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# Intellectual Property Licensing

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## Editorial

With knowledge being one of the main driving forces of modern-day economies and “Open Innovation” becoming an increasingly important concept of collaboration, intellectual property (IP) has become a central (business) asset. Different kinds of IP – whether trademarks, patents, copyright, know-how or design – can be used and exploited in various settings and multiple ways. However, licensing is undoubtedly one of the most common ones when it comes to turning IP into profit and transferring knowledge between different parties – be it from a research organisation to a company or from one business entity to another.

The present Bulletin issue sheds light on different aspects of IP licensing and provides professional first-hand insights into real-life licensing practice. We get you started with a brief introduction to key terminology and concepts including an outline from WIPO of six fundamental ideas related to technology licensing. Subsequently, our Senior Policy Advisor Eugene Sweeney takes a look at key (commercial) ingredients in a licence, and tells us a little bit more about the questions and issues to be addressed once the licence deal is done. As Richard Brunner and Sevim Süzeroğlu-Melchior, both leading IP experts at the Dennemeyer Group, rightly conclude in their piece on licensing out technologies from an SME’s perspective: “A successful licence deal does not end with the parties’ signatures, it is only the beginning.”

In the following, we turn our focus towards some sample cases and best practice examples from the world of technology transfer. We will introduce you to Bastian July, co-founder of the technology recommendation platform GoodIP, who talks current challenges and barriers related to technology brokering and market matching, and gives an overview of intermediaries in the field. Research centres and universities have large pools of novel inventions and IP, but often struggle to find the right licensee. In this regard, the technology transfer office of the German Saarland

University can be seen as a success story that is largely based on an innovative IP commercialisation strategy and rather unusual transfer pathways, as Axel Koch, Managing Director of the Knowledge and Technology Transfer Office, further explains in his article.

While successful knowledge transfer thus already represents a challenge in itself, less performing EU member states face even larger difficulties in establishing appropriate structures to improve the sustainable exploitation of research results. This is where the EU-funded initiative “Alliance4Life” comes into play, seeking to close the performance gap between EU-15 and EU-13 member states in European health research and innovation. In her project portrait, consortium partner Smiljka Vikić-Topić gives some insights into the innovation culture of European transition countries with a particular focus on life sciences. When it comes to licensing in this field, there are some specifics to be kept in mind, as Sebastian Tegethoff from the 24IP Law Group points out.

Taking up the theme of this year’s World IP Day “IP & Sports” this edition is rounded off with an article by Jose Alberto Merida Velazquez showcasing various ways of monetising IP in the realm of sports.

We hope you will enjoy delving into the different facets of IP licensing. Thank you for reading!

**The European IP Helpdesk editorial team**

## Contents

<b>Getting Started</b> _____	<b>2</b>	<b>Licensing in Life Sciences</b> _____	<b>14</b>
<i>Introduction to IP licensing</i>		<i>Putting a spotlight on some specifics</i>	
<b>Key Ingredients in a Licence</b> ____	<b>4</b>	<b>Project Portrait: Alliance4Life</b> _____	<b>15</b>
<i>Central terms to be negotiated in a licence agreement</i>		<i>Closing the health research and innovation divide in the EU</i>	
<b>Licence to Win</b> _____	<b>6</b>	<b>From Innovation to Monetisation</b> _____	<b>17</b>
<i>Licensing out technologies from an SME’s perspective</i>		<i>Intellectual property rights in sports</i>	
<b>Post-deal Management</b> _____	<b>9</b>	<b>News from the European IP Helpdesk Team</b> _____	<b>19</b>
<i>How to make licensing a happy, long-term relationship</i>		<i>Publications, training and other activities</i>	
<b>Technology Transfer</b> _____	<b>11</b>	<b>What Else is There Around?</b> ____	<b>20</b>
<i>Brokers, tools and platforms</i>		<i>Additional resources and helpful material</i>	
<b>Matching New Technologies and Markets</b> _____	<b>12</b>		
<i>Current challenges and barriers</i>			
<b>Successful Structures for Tech Transfer at Universities</b> ____	<b>13</b>		
<i>The case of Saarland University</i>			

# Getting Started!

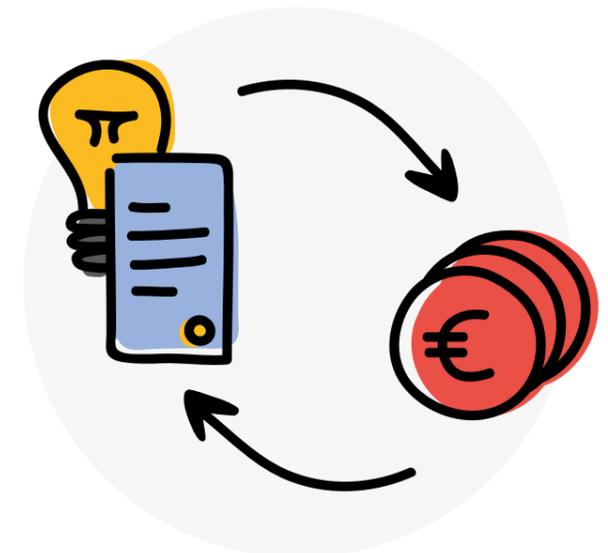
A Brief Introduction to Intellectual Property Licensing



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Setting up a new business or introducing innovative products or services to the market does not necessarily imply that an organisation has to start from scratch – even less does it mean that it needs to hold all necessary knowledge, knowhow or technologies itself. Nowadays, most successful innovations are based on collaboration and many innovative companies provide products or services to their customers building on intellectual property (IP) or inventions that already exist, held by someone else and – very often – used for completely different purposes. This is where licensing comes into play.

In principle, licensing means that the holder of a certain IP (**licensor**) grants permission for the use of this IP to another party (licensee) within the limits set by the provisions (e.g. in a certain time or territory) included in a contract called **licence agreement**. There are two basic modes of licensing: “**licensing in**” and “**licensing out**”. “Licensing in” refers to the process in which a company acquires and uses knowledge or technologies held by another party. “Licensing out” describes the converse process in which an organisation makes their IP available and grants the right to use it to others.



Licensing may play a vital role in a company's commercialisation strategy, providing substantial benefits to licensor and licensee alike, ultimately aiming to reach a “win-win” situation for both parties.

Besides, licence agreements can also be seen as an instrument for the distribution of risks between the licensor and the licensee.

### Benefits of licensing

For Licensor	For Licensee
Opportunity to reach new markets with existing products/services.	Opportunity to create new businesses.
Opportunity to enter a market with existing clientele of the licensee, which reduces risks for market failure.	Opportunity to provide licensor's already available/well established products/services to the clients, which reduces risks for market failure.
No need to invest in marketing and distribution.	No need to invest in R&D.
The licensor retains ownership of the IP while receiving royalty income from it.	The licensee does not need to “purchase” the IP and use the opportunity to test market success of the licensed product/service without investing much.

Licensing is a means for turning a possible competitor into a partner.

### Risks of licensing

For Licensor	For Licensee
The licensee can become a competitor.	Licensing may create a technological/business dependence.
The licensor can lose control of the licensed product/service.	The licensed IP may be challenged and the technology become obsolete.
There are difficulties to find a fair, solid licensee willing to obtain a licence.	There are difficulties to find a fair, reliable licensor willing to grant a licence.
Licensors must trust licensees as a source of revenue. In the case of a market failure, licensees may generate no revenues although there may be a minimum royalty clause in the agreement.	Payments can be too burdensome to cover and a certain amount might still need to be paid even though there is a market failure because of a minimum royalty clause in the agreement.

### Different types of licences

Apart from the distinction between “licensing in” and “licensing out”, one can differentiate different types of licences: exclusive and non-exclusive. An exclusive licence type can be sub-divided into:

- **Exclusive:** only the licensee is able to use the licensed IP or technology (the licensor cannot use or license it);
- **Sole:** the licensor agrees not to grant any additional licences but retains the right to make use of the licensed IP.

A non-exclusive licence grants both, licensee and licensor, the right to use the licensed IP or technology. The licensor is also allowed to negotiate further non-exclusive licences with other companies.

Each licence agreement is unique depending on the kind and nature of the individual IP concerned. Moreover, the choice of the most appropriate type of licence should be made by carefully considering:

- the overall business strategy and goals of the licensor
- the target market conditions
- the capabilities of the licensee

**Given the specific nature and varying complexity of each licensing case and agreement, it is highly recommended to seek professional legal advice before entering into concrete licensing negotiations.**

Although licensing is unquestionably a significant way to exploit IP, it is nevertheless just one option to reap the (commercial) benefits of an organisation’s intangible assets. And, it may take place in various settings and kinds of transactions. One of the most common forms of IP licensing is technology licensing.

## Six Fundamental Ideas Concerning Technology Licensing

*Provided by the World Intellectual Property Organization (WIPO), originally published in “Successful Technology Licensing”. IP Assets Management Series.*

- 1. Technology licensing only occurs when one of the parties owns valuable intangible assets, known as Intellectual Property (IP), and because of that ownership has the legal right to prevent the other party from using it.**

A license is a consent by the owner to the use of IP in exchange for money or something else of value. Technology licensing does not occur when there is no IP. However, IP is a broad concept and includes many different intangibles (e.g. patents, inventions), copyright (works of authorship including technical manuals, software, specifications, formulae, schematics, and documentation, among other things), know-how (e.g. expertise, skilled craftsmanship, training capability, understanding of how something works), trade secrets (a protected formula or method, undisclosed customer or technical information, algorithms, etc.), trademarks (logos, distinctive names for products and services), industrial designs (the unique way a product looks such as a computer’s molding), and semiconductor mask works (the physical design of semiconductor circuits).

- 2. There are different kinds of technology licenses.** You will hear licenses referred to by many names, but it is useful to think of them in three categories. Licenses may be for

certain IP rights only (e.g. a license to practice an identified patent or to copy and distribute a certain work of authorship). Licenses may be for all the IP rights of any kind that are necessary to reproduce, make, use, market, and sell products based on a type of technology (e.g. a license to develop a new software product that is protected by patent, copyright, trademark and trade secret law). A license may also be for all the IP rights necessary in order to create and market a product that complies with a technical standard or specification (e.g. a group of enterprises has agreed on a technical standard to ensure interoperability of devices and owners of IP essential to practice the standard pool their IP rights and license to anyone who wishes to use the standard on reasonable and non-discriminatory terms).

