

Technology-focused collaborations form a foundation of today's corporate planning strategies. Such collaborations can be in the form of strategic alliances, joint ventures, open innovation or other legal structures. Regardless of how the participants characterize and legally structure such collaborations, the most common motivation for forming such alliances is to pool technology and R & D resources. When technology and R & D is involved, it must follow that IP ownership issues should loom large in the planning stage of the collaboration. However, my experience shows that the parties rarely give appropriate consideration to IP ownership in the agreements that are supposed to fully set out the rights and responsibilities of the parties.

I can say with authority that IP issues are not usually given proper consideration in collaborative agreements because my expertise in this area results primarily from helping clients after their collaborations have failed. My clients typically sought my help after their collaborations went sour and they sought to exit the relationship with at least some valuable IP rights intact. In each of these situations, it was apparent that if my client had come to me for advice while they were executing the general business and financial parameters of the collaboration agreement, they may not have needed me to fix things on the back-end. Put simply, if I had been brought in on the front-end to put a fine point on IP ownership issues that a resulting from the collaboration, I would have been able to prevent questions regarding IP rights from even being a question.

My perspective about the preventable nature of IP ownership issues was confirmed when I recently attended a meeting of professionals who focus primarily on strategic alliances and other types of collaborative ventures. In this meeting of just over an hour, I counted at least 5 instances where someone commented something along the lines of "when the relationship goes sour, the IP issues cause problems." From the sighs that accompanied the mention of IP ownership issues, I obtained the clear sense from these seasoned professionals that IP was not only a big problem, but also a common occurrence in their collaborations.

Smart business professionals should realize that when a significant problem occurs on a frequent basis, there likely is a failure in an associated business process. This is the case for IP ownership issues: most of the problems I have addressed on the back-end of a failed collaboration were fully predictable and the resulting problems could have been reduced or eliminated by proper planning. But if common IP ownership issues are not difficult for an Intellectual Property and Patent Business Strategist such as myself (more info here: www.jackiehutter.com) to predict and prevent, why do such issues still occur with such frequency in the collaboration space?

The answer is fairly easy from my vantage point: patent experts are typically not considered as possessing essential business knowledge and, as such, people like me are not seen as necessary participants in a collaboration deal. This is true even when the primary reason for the parties getting together in the first place is to pool existing technology and to create R & D synergies that will result in acceleration of innovation to the benefit both participants.

Admittedly, we patent experts have facilitated our not being involved on the front-end of business matters by traditionally focusing our practices on obtaining patents and litigating them for clients. We have left business matters to business professionals and transactional lawyers because, as a highly specialized profession, we felt more comfortable in the area of our own expertise. Also, we have not generally reached out to educate others about our somewhat "arcane" area of legal expertise. Our knowledge has remained closely held within the confines of patent practice and, as a result, we have been problem fixers. as opposed to preventing problems before they occur.

Business and legal experts reside today in functional silos that effectively prevent communication and education. Unless these silos are broken down, it is inevitable that business professionals will continue to destroy corporate value by not sufficiently including IP ownership in their collaboration agreements. Patent experts can continue to create value for ourselves by expending efforts to preserve our client's IP rights when the collaboration fails.

The definition of insanity was said by Albert Einstein to be "doing the same thing again and expecting a different result". To this end, it is insane for business professionals who deal in the collaboration space to continue to struggle with IP ownership issues over and over again because there is no doubt that complications and disappointment will inevitably arise. While not all of these issues can prevented by up-front analysis, I can virtually guarantee that the cost and effort of resolving IP ownership after a collaboration failure will be considerably less when a business-focused patent professional such as myself is brought in at the collaboration planning and agreement preparation stage.