

Successful copatenting: Choosing the right partner

While copatenting and collaborative R&D both imply openness, commercialization demands protection from those who may copy ideas.

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Openness has creative benefits, while commercializing innovation requires the opposite: closing down to capture returns.

In the paper, "[Coownership of Intellectual Property: Exploring the Value-Appropriation and Value-Creation Implications of Copatenting With Different Partners](#)," IESE's [Bruno Cassiman](#) and coauthors René Belderbos, Dries Faems, Bart Leten and Bart Van Looy examine the implications of the "openness paradox" on copatent partnerships.

Their insights, particularly into the subtlety of the challenges that arise, could help firms optimize their collaborative strategies on research and development (R&D) and intellectual property (IP) ownership when approaching different partners.

Consider the disadvantages

Copatents are patents owned by two or more firms. In copatent arrangements, all applicants have the right to exploit the innovation on their own behalf.

While the advantages for both parties, in terms of lower costs and increased exposure, may be clearer, the disadvantages are more nuanced.

For instance, coownership of IP may restrict a firm's ability to fully exploit the market potential of the pooled R&D knowledge.

However, there are ways in which you can bypass the pitfalls.

Evaluate the risks

First, examine the risks. Choosing a partner from the same industry carries far more risk of competing with each other and reducing overall market value, partly because coowners retain the right to sell their side of the patent.

There is also the risk of a partner going bankrupt and having to sell its rights. While others can bid, the partner reserves the right to sell to the highest bidder, maybe even to a competitor.

As such, making a wise, informed choice of partner is vital.

Success may also depend on both partners being active in similar, though not necessarily the same, fields.

When partners are active in different industries and markets, partners are more likely to use the coowned knowledge for different purposes. This increases the likelihood of a partner developing IP in areas outside the other's commercial interests.

Universities make better partners

Partnerships with firms in other sectors pose less risk in terms of competition. Universities, in particular, pose the least risk, given that their primary goal is to pursue knowledge, not compete commercially. This makes them more attractive partners.

In fact, there is a significant positive link between copatents with universities and market value. Copatents with universities signal a relationship with no competitive risk, whereas copatenting with industry partners can lower market value.

Agree who owns what

When collaborating with universities, it is standard procedure to negotiate that universities do not have the right to license coowned knowledge to the competition. Indeed, up-front copatent agreements can influence the nature of the partnership.

Sometimes these arrangements can be restrictive, so they have to be crafted with care. The existing knowledge of both partners, based on current levels of technological expertise and

capability, needs to be defined at the outset.

You might also agree that when the R&D results are uniquely in one of the partner's knowledge areas, then that partner will be the sole owner of the patent.

However, bear in mind the "grey knowledge zone," which will make it difficult to determine who should be the owner of the IP.

If your company is stronger, you will have more bargaining power when it comes to negotiating ownership. Financially and technically weaker companies are more likely to be forced into a coownership agreement.

Establishing trust

Unequal partners may need the other's technical knowledge to develop their research. If the partner is unwilling to share this because it is the sole owner, then the codevelopment may not be feasible.

As with any partnership, some trust is necessary for success. Larger companies can use copatent agreements to establish goodwill and establish that vital trust with smaller partners.

Clear agreements can reduce concerns over appropriating knowledge, while increasing the probability of creating value jointly with your partner.

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