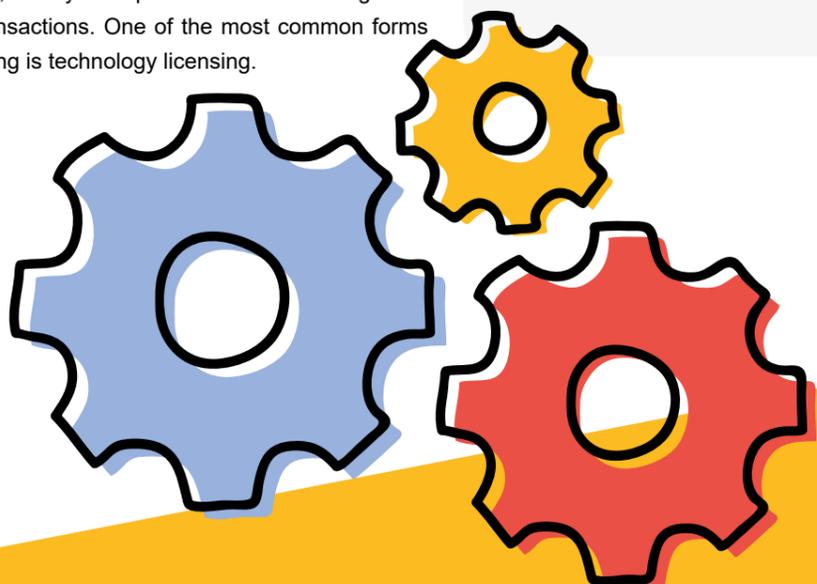
- 3. Technology licensing occurs in the context of a business relationship in which other agreements are often important.** These agreements are interrelated, whether they are in distinct documents or integrated in one big document. It is important to consider in a very practical way how the terms of these related agreements affect each other because of timing, pricing, and overall value. So, for example, to avoid future business disputes an agreement to develop a product (R&D agreement) should also address who has rights under pre-existing and newly created IP rights (IP license), who will have a licence to manufacture the product (manufacturing agreement), and, where appropriate, at what price one party will sell the product to the other party (sales agreement).

- 4. Technology licensing negotiations, like all negotiations, have sides (parties) whose interests are different, but must coincide in some ways.** Successful technology licensing occurs only when the negotiator understands thoroughly the benefits that are available to both parties. It is difficult to successfully negotiate a license where

you wish to obtain the rights to technology if you have little to offer in return. Ideally, both sides to the negotiation will have different elements of value to offer, including, for example, skilled employees, a market that can be commercially exploited, know-how, research facilities and commitments, and some form of IP. Unlike sales transactions involving physical property, IP licenses generally involve more than the simple question: “how much?” The goal is to find a good balance of value so that the license is a “win-win” transaction.

- 5. Technology licensing involves reaching agreement on a complex set of terms, each of which has several possible solutions.** Therefore, advance preparation is essential. In advance of the negotiation, before the other party has been approached, a party may spend many months defining business objectives, assessing leverage, researching the other party, deciding positions on key terms, preparing documentation, and protecting IP, among other tasks.

- 6. Technology licensing is not necessarily synonymous with technology transfer.** The fact that two parties reach a deal on licensing does not mean that the subject matter of the deal is actually transferred. Because technology licensing concerns not only knowledge that is expressed in writing, but also knowledge in the form of practical know-how or trade secrets (generally kept secret). It becomes an actual transfer when the licensor delivers the technology and knowledge to the licensee and the licensee learns how to effectively use, adapt and where possible improve the technology and knowledge. Ensuring the occurrence of knowledge transfer should be one of the major concerns of negotiators, in particular the licensees. Only when that occurs, an effective technology transfer takes place.



# Key Ingredients in a Licence

Written by Dr Eugene Sweeney, Senior Policy Advisor of the European IP Helpdesk

There is a challenge which faces all businesses, large or small, whether they are suppliers of products or services, and that is to stay competitive. Staying competitive requires introducing innovative products, services and methodologies.

But how can they achieve this? Small and medium-sized enterprises (SMEs) don't usually have time to do much research. Most successful innovations in companies are built by working with others – universities, research institutions and other businesses, and that is usually done by licensing intellectual property (IP) in or out. Even larger companies need to license in IP to help them innovate – no one has a monopoly on invention or creativity.

SMEs may not have the capacity to expand into other geographical territories. However, they may be able to find a company with local knowledge to do this for them. They could expand their business and strengthen their brand by licensing out their IP, and quickly establish a presence in a new territory, without having to learn about and adapt to new regions.

A company's own IP might also have value for other applications, outside the company's core business areas. So, they could increase their revenues by licensing out their IP to companies for different fields of use, and therefore expand their business without having to become familiar with new application areas.

**This is the essence of Open Innovation: It is about using other people's IP (i.e. licensing in), and conversely making the IP you own, but do not use, available to others (i.e. licensing out).**

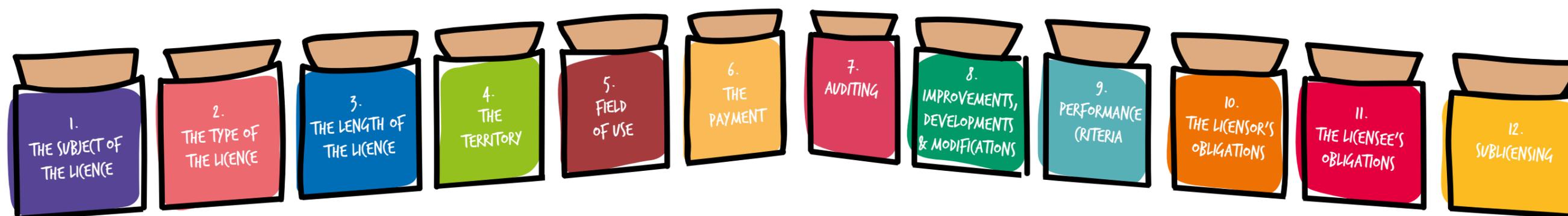
Each licence is unique, depending on the specific terms which are agreed. It is a bit like creating a new dish in a restaurant – with each ingredient selected as needed, in the appropriate quantity and with the right treatment.

This short article gives an overview of the main commercial ingredients of a licence agreement; and shows how each of these can be adapted and combined to produce an agreement that meets the objectives of both the licensee (who is licensing in) and the licensor (who is licensing out). It does not comment on the legal issues.

Photo by Clement Bergery on Unsplash



# Summary of the Main Commercial Ingredients of a Licence



When negotiating the terms of a licence, there are many variations for each term – and each term usually has economic impact, i.e. can be a subject for negotiation.

## 1. The Subject of the Licence

It is important to be clear about what you are licensing. Usually this involves several pieces of IP and IP Rights (IPR). In addition to IP protected by formal legal rights (e.g. patent, copyright, design right, etc.), it may also include secrets protected by a non-disclosure agreement, or know-how to be transferred through consultancy and/or post-deal support.

## 2. The Type of Licence

A licence can be exclusive, non-exclusive or sole. It may also be limited by geographical territory or field of use.

## 3. The Length of the Licence

The length of the licence is usually determined by the lifetime of the IPR. Patents expire after 20 years in most countries. In the case of pharmaceuticals, this might be extended. Other forms of IP have different lifetimes. There are rights which could go on indefinitely, such as trademarks (provided they are used and registration fees are paid), or secrets (as long as they are kept secret).

## 4. The Territory

This can extend to wherever the IPR exists. It is possible to license different people exclusively (or non-exclusively) for different territories.

## 5. Field of Use

It is possible to only grant (or exclude) rights for a particular market or technological sector – for example “only for use in the healthcare market” – or “excluding telecommunications applications”. It is possible to license different people exclusively (or non-exclusively) for different fields of use.

## 6. The Payment

This is normally divided into a down payment on signature of the agreement, and royalties. It is also possible to include milestone payments (for agreed milestones). Each of these may have several variations.

## 7. Auditing

The licensor should also ensure that they have the right to audit the licensee, to ensure that royalty payments are correct.

## 8. Improvements, Developments and Modifications

There are many ways of handling this, but the first thing is to agree is how to determine what is an improvement on the licensed IP, and what is new.

## 9. Performance Criteria

It is important that the licensee performs well if value is to be returned to the licensor (and ultimately the inventor). This is particularly important for exclusive licences, so consideration should be given to performance minimums to retain exclusivity.

## 10. The Licensor's Obligations

For the licensor, typical obligations include transferring the IP, and maintaining the legal rights, but there could be many others.

## 11. The Licensee's Obligations

The obligations placed on the licensee, on the other hand, include exploiting the invention in the best interests of both parties. It may also include obligations to install and maintain efficient systems to monitor use and hence royalty payments.

## 12. Sublicensing

Sublicensing rights should be explicitly granted or explicitly prohibited. This is particularly important for software.

## In conclusion:

Licensing is like finding a partner. It is an ongoing, long-term commitment, not a one-off deal – you may be together for over 20 years! Therefore, it is important to get to know a bit more about your potential partner before you do the deal. Of course, good negotiating skills also play an important part in getting a deal that works for both parties. Always remember: Getting together is easy but breaking up is harder – and none of the parties will benefit from it.

*Dr Eugene Sweeney has over 35 years of experience taking research results and early stage technologies to the market. He is an expert for the European Commission in the areas of IPR, Innovation and ICT. He has been an evaluator and monitor for several EC proposals and projects, including the EU IP Helpdesk and the Innovation Relay Centre Network. He is currently a member of the International and European Standards Committees for Innovation Management Systems and Intellectual Property Management, and a member of the Licensing Executives Society (LES).*



## The Licence to Win: Licensing out Technologies from an SME's Perspective

Written by Dr Richard Brunner and Dr Sevim Süzeroğlu-Melchior, Dennemeyer Group

While companies have traditionally seen intellectual property rights protection as a defensive means to secure competitive advantages on the technology front, large corporations, but also more and more small and medium sized enterprises (SMEs) have realised that IP management goes far beyond the pure protection of intellectual property rights and aim to utilise their rights proactively. Certainly, the question how to generate the highest benefits from a company's IP portfolio arises mostly after building up a solid protection base, but IP exploitation can also be an integral part of the business plan from the outset. Intellectual property is a broad concept and includes many different intangibles (e.g. patents, copyrights, trademarks, trade secrets, know-how). However, this article about technology licensing sets the focus on patents and utility models.

There are several ways of extracting value from a patent, such as using it as a bargaining chip in negotiations with cooperation partners or banks, selling it, and granting licences. Particularly licensing out technologies is a preferred way to commercialise and exploit IP, because it allows the owner to generate income, but still to reserve the greatest possible control over the IP and the related technologies. The classical explanation for licensing out builds on the idea that companies either recognise that a licensee has better capabilities to exploit a certain innovation than the IP owner, or they aim at establishing their technology as a de facto standard, for instance when network externalities are important to penetrate the market with the product. Other motives to license

out beyond direct revenue generation are to collaborate with others and develop new products and services jointly, or to expand the business into new sectors and geographical zones while saving costs and minimising risks, but retaining control over the quality of the products that utilise the licenced IP. Granting an equitable and affordable licence may also be reason enough to keep off new entrants from inventing competing products, if the licence is less costly, time-consuming, and risky than investing in research and development (R&D) themselves.

In addition, the importance of licensing out technologies increases, because nowadays we operate in a digitised and highly integrated but also fast moving environment. Offering up-to-date solutions and products often include a combination of diverse disciplines and technological fields, especially those which enable communication and data-driven business models. For example, brick-and-mortar producers of steel or concrete are in the process of transforming into technology-driven companies that incorporate connected services, machine-to-machine communication or artificial intelligence into their product developments and service offerings. Individualised, customer- and situation-oriented services ask for a combination and exchange of diverse technologies across industries. Therefore, the implications on the management of IP rights in the context of technology licensing are significant. It is expected, that licensing activities will increase in both directions (licensing in and licensing out) to meet this upmarket demand.

