

WHAT IS LICENSING?

The fundamentals.

Licensing Series – Part 1

Every inventor wants to make money from their invention. Money may not be the initial reason why people invent, but it is a strong motivator for many. For some, the long, arduous and yet rewarding task of inventing may be just that they have invented; that they are an inventor. For those who wish to take their invention to market, many consider licensing their product.

There are many paths to licensing a product. Which path you decide should be based on a thorough understanding of your product and its marketability, your target market and your target license partner. I will discuss in *Part 2* of this series how closely linked marketing is to your licensing strategy. For now, however, I will focus on explaining some of the licensing basics.

More broadly referred to as Intellectual Property (IP), licensing encompasses: patents, copyrights, trademarks, and trade secrets (the "total package"). While patents are the first thing people generally think about when it comes to licensing; your Intellectual Property portfolio, which includes your product, will generally cover all of these areas. I'll define a little more what each of these areas are and what they cover:

- ❖ Patents: Utility (utilitarian/functional elements and features), Design (ornamental features) and Plant patents (asexually reproduced).
- ❖ Copyrights: documents, web sites, manuals, instructions, marketing materials, software, etc.
- ❖ Trademarks: phrase, term, symbol, smell, sound, color, trade dress and product design that identify the source of the product (*who not what*).
- ❖ Trade Secrets: "unpublished" information, processes, formulas, etc., that offer you a competitive advantage.

Licensing itself is really the act/action you choose to engage with others in order to bring your product to market. You can license your product in any number of ways...which ones and how you choose to do this will help determine your ability to maximize your product's licensing potential. To begin to understand your licensing approach, consider the following:

- ❖ What do you want to license? "The total package".
- ❖ Will you be the primary manufacturer of your product and/or will you allow others to manufacture your product?
- ❖ Where and how will your product be distributed?
- ❖ How much do you understand about the distribution channel?
- ❖ Will you be offering your product for manufacture and/or sale in foreign countries?
- ❖ Do you wish to work with more than one licensing partner?
- ❖ Exclusivity, non-exclusivity, sub-licensing. Do you know what these mean?
- ❖ Marketing (branding and goodwill). Do you have an established brand?
- ❖ Licensing exclusions. How to determine what licensing does not cover as it pertains to your product and its market.
- ❖ Derivative works and IP ownership. Who really owns what?
- ❖ How do I determine the right fee to charge? Profit vs. Margin and the bottom-line.
- ❖ License revenues: upfront license fees, royalty-free and royalty-bearing. How do you want to earn revenue from your licensed product?
- ❖ Consignment/leasing options and what that means to your license revenues.
- ❖ Product volumes vs. Sales volumes and the impact on license revenues.
- ❖ Reporting requirements. Where did all those products go...and where's my money?

The answers to these questions come together to form the 'framework of your licensing strategy and your license agreement. In some cases, the answer to one question will actually generate additional questions that will lead to a more solidly defined licensing strategy. At the very least, you will begin to understand that licensing is complex, however, with proper forethought you will be able to avoid some of the pitfalls that many inventors experience as a result of an unplanned approach to licensing. In the next series – you'll learn that the best approach to licensing is a 'linked approach' and how a proper marketing strategy can enhance your licensing strategy.