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To Franchise or to License Part 2 : Licensing - Is it different?

This is a 3 part article on Franchising and Licensing and their differences.

In part 1 of our articles we gave you a quick insight on what Franchising actually is, the advantages of Franchising and the important aspects of Intellectual Property (IP) in a franchise business.

Here we continue our 3 part article with the issues and aspects of Licensing.

Part 2: Licensing – Is it different?

It is our intention at the onset of this article to make it very clear that there is no such thing as a standard license. Every arrangement is unique to the contracting parties and terms and conditions should be varied accordingly to accommodate the specific relationships.

Licenses are a common mode of exploiting your IP assets which at a basic level is merely a permission to enable

the Licensee to use the IP right without infringing it. Such basic licenses usually do not offer any training component, product development strategies and marketing support.

Licenses can take a variety of forms these days. Some common ones include exclusive licenses, non-exclusive licenses, bare licenses and nowadays, open licenses.

Exclusive licenses are agreements whereby the IP owner or proprietor not only confers permission on the licensee to use the IP but also undertakes that they will not grant any other license. Further and more importantly they themselves will not exploit the said IP.

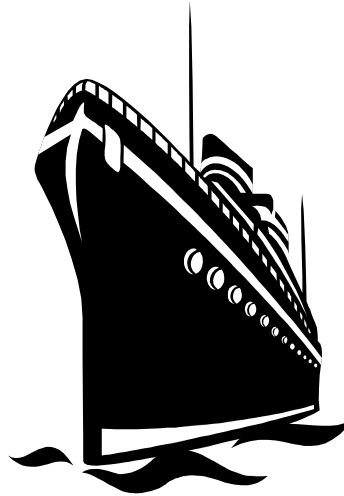
Non-exclusive licenses can be granted to more than one licensee and does not limit the rights of the owner to exploit the IP.

Another emerging licensing practice is the grant of an 'open license'. These type of licenses are useful in situations where it allows subsequent researches to use patented material on condition that they apply similar terms to any improvements.

November 08'

Coming Soon

- To Franchise or to License — Part 3
- Patent FAQ's



Taking your Business Further

Licenses are effected through agreements which should lay out clearly the intention of the parties particularly time lines, specific functions, geographical boundaries, payment obligations, dates and IP specifics. Also, all license agreements ought to be placed before a licensing or IP professional before being signed.

The following is a non-exhaustive list of features which should be considered in the development of a license and the preparation of a

license agreement:-

- Can the licensee sub-license?
- What is the term of the license?
- Can the license be renewed?
- What are the conditions of termination?
- How will any disputes be resolved?
- What happens if the IP granted under the license is revoked, infringed or opposed?

- Is there a required commitment on the part of the licensee to fully exploit the IP?
- Who pays for any prosecution or maintenance of any IP (trademarks, patent and others)

Licenses tend to cater for specific situations and relationships between Licensor and Licensee.

Licenses are by far the most accepted method of exploitation of IP assets.

Other articles

- Major Areas of Intellectual Property
- Trademark FAQ
- Procedures & Flowcharts
- Copyright FAQ's
- To Franchise or to License—Part 1