In practice, companies and particularly SMEs struggle to license out their technologies. A recent study by the [EUIPO](#) shows that only 19% of SMEs signed a licence agreement for IP rights, while only one fourth of those agreements contain technologies which are licenced out. Only a minority of SMEs sign licence agreements as licensors. The challenge for SMEs is to identify potential technology fields, applications and markets, potential cooperation partners and licensees. To tackle this problem, a practical concept for successful technology out-licensing for SMEs may be summarised in two important steps: first, defining the right licensing strategy by conducting analytics and, second, drafting

and negotiating an appropriate licence agreement that supports the strategy.

### *Defining the licensing strategy and conducting decision supporting analytics*

#### **The importance of a licensing strategy which fits the overall business strategy**

First of all, it is important to define an adequate licensing strategy. The licensing strategy depends on the overall goal and motivation of the licensor. It may be different for a company with the approach of maximising profits in a short term, than for a company that plans to expand into new markets or seeks technology partners. The licensing strategy needs to be aligned with the overall business and R&D strategy. If the company aims to create a de facto standard that the market shall follow, the licensing strategy might focus on maximising profits, whereas a strategy to differentiate from other available products and to offer top-notch technologies might rather focus on the selection of potential partners as licensees or cross-licensees. It is important that the licensing strategy does not conflict with the overall business and R&D strategy.

Once the licensing strategy is defined, attention needs to be shifted to the following questions: How promising is the technology? Where can it be applied? And how strong is the patent?

#### **Decision support by analysing the market characteristics, technology landscape, and strength of patent protection**

Basically, technology licensing only occurs when a party owns valuable intangible assets, such as patents, which allow it to legally prevent others from using it. In other words, a licence is a deal by the patent owner to permit the use of IP in exchange for money or something else of value. That implies that technology licensing does not occur when there is no valuable IP.

This leads to the question about the value of the patent and affects the bargaining power and expected royalties. An assessment of the qualitative value of the patent can be derived by analysing the market, technology and the strength of the patent protection. The characteristics of the market or industry provide information about the



market segmentation, market players and dynamics of the market. The technological assessment focuses on relevant technologies, technology uniqueness and competing technologies, maturity of the technology compared to the industry, and the lifecycle of the technology. Very helpful are commercial data such as turnover share of the technology and growth rates if available to estimate the dominance within the market.

Another important factor affecting the success of the licensing deal is the protection of the patent. A strong patent protection influences the out-licensing probability positively, increases the bargaining power of the licensor and enables to achieve higher royalty rates. On the other hand, the licensee can benefit from accessing technologies and saving costs on R&D. Criteria to assess the strength of a patent are patent age, country coverage, circumvention ability, freedom-to-operate, etc.

#### Checklist for licensing potential assessment:

- Market and industry characteristics
- Technology uniqueness and competing technologies
- Position in the technology lifecycle
- Legal strength of the IP right (strength of protection, circumvention ability etc.)
- Freedom to operate for the licensee
- Identification of potential licensees

#### Coping with the challenge to identify potential licensees

A critical activity for technology out-licensing is the identification of potential licensees. There are two major ways to identify potential licensees: first, a classical search for companies which might benefit from the technology and, second, the identification of potential infringers.

Searching for potential licensees is mainly based on publicly available data such as patent data or market data and research publications. Defining the right



search criteria is critical for the search success. Putting yourself in the licensor's shoes helps to understand the licensor's needs. It is helpful to ask yourself, why a specific company should license the technology, what the market needs are, and which benefits the potential licensees could gain economically and technically. Can the technology be applied to other areas or use cases? This type of questions can be answered by conducting technology and patent searches with the use of available databases and IP software. As a result, related technology fields, players in those fields, and technological developments over time can be evaluated.

Another way to search for licensing targets is to identify potential patent infringers and pressure them to license the invention under a threat of going to court. Obviously, such a threat is easier to create for large corporations with their own in-house legal department, but can also be realised with the support of external counsel. Ultimately, the stronger the patent is, the easier it is to put pressure on alleged patent infringers. Such infringers can be identified by conducting similarity searches, and monitoring the main competitors and market players.

When the licensing strategy is in place and aligns with the overall business goals, and potential licensees are identified, it is time to mirror these factors in the licence agreement.

#### Drafting and negotiating a licence agreement successfully

It goes without saying that a thoroughly drafted licence agreement is the core of a licence deal. Its purpose is to give the licensee the legal position to utilise an invention and aims to clearly define the subject, scope, royalty payments, and other obligations of the parties. This means to find an agreement on a complex set of terms.

#### Identifying the IPR to be licensed

An unprotected invention without a granted patent could be subject of a licence agreement, but it provides only a very low degree of protection for the owner and must remain confidential at all times. A much better starting point for a licensing deal is a granted patent where the nine months' opposition period after grant has already expired. Exceptions are technologies in early research stages that are very promising and have high potential.

Since most products are marketed internationally, solely a national patent is not of great value for the licensee. Therefore, the patent protection should cover several countries, ideally coinciding with the market of the product incorporating the patent. An international coverage can be obtained by validating a European Patent in several jurisdictions (up to 44 countries) or by filing a PCT application for protection in up to 152 member states.

The patents or patent families that shall be subject to the licence should be unambiguously stated in the agreement. It is recommended to not only list the patent numbers, but also the title of the patent, its priority date and the country of protection. Many licence contracts do not only include the patent as such, but also an obligation to share relevant background know-how, consisting of technical or business management knowledge, allowing to make best use of the patent.

#### Determining the licensed territory

The contracting parties have great freedom in shaping the territorial scope of the licensing agreement to the best of their needs. The territory in which the licensed patents may be used plays an important role. Only the countries where patent protection is granted or sought by the licensor limit the scope, but it may be wise to reduce the number of countries in order to grant further licences to other manufacturers who have a better market penetration in certain regions.

#### Exclusivity versus non-exclusivity

This relates to one of the basic concepts of licensing where a decision needs to be taken which type of licence shall be granted. An exclusive licence transfers the rights to use the patent to one single licensee, while a non-exclusive licence allows several licensees for the same territory. A variation from the exclusive licence is the sole licence, where the licensor maintains the right to exploit the patent besides the owner of an exclusive licence. It is obvious that the selection of the type of licence depends on many factors and does not only impact the royalty rate. As mentioned above, the patent licensing strategy gives a direction which type of licence to pursue. In practice, the licensing agreement always



Photo by Diego Ph on Unsplash

of the licence to a certain field of use for the patent. It might be favourable for both parties to meticulously draft such a provision, because the licensor keeps the option to grant further exclusive licences in other areas and the licensee receives certainty that no competing product is making use of the IP.

#### Limiting the license term

Finally yet importantly, the contracting parties need to agree on the term of the granted licence. While the licensee will be interested in a long duration in order to maximise the return on investment, the licensor might prefer shorter periods to receive decision options depending on the behaviour of the licensee and the economic results. In any case, the licence is limited to the term of patent protection. An obligation to pay royalties beyond the expiry of the patent is not allowed in most jurisdictions unless special circumstances apply. It is self-explanatory that the licensee would be worse off than its competitor who can use the invention for free.

#### Negotiating appropriate royalty rates

Certainly, one of the biggest challenges is to define an appropriate royalty rate as these may range as much as from 0.5% to 20% of the revenues. A great help in finding the suitable price are reference rates from similar licensing deals, which sometimes are published in public or commercial databases, dedicated literature, or can be derived from the U.S. Securities and Exchange Commission publications (<https://www.sec.gov>), and from court decisions. Furthermore, it needs to be clarified which figure shall be the basis for calculating the participation. It is obvious that it makes a significant difference to choose either generated revenues or profits as a basis. Also, it may be agreed that the licensee may apply certain deductions. An alternative approach is a quota licence, which determines a fixed licence fee per sold item. This is easier to handle, but bears the risk that the agreed amount does not reflect the market success of the product appropriately, if the licensee achieves disproportionate revenues than initially assumed by the licensor. Additional licence fees such as upfront fees or periodical minimum fees stimulate active use of the patent at the licensee's end and guarantee a certain income for the licensor. This reflects the purpose of

depends on case by case. Therefore, it is inevitable to expressly state the type of licence in the agreement.

#### Right to grant sublicences and right of transfer

Similarly, it must be clearly defined whether the licensee shall have the right to grant sub-licences or to even transfer the licence to third parties. The licensee might have a legitimate interest to grant sub-licences to affiliated companies, in particular, to satisfy the structure of an international group of companies. Tolerating third-party sub-licences or licence transfers clearly means a loss of control and should be backed by the strategy and business case.

#### Specifying the licensed use

A licence agreement shall also clearly define the **subject matter of the licence**. Usually, it includes the right to produce, offer, place on the market, or simply use a patented product. Alternatively, the licensor may have good reasons to only grant a licence for market distribution, for example if the product is manufactured by the licensor. Another possibility which is particularly important for technology licensing is to limit the scope

of the licence to a certain field of use for the patent. It might be favourable for both parties to meticulously draft such a provision, because the licensor keeps the option to grant further exclusive licences in other areas and the licensee receives certainty that no competing product is making use of the IP.

#### Warranties and other obligations

Other provisions of a licence agreement contain the licensor's warranty that he is the actual owner of the IP, its obligation to maintain the patent throughout the term, and to enforce it against infringers. The latter is often considered in an obligation of the licensee to inform the licensor about infringements and to actively support a claim. Other important obligations are the keeping of proper records of turnovers and sales figures relating to the licensed product, the provision of such information to the licensor, and being available for audits either conducted by the licensor or a chartered accountant. These records and audits help to avoid misunderstandings and distrust. We recommend engaging the finance and accounting department to monitor timely payments and manage account receivables. It is also advisable to clarify how to deal with improvements of the invention. In many cases a mutual grant of a licence to the improvement is a reasonable solution. Since in some countries it is not only optional, but at least highly recommended to record (exclusive) licences with the patent offices (e.g. Brazil, Indonesia, the Netherlands, Russia, United Kingdom), it should be agreed which party will procure the recordation of the licence and bear the related costs.

Finally, there are some clauses that should be part of any commercial contract, e.g. the applicable law and

jurisdiction in case of disputes. If there is no consent about certain clauses, sometimes the consultation of an arbitral tribunal or compulsory mediation can support to resolve dissents. Since there are so many issues that should be addressed in a licence contract and there are even more options as to how to approach the issues, a licence agreement should not be made without advice and support of a specialist lawyer.

#### Checklist for drafting licence agreements:

- Identify patents, territory, use fields
- Determine type of licence
- Define permitted use
- Royalty rates
- Term
- Applicable laws and jurisdiction
- Other provisions

In summary, licensing out technology requires defining a licensing strategy that aligns with the company strategy and which is based on market data. The latter is also helpful to identify potential licensees. Once a suitable licensee shows real interest a proper licence agreement needs to be drafted. Even if the lack of internal resources or expertise may appear discouraging, licensing technology to other companies can be an important success factor for small and medium sized enterprises, if complemented by external advice where necessary. A successful licence deal does not end with the parties' signatures, it is only the beginning.



