JOINT VENTURE
PARTNERING
A WAY TO BRING TECHNOLOGY TO THE MARKET
DEFINITION

• No precise legal meaning
• Commonly called “partnerships”, “JVs”, “Strategic Alliances”
• An association of independent entities that combine resources for a defined commercial purpose to share risks and / or rewards
• Can be complex separate entities with independent management, financing, even public equity
• Can be purely contractual arrangements, such as strategic licensing, distribution or development agreements
TYPES OF JV/COLLABORATIONS

“A rose by any other name…”

• Joint Venture Agreement - INCORPORATED
• “Virtual JVs” - CONTRACTUAL
  o Collaboration Agreement
  o Strategic Alliance Agreement
• Co-Branding Agreement
• Co-Marketing Agreement
• Co-Promotion Agreement
• Joint Development Agreement
• Revenue Sharing Agreement
ADVANTAGES OF JVs

- Diversification of resources, technologies, expertise, markets, and customers
- Entry into new businesses or geographic markets
- Leveraging partner’s competencies
- Sharing/minimizing of risks
- Maximizing efficiencies and economies of scale
- Flexibility regarding term of commitment and potential exposure
- Alternative to capital constraints and costs of M&A transactions
REASONS FOR JVs

Percentage of “Winners”

High Technology Companies

M&A Deals: 33%
JVs & Alliances: 64%

DISADVANTAGES OF JVs

- Time consuming and potentially complex to structure
- Require thorough diligence on: partner, objectives, structure, governance, etc.
- Require ongoing trust and maintenance of relationship with joint venture partner
- Require continued agreement and alignment with joint venture partner
- Require an exit strategy
CONTRIBUTIONS OF IP

IP Contributor

Retention of control/ rights to Company’s IP and technology portfolio

JV Owner

Sufficient contribution of IP and technology for the JV to succeed
KEY IP ISSUES

• What IP will be contributed by each partner to the JV? For what field of use and on what terms (assignment v. license, royalties, exclusivity)?
• Will there be any on-going obligations to contribute IP (i.e. a “hunting license”)? If so, any limitations on this and how to implement those limitations?
• Who will own “Foreground IP” (IP created by the JV either alone or in combination with the JV partners)? Any different result if the Foreground IP is an improvement on a partner’s IP?
• Who owns IP on termination (buy/sell, liquidation, run-off)?
• On termination, will access to any “Background IP” (IP licensed by a partner to the JV) continue?
GOALS OF JV PARTNERS SHALL BE ALIGNED

• Understand your partner’s interests and goals – are they consistent with (or at least complementary to) yours? Are they likely to change over time?

• Is there a shared vision among the JV partners as to how to move forward – governance/control, funding, product development, JV return thresholds?

• Are the JV partners compatible? Business culture, approach to compliance, compatibility of employees who will work for the JV?

• Are there inherent conflicts of interest, and are there mechanisms to deal with them?

• Will the partners be entitled to compete with the JV? Is it expected that they will compete?
  • Why do we care?
  • Importance of Initial Business Plan and Budget