

LICENSING AFTER THE PANDEMIC

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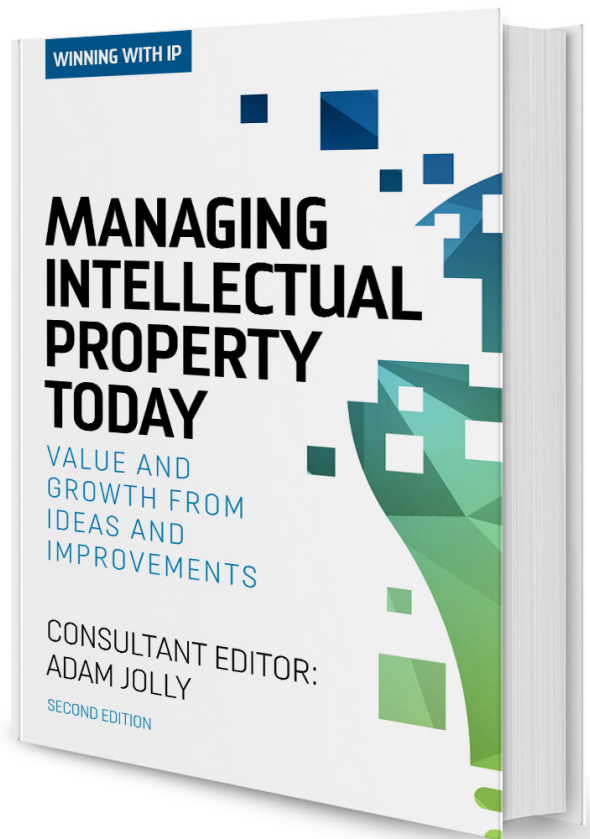
Licensing is accelerating the fight against Covid-19 and the transformation of the workplace. Christian Heubeck and Wolfgang Weiss at Weickmann & Weickmann discuss how tech ventures can use it to innovate and adjust at speed in a book inspired by the EPO's and LESI's High-growth Technology Business Initiative

Scientific ingenuity rightly gains the plaudits for turning the tide against Covid-19. In its way, however, licensing has played an equally influential role in accelerating innovation. It has opened up the path for bringing together the networks of partnerships that have transformed frontier research into life-saving treatments within a year.

Each drop of the vaccine is packed with intellectual property rights, each separately sourced and negotiated. Alongside the core breakthrough to combat the virus sits a series of elements to safely purify, package and distribute the vaccine to millions.

The speed and intensity at which these collaborations are operating will have lasting consequences. When faced with an existential challenge, licensing has proved its worth in innovating more openly and more quickly. It will certainly continue to play a central role in the ongoing fight against Covid-19. After the acceleration of digital innovation that has happened during lockdown, it is likely to play an equally instrumental role in bringing together partners at speed to manage the transformation of workplaces and markets.

Many still remain to be convinced about whether licensing is for them. Their hopes have been disappointed too often before. Partners are hard to find. Agreements are difficult and arduous to negotiate. Liability to IP challenges can become an uncomfortable and expensive risk. Follow-up ideas are hard to pursue.



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Drawing on the knowledge and experience of 20 top-level IP performers, including the innovation team at the European Patent Office, this book reports on how IP is being used post-pandemic to create tech solutions, pick up the latest thinking, take a competitive lead, negotiate the best deals, knock back any challengers and open up a path to breakthrough growth. It gives a series of lessons and insights about how today's winners are lining up their IP to transform early-stage ideas and technologies into assets around which competitive business models can be designed.

Further details: www.novaropublishing.com/managing-intellectual-property-today

During an emergency, it is true, shortcuts can be taken. Even so, during more normal times any difficulties with licensing can largely be avoided if anticipated far enough in advance.

For those now looking to adjust, compete and innovate after the pandemic, it is no longer enough to think about licensing once you have run out of other options. It has become an accelerator in its own right that demands your attention from the start.

If you can check out the market in advance, you will generally find yourself in a much stronger position later to secure better legal and financial terms. So what steps can any promising venture take to gain from the upsides of licensing while minimizing its limitations?

Drop your illusions

You might be in the fortunate position where you can avoid the distractions of licensing. You might have a uniquely brilliant idea. Then by all means raise the funding and grow it yourself. For every such venture, we see many, many more who fail because they have been too slow to confront commercial reality early enough.

In all probability, you are going to require partners. A licence governs how knowledge is shared and how these relationships operate,

whether in taking your idea to market or complementing what you offer. So the first step is to have the courage to drop your illusions. Accept that you are unlikely to succeed on your own and start looking for partners now.

If you leave it to the point, when funds are running low and the pressure to perform is mounting, you're never going to enter the healthiest of relationships. The other side will have too many chips in their favour. They'll know your back is against the wall. Your disappointment is next to guaranteed.

Up to proof of principle, you can work in a bubble. You have all the funding, personnel and technology that you require. The priority is to show your invention works. In life sciences or pharmaceuticals, it has mostly to stand a chance of becoming a human therapy. Further tests in pre-clinical and clinical will require significantly more resources, whether in the millions or tens of millions, so you will depend on strong partners, particularly when you are innovating at speed.

The right partner

Clarity matters as much as being early, when starting to discuss the potential for co-operation. Are you looking to create revenues or maximize profits? or is your priority to develop products, gain market share or make an impact?