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**“A licence is not a one-way transaction – it’s a long-term relationship that can last for years!”**

*An interview with Eugene Sweeney, Senior Policy Advisor of the European IP Helpdesk, on what to consider once the deal is done, and the importance of proper post-deal management to make it a happy connection.*

Licensing is one of the most common ways of transferring IP; whether from a university to a company, or from one company to another. But when the deal has been done and the licence signed, isn't that the end of it? Shouldn't you just let your licensee get on with it, so you can carry on with your research or other business interests – and just wait for the licence revenues to flow in?

A licence is not a one-way transaction – it represents a long-term relationship between the parties, with obligations on both throughout the life of the licence – which can be for a very long time! So, the work of the licensor (or owner of the IP) doesn't end when the deal is signed. If you own and rent out a physical asset, such as a house, car or piece of land, you are expected to actively maintain that asset, so that the person who rents the asset gets the value they expected when they originally signed the rental agreement. Intangible assets are no different, and active post-licence management is essential to maintain and maximise value.

When you license IP, the licensor grants the licensee the right to use that IP under certain agreed conditions

– in return for something, usually financial. By granting someone a licence to use your IP, you also undertake to protect them from infringers of the legal rights attached to that IP (the Intellectual Property Rights, IPRs), such as patents, copyright, design rights, database rights, etc.). It's like renting out a field. If you grant someone the right to use the field, you have an obligation to keep the field in good condition, and to stop other people entering the field and using it for their own purposes. If your IP is successfully exploited, then you should expect that someone will try to copy you, and maybe operate on your patch. Hence, they will compete with your licensees, hence reducing your returns. You may need to consider using your legal rights (IPRs) to take action on an “intruder” to prevent them using your IP for commercial purposes. They may, of course, find a way to work around your IPRs, and this is why it is important to secure strong and broad rights, rather than have IPRs which are easy to work around or easy to challenge.

**But if you are an SME or even a university or research institution, you may not have the resources or the will to take legal action?**

That is true, but most infringements are not deliberate, and can usually be resolved by notifying the other party of the existence of your IPRs and asking them to take a licence or come to some other arrangement. They will, of course, look at the strength of the IPR before

deciding to take a licence, and if it is strong then they will probably want to negotiate with you, but if not then they may decide to challenge the validity of the right. It is very important then, when establishing the legal right (e.g. a patent, design right, etc), that it is both broad enough to avoid “workarounds” and strong enough to deter challenges to its validity. For this reason, working with a good IP lawyer or patent attorney is critical to ensure the patent meets your commercial requirements. If not, you may end up spending a lot of money to get a granted patent, which, if not fit for purpose, won't serve for much more than to frame it and hang it on the wall. However, in case the infringer refuses to desist or take a licence, you need to decide if and how to enforce your rights. In some cases, the cost of enforcement will be high (usually only in case the IPR is weak) and exceed any revenue you might generate – making it commercially unviable to go down this route. So, the licensor may not want to be burdened with the “obligation” to enforce IP rights against infringers in all cases. Therefore, it is important that the decision to take action remains with the licensor. One way of doing this would be to agree on a process in the licence agreement, such as the following, which is only a suggestion and other arrangements could be reached as well.

- If either licensor or licensee becomes aware of an infringement, they will notify the other party immediately. They would probably also contact the infringer and notify them of the existence of the IP right and ask them if they wish to take a licence or desist (depending on the licence).
- If there is no easy resolution with the infringer within a given time (e.g. 30 days), the licensor will decide if they intend to commence proceedings against the infringer. If so, they will bear the costs and be entitled to any award of costs and damages.
- If the licensor decides not to take action, they will inform the licensee and they will discuss what joint action should be taken, if any, and how costs and awards will be split.
- If the licensor decides not to act jointly with the licensee, then the licensee may proceed to act against the infringer independently. In this case, the licensee will bear the costs and be entitled to all awards.
- If the licensee decides not to proceed against the infringer, the licensee will be entitled to a royalty-free, non-exclusive licence for the remainder of the term for the relevant territories and fields of use.



So, IP Rights should be seen as an investment, which gives you (and your licensee) a limited monopoly position, which could enhance competitiveness and growth. Like any investment, you need to assess the costs against the benefits.

#### What if the licensee doesn't use my IP – and just keeps it on the shelf?

Well, if your licensee doesn't do a good job, it is not good for you! Continuing with the "field" analogy I used earlier: Besides having an obligation to maintain the field in good condition and keeping out those who don't have the right to use the field, you also need to regularly monitor the licensee to ensure they are maximising the use of the field. If the licensee does not get any customers, then you will get no royalty revenue.

You need to be aware of potential competitors who might take a licence to your field, but also own a "competing" field of their own. They may just want to license your field to keep it empty, so everyone uses theirs. So, it is important to understand the motivations of your licensee, and to ensure any licence agreement includes some performance clause, or minimum commitments, and that you retain the right to cancel the agreement if the licensee is not making the most of your IP. After all, it is your baby – and you want it to develop to its full potential!

#### But what if the licensee is doing a good job and sending regular royalty payments, isn't that enough, can't I just leave them to it?

Maybe, but how do you know whether the royalty payments are accurate? Unless a company has a monitoring system in place, there will be no systematic ways of picking up any errors in payments. A licence is not the same as other business transactions, and royalty payments rely entirely on the integrity and competence of the licensee.

I'm not suggesting that licensees are dishonest, but licences can last a long time – up to 20 years for a patent, longer for copyright or confidential information – and during that time many things can change, such as people, products and systems. When these things

happen, the detailed terms of royalty payments may become lost or overlooked during the changes.

The calculation of royalties can be quite complex, and although the licence agreement should make the details clear, their implementation in practice needs to be well managed with appropriate systems in place at both the licensee and licensor.

For example, how will combination products or "special deals", where the royalty-bearing IP is bundled with something else, be monitored? A new sales manager may decide to offer the licensed IP free of charge in combination with another product, such as "free software with our consultancy services". The agreement needs to anticipate these situations and clearly define how they will be treated; for example, a minimum royalty based on a reasonable market price (rather than sale price) in the case of combination offers. Similarly, for defining the costs which are eligible for deduction before royalties are paid; or when the royalty will be triggered (on manufacture, sale or use); or for transfer pricing adjustment when sales are made between companies in the same group.

Over the lifetime of a licence, a company could restructure, be acquired, or merge; it could relocate to another territory (IPRs are national rights); its systems could be upgraded and people could change. All these things may affect the accurate reporting of royalty payments and should be anticipated in the licence agreement.

#### So what should I do?

Post-deal management should be considered already during licence negotiations, to ensure there are appropriate clauses and conditions in the agreement. The licensor should ensure that the licensee puts in place appropriate internal systems for accurately calculating the due payments. The licensor should also ensure they have effective systems in their own organisation to monitor licences and royalty payments, with someone having specific responsibility to manage them.

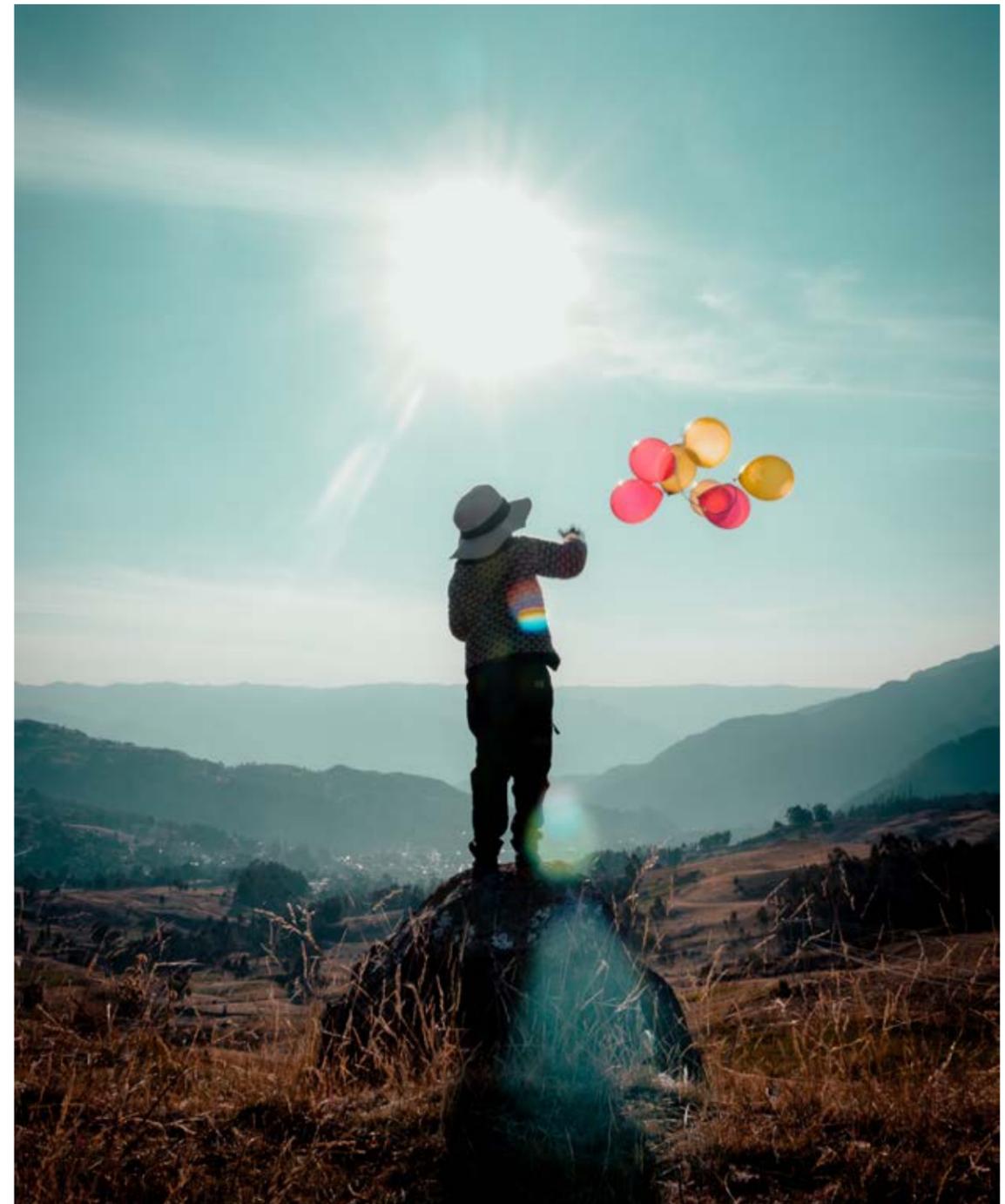


Photo by Carlos Ruiz Huaman on Unsplash

The licence agreement is critical for establishing the framework, but in the end, it is a people business. A licence is an ongoing, long-term commitment – not a one-off deal. Licensors and licensees have to live and

work together for a long time, so it is vital to get to know your partner before you do the deal, and maintain good long-term working relationships.

# Technology Transfer: Brokers, Tools & Platforms

Written by Dr Bastian July, GoodIP

Research centres and universities have large treasure chests of unused technologies. Companies also often struggle to out-license their technologies. For a considerable number of companies, the expectations they have of out-licensing are not fulfilled. By far the greatest difficulty is finding the right commercialisation partner.

Potential technology buyers and licensees have difficulties in identifying suitable partners and technologies that they could bring on board. In particular small and medium-sized enterprises (SMEs) complain about finding the right partners in universities and elsewhere.

for patent buyers helping them to identify interesting patents for acquisition.

