Agreement
 - Choice of Venue = Place Where Dispute to Be Resolved
- Silence
 - Parties may choose not to address this issue in the Agreement
- Perspectives Based on Party's Location, and Whether to Align or Not Align With Jurisdiction of Choice of Law
 - Considerations When Venue and Choice of Law Jurisdiction Align
 - Considerations When Venue Different From Choice of Law Jurisdiction
 - Trying to Align Similar Legal Systems When Non-Alignment of Venue and Choice of Law Jurisdiction

Points to Ponder – Patents

- Does the Choice of Venue Clause act as an exclusion for special “Venues or Courts”
 - PTAB
 - ITC
 - EPO
 - Individual Country Nullity/Opposition Proceedings

Points to Ponder – Patents

- Start with the End in Mind
 - What is Business trying to accomplish?