You will generally have three options for finding a partner. Informal links are often the best. So it is worth checking out your own networks first. You might find yourself working with someone you already know or being introduced to someone. More formally, official agencies keep lists of potential partners. Or you can start to build your reputation by improving your profile, visiting trade fairs or giving papers at conferences. These are good routes for smaller companies looking to expand their reach, whether they're looking to open a discussion with a corporate or enter a new international market.

Review your technology landscape

As innovators, you are naturally attached to your ideas and solutions. Be realistic about them too. You would like to think that you have a clear path to market. But how strong is your IP in comparison to your competition? what technology or capability might you want to add to give yourself an edge?

As you innovate, you can opt to develop your own solution for everything. The alternative for non-core elements is to bring them in under licence. It speeds everything up for you. You know that it has already been tested, so it is one less concept you have to prove and is one point of failure that you can discount.



Forms of collaboration

Following lockdown, we now see that innovation can work in much faster cycles. Everyone realized that they couldn't work in their traditional silos. They all had to come together and use cross-licensing to develop a solution within a deadline as short as a year.

Depending on the circumstances, you can choose which form of collaboration to use. In the case of Covid-19, it was a question of big pharma testing, scaling and marketing a scientific solution. Alternatively, you could develop the product together or sell a licence to one of the leading players to develop on their own.

Ready to negotiate

The major players in most markets are now decisively shifting towards a more open sourcing of innovation and are actively looking to source partners. However, before you set your hopes too high, recognize that negotiations take skill and perseverance:

- Corporates have structures at each level of their organization, each of which must agree for the project to proceed.
- Based on your estimates of the impact you are going to make, you might be set on raising millions. A corporate might see it more as an addition worth closer to the tens or hundreds of thousands.
- You have to accept that your project might get buried without technological reason, because of conflicts within corporate management or between you as partners. It is a deeply human process. If you find yourself getting locked into an uncomfortable position, make a change in your negotiating team. It often makes all the difference.

Types of licence

Depending on your market, you will look at different forms of licence. Offering a manufacturing process, you will want to make it as available to as many users as possible. In life sciences and pharmaceuticals, you will be most probably aiming for one exclusive licence.

However, it is risky to place all your hopes on one such deal. It is often better to license out one or two projects, so creating enough funding so you can develop your other ideas.

For those new to licensing, it can often come as a surprise that agreements are so arduous to negotiate. Between smaller organizations, an agreement will typically run to a few pages. For a deal with one of the leading US players, it might be several hundred. So for smaller ventures, it makes sense to focus their efforts on one agreement, rather than having too many versions.

Financial benchmarks

You can be guided by benchmarks in setting a value to your IP, negotiating a rate of return and lining up payments. Ultimately, however, there are no rules. Everything is possible.

For your IP, you start with a comparison of what else is on the market, although information can be hard to find, as it tends to be confidential. Usually standard rules apply to royalties: 5 to 10 percent in life sciences or 2 to 3 percent in manufacturing. Other payments are all down to negotiation.

In agreements, you will see a combination of down payments, milestones, revenue based on turnover and royalties set a minimum or maximum level. As a smaller venture, the emphasis is on keeping the financial rules as simple as possible, perhaps a down payment with a combination of milestones and a share of revenue.

The virtue of making an early start in talking to potential partners is that you will develop a sense of what is going to represent good value in your market.



Transfers of knowledge

IP gives you a clean and efficient way of transferring knowledge. You can be precise about what is in the package. However, the value in collaborations is often in the dialogue that follows and the ideas that emerge.

Ideally, you want to establish a relationship where you can keep innovating together. So you would like to encourage a free flow of know-how while securing your rights in any inventions that follow.

You could agree to jointly own any new IP, although it can be difficult to commercialize if you both have to agree each step. It is usually better to give one of the partners the first option on an application. Or give each of the partners the right to file their own version of the innovation. In any case, ownership of new IP generated under the license should be clarified.

IP checks

Once the shape of your deal is resolved, it will be subject to some rigorous checks. Many collaborations falter at this late stage. Your partner will expect to have freedom to operate. Any conflicts can change the logic of what you have agreed.

For peace of mind, they will probably be looking for assurances about the future integrity of your IP. It's you as the licensor who takes responsibility for defending any claims of infringement and paying any damages. These are significant liabilities. So as far as you can, avoid giving a blanket declaration that holds your partner harmless.

The next waves of licensing

We have had the first wave of innovation around Covid-19. Everything was happening at high speed. Licences were negotiated with fewer of the usual checks about freedom to operate. During the crisis, everyone accepted that they had to take a wider, more open view. Moving forward, we can expect many more negotiations about licensing and more analyses about freedom to operate.

It is estimated that 200 teams around the world have been working on vaccines. Their patents will only be published after 18 months. So there is a lot of new IP on its way, which is unknown right now. So we can expect the intensity in licensing negotiations that we have experienced since 2020 to continue for the foreseeable future.



Christian Heubeck and **Wolfgang Weiss** have drafted and reviewed multiple licensing and co-operation agreements for tech ventures, securing the IP rights and confirming their freedom to operate. They are partners at Weickmann & Weickmann, one of Germany's most established IP practices, which specializes in engineering, chemistry, life sciences, trade marks and designs. Since 2020, Christian and Wolfgang have been intensively involved in filing and negotiating the IP for Covid-19 solutions, developing licensing models to support accelerated innovation. Further details at: www.weickmann.de.

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