**Experts & Search Firms:** Very often patent brokers rely on outside experts and search firms to look for evidence that a patent is used by one or more companies, making these companies candidates for a licensing campaign.

**Patent Pools:** Patent pools focus on licensing-out granted patents from multiple companies in one bundle.



## Services

The most traditional approaches are patent brokers, experts and patent pools. They have successfully transferred or licensed patents since the beginning of the 20th century.

**Patent Brokers:** Patent brokers offer patent sales or licensing support as a service and manually search for potential partners and then approach them through their network of contacts. Patent brokers usually focus on granted patents. From time to time, they also act

## Communities

Another approach is to use the “Wisdom of the Crowd” to identify application fields and potential partners for a technology. Here, the market is broadly defined by three perspectives: crowd searches, crowd sellers and defensive aggregators.

**Crowd Sourcing:** On crowd sourcing platforms experts from around the world can be hired to search for evidence that a patent is used by one or more companies.

**Crowd Sellers:** There are a few platforms on which

technologies can be presented to a crowd of brokers or sales professionals, who can then decide whether they want to search a buyer for a technology. Usually, they charge a sales commission in case of a successful transaction.

**Defensive Aggregators:** Defensive aggregators purchase patent portfolios to license them to the corporations within their network. They are among the most active buyers of patent portfolios.

## Marketplaces & platforms

There are several internet marketplaces for technologies. Roughly speaking, they can be divided into three categories: early stage technology marketplaces, marketplaces for granted patents and automatic matching platforms.

**Early Stage Tech:** Their focus is on new technologies and know-how transfer. Usually, the technologies have reached the prototype stage and are protected by patent

applications. Companies turn to these marketplaces to find new technologies that can help them expand their market position.

**Granted Patents:** These platforms focus on granted patents just like patent brokers. Companies purchase patents to integrate them in their own portfolios or to avoid being attacked with these patents.

**Automatic Matching:** The tools of the 21st century open up new possibilities for reinventing the market for technology transfers. Technology offers on the one hand and search & interest fields of companies on the other hand can be understood by Artificial Intelligence (AI). Matching algorithms of a recommendation system can be used to suggest suitable technologies to potential buyers and licensees. Instead of storing technology offers only in a database and then calling them up via user filters or relying on the activities of one broker, AI can be used to efficiently match partners for the first time in an automatic and scalable way.



## “We are driven by the desire to work with the most talented people to bring technologies that could change our lives to the market.”

We sat down with Bastian July, co-founder of GoodIP, to talk about the challenges and current barriers of matching new technologies and markets.



### What do you think is the most important factor when it comes to finding a commercialisation partner for a new technology?

Without a question: Having a plan and approaching dozens of companies potentially interested in the technology. Think about potential application fields and then create a list of potential partners. Sort them in most likely interested (group A), potentially interested (group B) and somewhat interested (group C). Approach the somewhat interested (group C) first and get their feedback. Afterwards, adapt your sales pitch and try the mostly liked interested (group A). If that does not work, go for the potentially interested (group B).

### What is “special” about GoodIP?

We focus on technology buyers. Based on the search interests and preferences of our corporate partners as well as reviews from our technology experts, we analyse and create technology recommendations tailored to the needs of companies interested in such new technologies.

### What advantage do technology owners have in presenting their technologies on your platform?

Our platform is a single point of contact for innovative technologies that are for sale or licensing. GoodIP establishes direct contact with potential buyers and opens the iron doors of companies which technology developers and start-ups often cannot unlock.

The presentation of the technologies is also a point where we stand out and want to make it easier for technology owners to market their technologies. A short

intro of the technology, creative videos and reviews from our expert community create proximity to the potential customer.

### Why do you think such a new approach is necessary?

I have a serious question for you: How many of all technologies are currently sold or licensed? Are you sitting down? We have some bad news for you. It's actually less than 5% of all technologies! We need a new approach to achieve more, much more!

### Where do you currently see a need for development, especially in comparison: Europe vs. US & Asia?

European universities, start-ups and SMEs are innovative forces that do not have to hide from their competitors in the US and Asia. However, compared with their counterparts in the US they exploit their intellectual

property much less and hardly ever license it out. They focus on bringing products to market while they could also license-out their technologies to conquest new product markets and geographical markets.

### What successes have you had so far?

As a start-up we are constantly growing. We have just been admitted to the highly selective start-up accelerator program of the Entrepreneurship Center at the Ludwig Maximilian University of Munich and are supported by FLUXUNIT, the venture capital arm of OSRAM. This is a great honour and privilege for us. We developed results-driven licensing strategies for start-ups, SME and large corporations in Germany, the Netherlands and Asia. Our major project at the moment is the prototype development of the AI-based matching algorithm on our platform.

### Last buy not least, could you tell us a little about yourself?

I am 42 years old and a co-founder of GoodIP. Prior to founding GoodIP, I coordinated the patent disputes and licensing agreements of Osram and the semiconductor manufacturer Lantiq (now Intel) worldwide. I am driven by the desire to work with the most talented people to bring technologies that could change our lives to the market. My GoodIP's co-founder, Christina is 22 years old and is graduating from the Technical University of Munich and brings energy and promising ideas to our company. During her studies she co-founded the social startup Townbee and has always had a strong sense of entrepreneurship and leadership.

Thank you very much for answering our questions today!

## Sample Case: How Inventors Present their Technologies

This invention comes from nature. Two Thai high school students show how you can make plastic out of a completely natural product. Make plastic organic! Watch their video and learn more about the invention on the GoodIP platform:



# GoodIP

### GoodIP is a recommendation platform for innovative technologies

Innovators, researchers and entrepreneurs use the GoodIP platform to draw attention to their technologies in a creative, appealing and understandable way. On the other hand, there are the technology buyers and licensees – SMEs as well as growing tech companies that have one thing in common: They understand that in the future they can only survive through open innovation and bringing in technologies from innovative minds. GoodIP provides technology recommendations to these potential buyers and licensees. Based on reviews from technology experts as well as their company's search fields, potential buyers receive customized recommendations, revolutionising the technology transfer market. And GoodIP is going to add an AI-based matching algorithm soon.

# Establishing Successful and Sustainable Structures for Knowledge and Technology Transfer at Universities: The Unusual Transfer Pathways of Saarland University

Written by Axel Koch, Saarland University

Most knowledge and technology transfer centres at German universities have been struggling with the same issues for decades: Although transfer and innovation have developed into a long-term task and are increasingly considered a so-called “third mission” besides research and teaching, many universities still don’t have more than one transfer officer, who often has to deal with additional responsibilities at the same time. Only a few larger universities can afford a proper transfer unit. Yet, even in these cases, employees have to work under temporary contracts which depend on limited public funding. Their payment is usually based on civil service collective agreements – a fact leading to a different starting position compared to e.g. the US where it is easier to employ industry specialists with their corresponding work experience.

However, if young talented employees can be successfully recruited, they often use the job as a stepping stone which results in a high staff fluctuation. The required profit orientation is another critical issue: Especially when it comes to commercialising the university’s IP, it turns out that the public structures are not designed for entrepreneurial activity. Traditionally,

it is hard to obtain quick decisions as the university management is rather risk-averse and there are various administrative hurdles to overcome, e.g. when it comes to the university’s participation in start-ups.

## Organisational structure

For the above-mentioned reasons, Saarland University (UdS) has decided to establish their knowledge and technology transfer unit as a special form of organisation, consisting of a university-internal transfer office and two subsidiaries. In order to ensure an integrated general strategy and to avoid conflicts of interest between the different units, all of them are organised under a unified management. The Office for Knowledge and Technology Transfer (KWT) is part of the university department for research management and transfer which enables the strategic link to the core administrative unit responsible for the acquisition and processing of third-party funds. Like this, transfer has been integrated into a unit with stable long-term financing and corresponding capabilities to retain qualified staff. However, even a business-oriented university administration unit reaches its limits in terms of decision-making speed, risk-taking and flexibility.

Therefore, the KWT focuses on all transfer areas which are not profit-oriented, but rather serve to raise awareness, provide advice and mediation support and often require public funding: awareness-raising and support for entrepreneurs, matchmaking and initiation



of regional cooperation between businesses and researchers as well as the Career Centre.

All commercial activities requiring quick decisions and contracts as well as entrepreneurial risk assumption, are outsourced to a separate profit-oriented company – the university’s knowledge and technology transfer company (WuT GmbH).

This 100 percent subsidiary of the university assumes the following tasks:

- operation of the university-owned incubator “Starterzentrum” which rents spaces and infrastructure to university-based founders;
- exploitation of the university’s IP – from biological material and software to patents through the Patent Marketing Agency;
- involvement in university-based start-ups;
- organisation of the university’s career fair NEXT.

The structure is supplemented by another GmbH, the IT Incubator GmbH. It serves as a company builder enabling the advancement and spin-off development of IT projects with a high market potential. The IT Incubator GmbH was founded together with the Max Planck Innovation GmbH as a joint venture which not

only accommodates teams from Saarlands University and all Max Planck institutes, but also from the other IT research institutes on Saarbrücken campus.

## The participation strategy of Saarland University

In 2014, Saarland University decided to go beyond its traditional role of providing regular free start-up consultancy and started to become involved as a shareholder. This strategy enabled the university to gain entrepreneurial influence on the strategic orientation of its start-ups. With the help of the WuT GmbH, it is thus capable to act quickly in the frame of an open participation. In order to guarantee the founders sufficient own shares in their company, the university usually participates with a share of about 10 percent while never exceeding 25 percent.

The university can participate in two ways:

- as part of an investment (50,000 EUR maximum) from the own start-up fund;
- as part of an IP contribution to the new business, whereby the shares in the company replace the usual upfront payment

Saarland University (UdS) is considered a knowledge and technology transfer pioneer in Germany: More than 20 years ago, it opened the first incubator of its own, the “Starterzentrum”. In 2013, UdS was among the twelve German universities honoured with the prestigious title “EXIST Entrepreneurial University”. In 2018, it came second in the founding radar of the “Stifterverband der Deutschen Wissenschaft”, reaching the best result in the category “start-up support”.

The aim of the investment is an “exit scenario”, i.e. the generation of a larger return in case of the sale of the company. Except for strategically relevant cases, it is not planned to hold the investment permanently.

### **The IP commercialisation strategy of Saarland University**

The university has opted for a “blockbuster strategy” and therefore generally prefers long-term revenue opportunities over short-term one-off revenues, meaning e.g. licensing over complete sale. This means that even in contract research, it is requested that the transfer fee for the resulting IP is at least accompanied by a so-called appropriateness clause. It guarantees the right to renegotiation in case of an exceptionally valuable invention. In case the IP is licensed to a start-up, the upfront payment can be replaced by taking shares in the company (see above). Instead of a minimum license, there is a licensing obligation which, in case of insufficient sales, turns the exclusive right into a simple user right or allows for a termination of the agreement. The transfer of IP is possible for start-ups and IP developed in collaboration, otherwise the IP will generally be only licensed.



**Axel Koch** is the Head of the Department of Research Management and Technology Transfer at Saarland University, a Board Member of the German Association for Knowledge and Technology Transfer (TransferAllianz e.V.) and part of the Review Panel for Registered Technology Transfer Professionals (RTTP). He has vast experience in the field of start-up consultancy and IP valorisation and has been supporting the European IP Helpdesk as an external expert for many years.



## **Spotlight: On the Specifics of Licensing in Life Sciences**

**Written by Dr Sebastian Tegethoff, 24IP Law Group**

A licence grants access to a technology in return for the payment of a licence fee – to mention just one possibility of compensation for a licence. Anything different in or for the field of life sciences? Absolutely! The following article tries to shed light on the specifics of licensing in life sciences.

The protection of innovations relating to life sciences by intellectual property rights (IPR) is extremely important. Like in no other technological field “patent off” can be considered as a deal breaker in life science licensing. The reason is that life science innovations themselves are usually the reason for negotiating a licence and not the mere capability of manufacturing a product.

### **Compulsory approval procedures**

Moreover, life science products – independent from whether they are related to pharmaceuticals or med tech – will have to clear compulsory approval procedures (clinical trials, Food and Drug Administration/FDA or European Medicines Agency/EMA approval, etc.) before they can be brought into the markets. Such restrictive procedures are simply not present in other technological fields. Life science technologies may be amended or improved during such trials or approvals so that the question comes up whether the IPRs still

cover amended or improved technologies after clearing all necessary procedures. No one will pay a licence fee for a “patent off” technology.

In consequence, adjustments or improvements of life science technologies during trials and approval must still be covered by IPRs like patents, which means that such modifications will have to be comprised in a patent application that has been filed usually a long time prior to clinical trials or EMA/FDA approvals. You don’t need a crystal ball to ensure this, but a good team of patent professionals and technical developers. They will have to work hand-in-hand to assess the probability of possible improvements of an innovation when preparing patent applications simply to be able to mention such modifications of the respective technology. Such descriptions may provide a basis for directing patent protection in the direction of the approved product.

### **Monitoring the scope of protection**

Keeping the relevance of IPRs and possible improvements of life science technologies during approval procedures in mind, the scope of protection of IPRs in life science will have to be monitored constantly on the side of a possible licensor prior to entering any licence negotiations – otherwise the potential licensee will do. Thus, entering licensing negotiations requires a profound evaluation of IPRs on both sides of the table

regarding the protection of a respective life science technology, and in particular whether the subject-matter of a license agreement is protected.

A clear and well documented ownership of IPRs sounds so easy but will usually be discussed during the first round of negotiating a life science licence. A lot of questions regarding the ownership of an IPR, like a patent, may come up which had a minor priority during every day’s work in a licensor’s company. Therefore, the first step prior to approaching possible licensees or even entering into licensing negotiations has to be the clarification of the IPR’s ownership status, and to have documents at hand demonstrating that solely the licensor owns an IPR and is thus the right person to negotiate a licence with.

In a nutshell, a) cover the subject-matter of a life science licence by an IPR, and b) own it! These are the two simple rules for any potential life science licensor to keep in mind. However, meeting these simple rules is often far more complicated.



**Dr Sebastian Tegethoff** is a Managing Partner of the 24IP Law Group and a speaker for the European Patent Academy of the European Patent Office. He is an experienced legal adviser in developing and defending integrated IP portfolios including patents, trademarks and designs and the corresponding contractual framework. In this context, he develops strategies for research institutes as well as for all kinds of businesses to help them leverage their developments in international markets. He has been lecturing on patents and employee invention rights at the Beuth University for Applied Sciences in Berlin and on strategic IP management at the University of Hamm-Lippstadt.



## Alliance4Life: Closing the Health Research and Innovation Divide in the European Union

*Written by Smiljka Vikić-Topić, School of Medicine of the University of Zagreb*

With knowledge and technology transfer (including licensing) playing a vital role in maximising the impact of EU-funded research, it comes as no surprise that activities in this field are also considered very important for the closing of the research and innovation divide in Europe. Aiming to bridge this gap, the European Commission supports a number of initiatives addressing different sectors and thematic areas to help less performing EU member states and regions build capacities in various aspects related to research and research management, especially in improving the sustainable exploitation of research results.

One of these initiatives is the Horizon2020 project “Alliance4Life” that brings together ten leading life

science institutions from nine less performing EU countries seeking to close the performance gap between EU-15 and EU-13 member states in European health research and innovation. In order to reach this goal, the project aims at improving governance and managerial practices with a strong focus on changing the institutional culture in the affected countries.

The consortium members are organised in seven domains of expertise/Focus Groups, which were identified as the key knowledge areas to be improved: 1) Science Evaluation; 2) Research Ethics & Integrity; 3) Human Resources & Mobility; 4) Grants and Research Funding; 5) Core Facilities and Big Data; 6) Knowledge and Technology Transfer; 7) Science Communication. They consist of members of the partner institutions as well as invited external experts from high-performing research institutions. The Focus Groups meet regularly

to discuss issues, share best practice, suggest recommendations, strategies and actions, and develop training modules and evaluation methods. The concept of the Focus Groups provides a stimulating environment by gathering the different expertise of the various partners.

### Towards an innovation culture

In transition countries, the culture of exploitation and transferring knowledge and technology from public research organisations to the private sector is a fairly new concept, which is not yet fully explored. To unlock the potential of its researchers, the Focus Group “Knowledge and Technology Transfer” aims to define



Figure 1 a)



Figure 1 b)

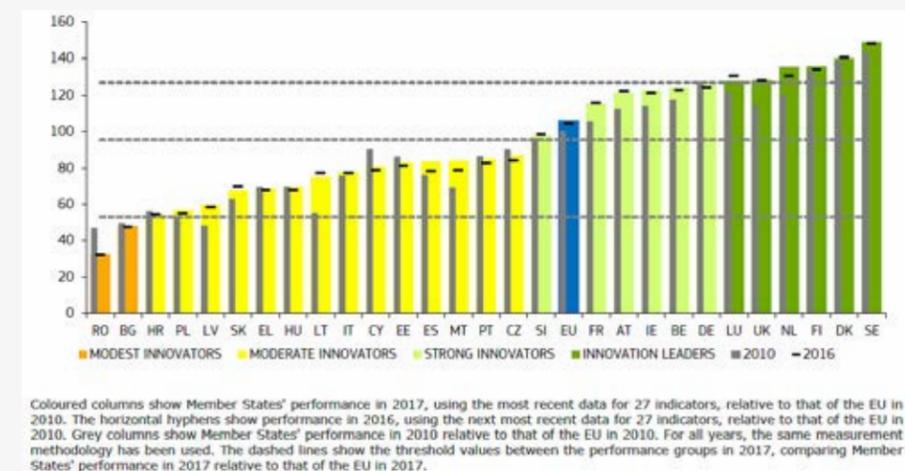


Figure 2

Figure 1a) shows Alliance4Life countries and Figure 1b) shows the EU countries' innovation performance according to the European Innovation Scoreboard (EIS) in 2018:

Figure 2, share of innovation performance in EU countries in relation to the total EU performance in 2010 (Source: European Innovation Scoreboard (EIS) in 2018).

strategies and concrete methods that would result in an improved innovation culture.

Countries gathered within Alliance4Life are rather moderate innovators with the exception of Slovenia, which can be considered a strong innovator. Bulgaria and Romania, two EU-13 countries which are not part of the Alliance, are at the frontend as modest innovators (Figure 1 & 2).

Knowing that innovative people and researchers are everywhere, but do not all work under the same conditions, Alliance4Life tries to find the reasons for performance weaknesses, exchange effective measures and offer solutions on institutional, national and EU level.

In order to evaluate the current situation, the team made assessments of institutions in all of the above mentioned areas from 2015-2017. In the field of K&T transfer, they compared the number of PCT applications, licenses and spin-offs among project member institutions (Figure 3).

Figure 3 shows the number of PCT applications, licenses, IP assignments as well as existing start-ups within Alliance4Life institutions.

**Initial project findings**

The first results of these assessments have been summarised and published in an [Assessment Report](#) and in an [Inventory of Best Practice](#). Moreover, main findings and recommendations for institutions, national governments and the EC will be compiled within a dedicated White Paper set to be released in August 2019.

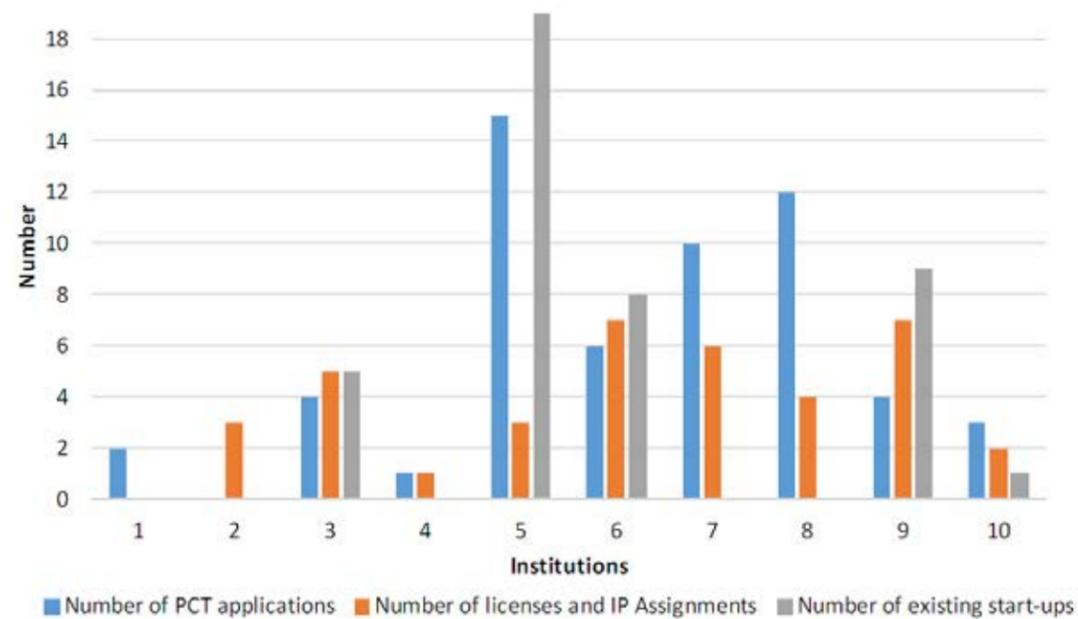
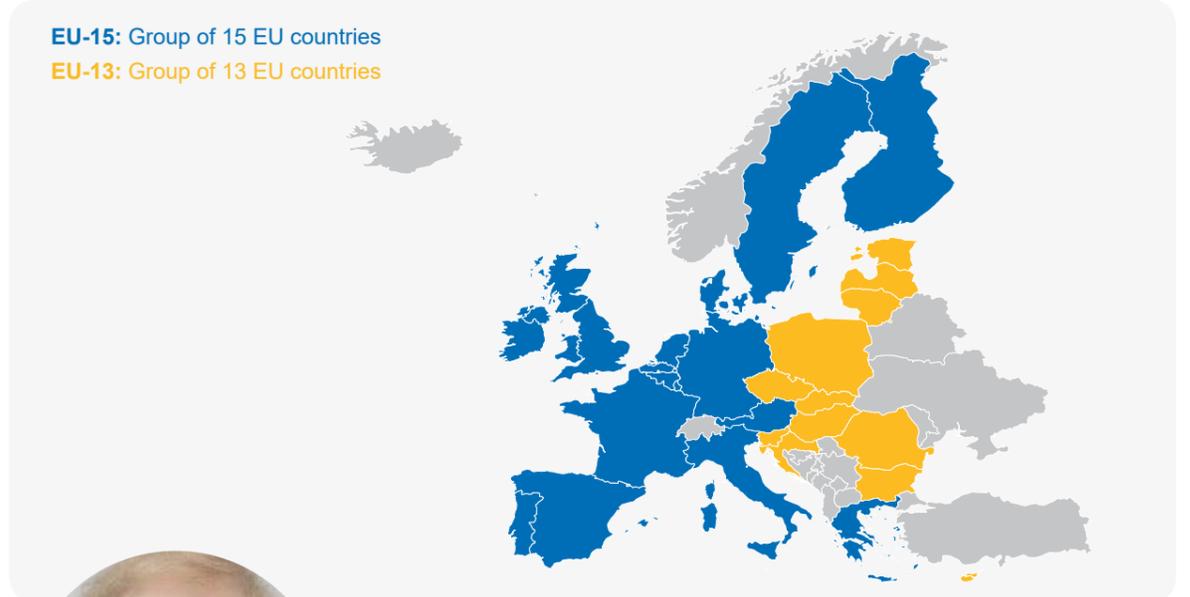


Figure 3

As becomes evident, the reasons for low performance in exploitation of research results and industry collaboration are diverse and can be identified on different levels: Although often part of the overall strategy, technology transfer has not been implemented at all institutional levels. Primarily, patents are often not taken into account. Hence, researchers lack the motivation to participate in TT. There is insufficient knowledge among researchers and scarce expert support for them. There are not enough experts in these countries, especially with long-term experience and there are not enough possibilities to acquire it. Regional industry is still not sufficiently developed nor does it perform extensive R&D, so there is too little demand from the industry side. Academics, on the other hand,

are not persistent and assertive enough when it comes to pursuing industry to start collaboration or request services.

Nevertheless, the situation has started to improve in the last years, especially among young researchers. There is a growing interest among students and young researchers to gain knowledge in transferable skills, IP management and protection, technology transfer, finding industry partners, project management, proposal writing, etc. Many institutions are offering training at doctoral studies level. Moreover, an increasing number of grants is offered for higher development stages of technologies (Proof of Concept, TRLs 4, 5 & 6). Additionally, an increased participation in EU projects could improve the situation in K&T transfer.

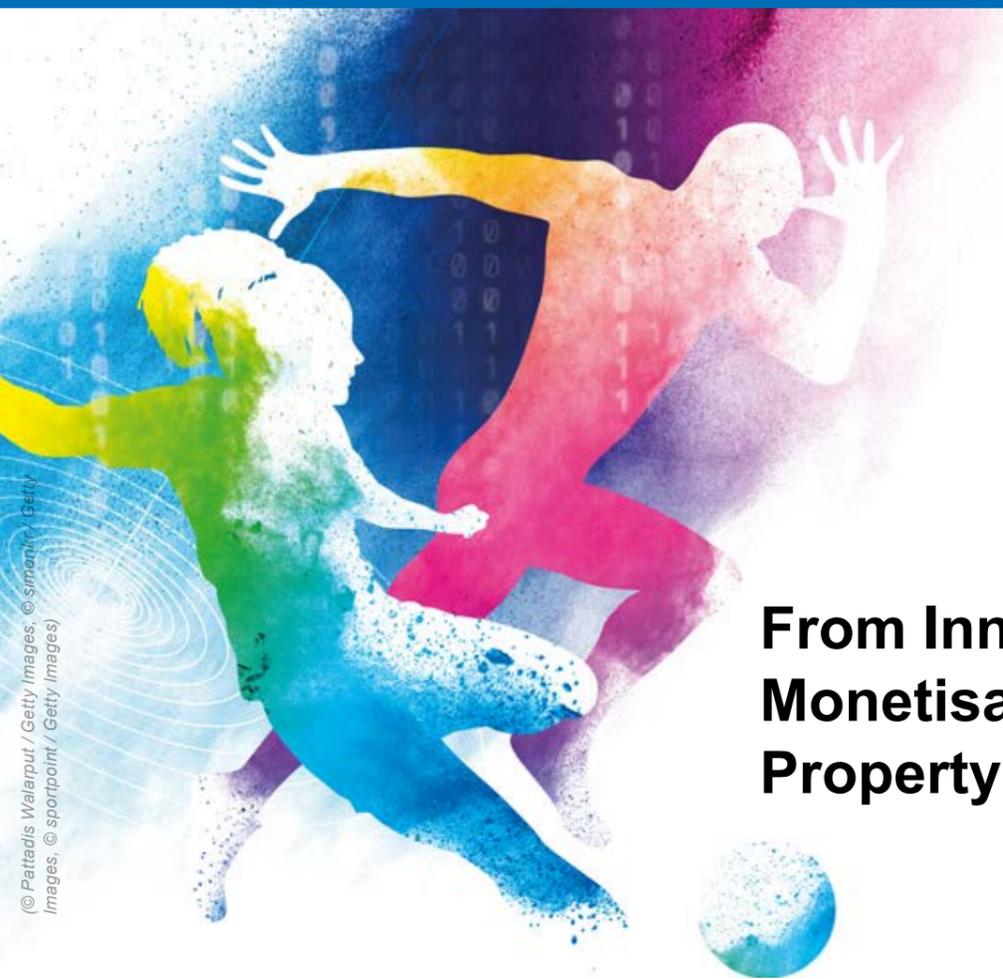


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The project [“Alliance for Life Sciences: Closing Research and Innovation Divide in the European Union”](#) received funding from the European Union’s Horizon 2020 research and innovation programme under grant agreement No. 779303.





## From Innovation to Monetisation: Intellectual Property Rights in Sports

The spirit of sports has changed from its original objective: In earlier times, athletes used to play for the pleasure of doing sports, for keeping good health and participating in a game, whether they would win or not. For some decades now, this no longer seems to be the main motivation for elite athletes to participate in a game. Glory, notoriety and wealth have also become key factors for elite athletes.

The monetisation of IPRs in sports has rapidly changed their mentality and that of the executives working for sport clubs. Over time and particularly during the first half of the 80's, many sports underwent a metamorphosis. Clubs signed juicy agreements with companies willing to associate their brands with the names of the clubs. That was the beginning of what we can now see at stadiums, streets, pay TV, sportswear stores, etc.

Sports adapted to our globalised world where athletes became super stars, clubs and the top sports organisations signed multi-million agreements to license their brands and associate it with all kind of souvenirs, products and the media content as we know it today. It is no wonder that intellectual property (IP) cannot be separated from this development.

Clubs, athletes, sport organisations, sports-related companies, technology developers, technology holders and other rights owners became generators of IPRs. There is, in fact, a very close link between all of them as they share an important slice of the cake.

### Licensing IPR in sports events

There are plenty of examples of how sport organisations have maximised their revenues by licensing their IPR to third parties allowing them to be associated with the events organised by the worldwide federations. The Olympic Games, the FIFA World Cup Football championships and the UEFA Champions League are on top of this list and generate impressive figures every time an event takes place. Over time, they were joined by other sports-related organisations which have learned from them and started doing the same. By now, there are at least 57 international sport federations recognised by the International Olympic Committee. They also organise their worldwide events and are just below the main sports chain detailed above. Though the purpose of those events is meant to be non-profit, the reality suggests something else.

In terms of figures, licensing of media rights for the period of 2013-2016 represented revenues for \$ 4,157 million dollars to the International Olympic Committee, 47% of their whole income for that period. This gives us an idea of the figures that the top sports organisations can receive in such a short period of time.<sup>1</sup>

The political and economic power of top sport organisations can also influence beyond the game as such. Local authorities of host countries have to adapt their domestic legislation to the protection of the IPRs of the events. In the majority of cases, new laws concerning the protection of Olympic properties have to be enacted containing measures against ambush marketing, antipiracy measures, etc. The final purpose is to protect the value of their rights and to preserve them.

Similar situations occur when it comes to the protection of the FIFA World Cup properties before, during and after a World Cup event.

With regards to the revenue of FIFA for the 2015 to 2018 budget cycle, there are many sources estimating around \$ 6 billion USD, such as the CNBC, the New York Times and Forbes. More than \$ 4 billion of that total came from the World Cup Russia in 2018.<sup>2</sup>

The bid of Canada, Mexico and the U.S. for the 2026

FIFA World Cup is expected to generate more than \$14 billion in revenue and \$11 billion in profits for FIFA.<sup>3</sup> The licensing of media and other products plays an important role in such revenues.

### IP as a game changer: technological developments in sports

On the other hand, several technological developments have also been disclosed during some sport events through the history and some others have been created to control the game or perform better while playing. New inventions were launched such as timing consistency in Los Angeles 1932; televised broadcast in Berlin 1936 and London 1948; electronic timing in Tokyo 1964 and virtual imaging in Sydney 2000. These innovations "helped improving the accuracy and the enjoyment of the Games for athletes and spectators, and led to technological innovations in other venues long after the Olympic competitions ended".<sup>4</sup>

Some particular sports have also developed and have been modernised from what they used to be. For the first time in competitions, rowing implemented GPS tracking in 2008. Many sports have required infrared beams to determine finishing times. Taekwondo implemented sensors in vests during 2012 and headgear in 2016. Important developments have also helped disabled athletes to better perform while competing with new materials for prosthetics. The most famous case relates to Oscar Pistorius; the disabled South African athlete that could compete against non-disabled athletes.<sup>5</sup> As it can be seen, most of such developments have required IP protection.

With regards to football, there have been recent changes to the conservative rules that had been in place for many decades and were an integral part of the game. Spectators and players benefit from them. There have been many technological implementations such as the hawk eye, which controls the position of the ball, Goal-Line Technology (GLT), VAR or video-assisted referee controlling and Electronic Performance & Tracking Systems (EPTS). All these innovations have completely changed the game turning it into a modern game aiming to be fair.<sup>6</sup> These innovations are based

on IPRs, such as trademarks, designs, patents or utility models that are transferred or licensed for the good of the game.

Sportswear, balls with new technological developments and materials, rackets, sticks, new types of natural and artificial grass, more accurate timing, powerful cameras to catch all the game from different angles, etc. All the above produce IP and can be protected in any part of the world.

### Football clubs and multinational sponsors – a match made in heaven

The most recent report from January 2019 showed the list of the football club's top 20 which all together made a total revenue of \$ 9.42 billion, which set a new world record.

After winning the Champions League three times in a row, Real Madrid is at the top on the list. The club generated total revenue of \$ 851.7 million with 43% coming from media licensing, 40% from commercial activities such as sponsoring and merchandising and 17% from the match day.<sup>7</sup> Adidas and Emirates are core pillars of the club's revenues. Just recently, it has been announced that Real Madrid is expected to close a 1.6 billion euros deal<sup>8</sup> with Adidas for 12 years and 120 million euros per season. To be associated with Real Madrid, Emirates pay 70 million euros per year. So, just through those two companies, the club earns 190 million euros per year.

With total revenue of 782.71 million, FC Barcelona ranks second and is mainly supported by important deals with Nike and Rakuten.<sup>9</sup>

"Multinational companies seeking to promote their brand, build their reputation and develop deeper customer relationships often team up with a sporting organization or associate themselves closely with a sporting event. This offers them massive exposure as the millions of fans and viewers who tune into sports events across the globe see the brands in question many hundreds of times."<sup>10</sup>



Another type of common agreement is licensing which "allows fans to indulge their passion for a sporting event; enable fans to support the event and offer fans authentic official licensed products".<sup>11</sup>

### Licensing agreements with athletes

Licensing agreements are a common type to exploit the rights of athletes. In many cases they constitute a generous percentage from their total income.

Lionel Messi was the top footballer in earnings during 2018. According to Forbes<sup>12</sup>, his salary and winnings reached \$ 84 million (85% salary and 15% image rights<sup>13</sup>). Combining his endorsements of \$ 27 million, made this a total of \$ 111 million. There is not much reliable information on how the income is divided. However, according to Goal.com, at least \$ 26.5 million come from companies associating their brand to his image. Such companies are Adidas, Huawei, Tata Motors, Lays, Gatorade, just to name a few. In 2020, a theme park named after him, Messi Experience Park, is planned to open in the Chinese city of Nanjing, but the revenues or income for the license have not been disclosed.

The second wealthiest footballer was Cristiano Ronaldo who, according to Forbes, earned \$61 million in salary and winnings. His endorsements were above the sums for Lionel Messi at a total of \$ 47 million. His total income during 2018 was \$ 108 million. Unlike Lionel Messi, Cristiano Ronaldo has his own mark CR7 for personal

items and a hotel chain. His personal agreements with other multinational companies reward him with very juicy benefits, especially the lifetime agreement signed with Nike for \$ 1 billion.<sup>14</sup>

Companies signing multimillion sponsoring contracts assume important risks and sometimes, their brands have paid for the consequences of such associations. They usually look for candidates with a good image who will have a positive influence on their brands. However, that does not work out all the time.

There are a number of examples of scandals and break-ups of important sponsorship agreements, such as on the case of Maria Sharapova who lost endorsement deals with Nike and Tag Heuer after being found positive for doping some years ago.<sup>15</sup>

Another case is related to Tiger Woods, who was caught cheating on his wife and lost his endorsement deals with Gillette, Accenture, AT&T, Gatorade, Tag Heuer and especially the \$20 million per year agreement with Nike.<sup>16</sup>

One of the best-known cases of losing important endorsement deals might be Lance Armstrong who was

found positive for doping during the Tour de France. He lost almost all of his deals with Nike, Anheuser-Busch InBev, Trek Bicycle Corp, FRS and Honey Stinger.

The link between companies and athletes can be rewarding for both parties in a sponsoring deal – as long as both act very responsibly in order not to break the deal. All these examples have shown: as long as technological developments and the sports economy move forward, sports will be a very IP-intensive industry and we have only just seen the beginning.



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## Game, Set, Match: IP & Innovation in Tennis

With this year's World IP Day exploring how IP rights can help encourage and protect innovation and creativity in sports, we've gathered some examples from the famous racket sport. Watch our short animated clip or take a look at our [online article](#).



# news

## Update from the Team

### New Fact Sheet: New Directive on Copyright and Related Rights in the Digital Single Market

On 15 April 2019, the European Council approved the Directive on Copyright and Related Rights in the Digital Single Market. This Directive intends to make EU copyright rules fit for the digital age. Unlike regulations, the Directive is not directly applicable and will require the transposition into the national legal systems of each member state.

The digital age has transformed the way in which researchers carry out their work, how we conceive business and share knowledge and information. Current copyright rules are not adapted to the growing digital landscape – a fact which made it necessary to bring these rules up to speed and offer an appropriate regulatory framework that encourages creative work and innovation while striking the balance with freedom of expression and the need to promote research, education, access to information and cultural heritage.

In a brand new fact sheet set to be released in the coming days we provide you with an overview of the most important changes and legal implications, and take a look at the next steps.

### Training Campaigns: “IPforBusiness” and “EUOpenForBusiness”

The European IP Helpdesk training team and the European Patent Academy are organising a European-wide [IP training roadshow “IPforBusiness”](#) together with the department of International Patent Law at the European Patent Office to respond to the high demand

### Webinars:

#### Join our Upcoming Online Training Sessions

 3 July 2019

[Basic IP toolkit for SMEs – hacks and common pitfalls](#)

 17 July 2019

[Effective IP & Outreach Strategies Help Increase the Impact of Research and Innovation](#)

 11 September 2019

[Introduction to IP](#)

for business-oriented IP training. After sessions in Bucharest and Copenhagen the roadshow's will also stop in [Oslo](#) (2 September 2019), [Budapest](#) (8 October 2019) and [Bratislava](#) (5 November 2019) in the second half of the year.

Moreover, the team has once more joined the “[EU Open for Business](#)” campaign organised by the European Commission in collaboration with the Enterprise Europe Network. The campaign aims to increase the use of the services and tools for SMEs, start-ups and scale-ups provided at EU level, by promoting local networks and info access points. This year, “EU Open for Business” focuses on entrepreneurs from Austria and Germany, with the European IP Helpdesk having joined info days in Berlin, Vienna, Lübeck.

### Case Study: Licensing Opens up Business Opportunities

The European IP Helpdesk is currently developing a case study dealing with IP licensing. It will shed light on how a young innovative company used licensing to significantly enhance their business activities in different parts of the world.

As outlined in the introductory piece of this Bulletin, licensing can come in two ways: “in-licensing” and “out-licensing”. In our case the relevant licensing deal is an “out-licensing” one. The company has successfully developed a unique technology in the area of waste heat recovery and it is protected by various intellectual property rights. Some of these are basic patents on how the technology (which has been known for quite some years) can be used in standard applications, where big bespoke installations were needed up to now.

The company is already successful in the European market, but wants to extend its business operations into Asia. Doing business in Asia is a rather challenging task for a young European firm with no proven track record in Asia. It developed various options and finally chose a licensing deal with an existing Chinese corporation and in addition, a Joint-Venture (JV) between these two partners was formed. In this cooperation, the European company provides the innovative technology to the JV and in addition produces some critical components (produced in Europe), whereas the Chinese partner brings market access, finance capabilities and assembly power (including production of some additional components) into the cooperation.

The very young cooperation already had a first major business success being able to secure a contract for a large installation for waste heat recovery in an Asian country. This success was only possible due to the fact that the company had a very strong IP protection of their technology, upon which they could build this international partnership.

### 4 Reasons to Patent: Successful Collaboration with 4iPCouncil

The European IP Helpdesk teamed up with 4iP Council, a European not-for-profit dedicated to developing high quality academic insight and empirical evidence on topics related to intellectual property and innovation, to develop a new interactive guide to help European SMEs unlock all the value of patents.

The guide “[4 Reasons to Patent](#)” recently launched by 4iPCouncil is a practical interactive web guide that aims to help innovative European businesses draw economic and strategic value from their patents. The guide identifies four key benefits to patenting - market access, negotiating, funding and strategic value - and breaks these down simply into methods for value-creation with clickable case study links, quotes and facts.

It was developed with content input from ASTP, The European IP Helpdesk, The European Patent Office (EPO), France Brevets, GRUR, The Intellectual Property Awareness Network (IPAN), and Intellectual Property Institute of Luxembourg (IPIL). 4iP Council's network of academics and IP practitioners also contributed.



**4 REASONS TO PATENT**

-  1 - MARKET ACCESS
-  3 - FUNDING
-  2 - NEGOTIATING
-  4 - STRATEGIC VALUE

Explore how patents add value with our **interactive guide**.

 Rigorous empirical research on intellectual property

### European IP Helpdesk team across Europe

In the first months of this year the European IP Helpdesk team has participated in numerous events and training sessions across Europe.



International IPR Stakeholders' Meeting 2019, 27 March



EU Startups Summit, 2–3 May



IP for Business Training Session, 11 June



EU Industry Days, 5–6 February



European Cluster Conference, 14–15 May



### Growing Family: New European IP Helpdesk Ambassadors

During the first months of this year the European IP Helpdesk's family of ambassadors welcomed four new members from Slovenia, France, and Spain expanding our network of regional contact points to [51 ambassadors covering 29 European countries](#).

### Congratulations to our Spanish Team of Ambassadors!

On 6-7 June 2019, the Enterprise Europe Network (EEN) Spain held their annual meeting 2019 in the city of Málaga, Andalusia. For the Spanish European IP Helpdesk ambassadors, the event included a very special moment: Paying tribute to the very close and fruitful collaboration between the Spanish EEN and the European IP Helpdesk ambassadors, the team won the Best Practice Contest in the category "Collaboration within the network".

### European IP Helpdesk Ambassador Summer Training

From 17 to 18 June a large group of our current ambassadors came together for a two-day summer training in Brussels. Offering a platform for direct exchange and discussion, ambassadors and the European IP Helpdesk team had the chance to catch up on recent activities, map out future directions of the cooperation scheme, and learn more about latest developments linked to the next EU research framework programme "Horizon Europe", the new EU Copyright Directive, or other initiatives offering support to SMEs such as the VIP4SME project. The training programme was completed by a visit of the European Parliament.



## What Else is There Around?

Looking for further information and helpful documents on licensing and/or technology transfer you will tap into a wealth of different publications, guides, or checklists. Hence, the resources listed here are only a few examples of additional material on the subject that could also be of interest to you. Additionally, we included the links to key associations in the field on a European and international level, which also offer a variety of useful documents.

### European IP Helpdesk Material

[Guide: IP Commercialisation](#)

[Fact Sheet: Technology Licensing-in](#)

[Fact Sheet: Commercialising IP – Licence Agreement](#)

[Fact Sheet: Commercialising IP – Knowledge Transfer](#)

[Tools](#)

### Guiding Documents

WIPO Manual: [Successful Technology Licensing](#)

UK IPO: [Online Guide & Checklist on Licensing](#)

### Sample Agreement Templates

The Spanish Patent and Trademark Office in collaboration with the WIPO and the Licensing Executives Society (LES) Portugal and Spain elaborated a [set of contract templates](#) aiming to cover different

aspects of technology transfer and licensing, which are also available in English.

### Best Practice

If you are interested in learning more about real-life cases and best practice linked to licensing or technology transfer, you may browse through the best practice libraries put together by the [Association of European Science and Technology Transfer Professionals \(ASTP\)](#) and the Horizon 2020 project [Progress-TT](#). Although the latter ended in December 2017 the project website is still accessible providing a broad range of supporting material aimed at helping build capacities for technology transfer.

### Associations

[Licensing Executives Society International \(LESI\)](#)

[Licensing Executive Society Europe](#)

[Alliance of Technology Transfer Professionals \(ATTP\)](#)

[Association of European Science and Technology Transfer Professionals \(ASTP\)](#)

[AUTM](#)

*In addition, there are several technology/knowledge transfer and licensing associations or societies on national level.*

# The European IP Helpdesk Bulletin

The Bulletin is published twice a year with the second issue dealing with "Go-to-Market Strategies" at the end of this year. All issues can be found in our [library](#) on the European IP Helpdesk website.

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