

Should You License Your Competition?

BY HENRY E. FRADKIN*



In starting out or increasing the effectiveness of a technology transfer office, there are many hurdles to overcome. These include: (1) securing the necessary commitment from top management to proceed, (2) ensuring that you have the necessary resources to achieve office objectives, and (3) having a mechanism to gain necessary technical and business support from other company activities.

When I started up my new technology commercialization office at Ford Motor Company (see “Launching a Licensing Program at Ford Motor,” *les Nouvelles*, September 1999), we (my people and I) needed to define our potential customer base for licensing out and otherwise commercializing Ford IP and technologies. As such, we faced a very critical hurdle that is best captured by the question: should we license Ford competition? And, this certainly is not a unique issue as I have encountered this “question” many times while working as a consultant with clients who are trying to improve the effectiveness of their licensing efforts.

Purpose Of This Article

The purpose of this article, therefore, is to answer that question by providing the same rationale I used back in 1997 to convince Ford management that this approach was warranted and even a necessary component of Ford business strategy. Specifically, I will cover the following topics:

- A brief discussion of why we license out our IP and technologies;
- A look at what is meant by licensing;
- The timing for licensing out IP and technology to a competitor;

- Rationale as to why we should license out to a competitor; and
- Two success stories.

Background- Why Should We Do Licensing?

Before getting into any discussion of why we should license or otherwise commercialize company technologies, it is vital to appreciate and acknowledge that all such efforts must be consistent with the business strategy and objectives of the company or organization. Licensing, for example, cannot proceed as an isolated tactic as it could prove harmful to the company. For example, the licensing executives could craft a “wonderful” deal with an industry supplier—but if this supplier were antagonistic to the company, providing that supplier company with your company’s IP could be contrary to company direction.

With the above caveat in place, let’s look at the principal reasons for licensing out...where we can utilize our licensing deals to:

- Generate new sources of royalty revenue,
- Build specialized patent clusters for cross-licensing and other purposes,
- Manage and resolve threats,
- Reduce the cost to acquire new technologies; e.g., through:
 - Joint developments and/or
 - Joint ventures;
- Set industry standards for economies of scale,
- Secure technology improvements through “grant-backs,”
- Gather competitive intelligence through negotiations,
- Enter new markets economi-



Show Me The Money!

cally—versus setting up a company, etc., and

- Increase the reputation and goodwill for the company.

However, after all is said and done, the #1 reason to do licensing and technology commercialization is best captured by what Jerry Maguire said in the movie—*SHOW ME THE MONEY!*

What Is Meant By Licensing

This appears to be an obvious question, but I wanted to frame this question from the consideration of what and how we actually license to a competitor. Of course, there is direct licensing where a company reaches an agreement for technology transfer with its competitor or competitors.

Additionally, we have to consider the situations where the company licenses out the rights to an industry supplier, allowing that supplier

*Henry E. Fradkin is the founder and principal of Value Extraction LLC and formerly was the director of the Technology Commercialization Office of Ford Global Technologies, Inc., a wholly owned subsidiary of Ford Motor Company.

to use, make, have made, sell, and have sold IP and/or technical know-how. Usually, the supplier enters the licensing deal with the expectation of being allowed to provide parts, systems, etc. to competitors of the licensor as well as to any other company. The licensor may establish certain controls on the licensee to ensure that the deal is consistent with its corporate strategic needs. For example, the licensor may not allow the supplier to make parts, etc. for direct competitors for an agreed-on period of time, such as the time necessary for the licensor to introduce and establish the licensed technology as a market “first.”

When Should You License Your Competitors

The last sentence provides a good segue into my next point—one that is critical. The answer to the question of “should you license your competitor” is YES. But, there is a key caveat. You should not do so until your company has established a clear advantage in the marketplace. This is another way of saying that your out-licensing has to be consistent with the basic business of the company; so, “advantage” may take the form of:

- Market share gain as a result of utilizing the technology in a product or process, and
- Recognized leadership in that technology sphere.

Why Should You License Your Competitors

We now have arrived at the “meat” of this article; i.e., the rationale for why licensing your competitor(s) is a “good thing.” I used this line of reasoning to convince executives at Ford that my office should be allowed to license out even core technologies once a market and/or technology advantage had been achieved. In the following discussion, I will outline arguments for “carrot” licensing situations. As noted earlier in this paper, licensing also can be an effective way to settle infringement cases.

1. Everything being equal, your competitor has to pay more for

the technology

Simply stated, the competitor has to pay a royalty for the right to use the technology. Assuming roughly equal manufacturing costs or purchase costs, then the royalty results in the competitor incurring a cost penalty.

2. It keeps competitors from designing around your company’s invention

Licensing out your technology to a competitor or an industry supplier—and crafting a fair deal for all parties—generally discourages your competitor from conducting its own in-house R&D to design around your IP. The implications are that your company then gains control over the technology and it decreases any likelihood that your competitor could “leapfrog” your company’s technology.

Additionally, depending on how well you negotiate, you can try to include a “grant-back” clause whereby any improvements made by your licensee either would belong to or would be licensed royalty free to your company. In effect, this would make your competitor a “product development” source for your company.

3. It promotes new inventive efforts from your people...to work on a next generation or complementary technology

Moreover, once a competitor has gained the rights to use your company’s certain IP and technology, it often provides an incentive for your company’s employees to develop the next generation...and thereby recapture technological leadership. An ancillary benefit is that development of a next generation or improvement could provide a new source of revenue by giving the licensing office the opportunity to create a deal leveraging the new invention’s appeal.

4. It can establish an industry standard

Also as I noted earlier, if an industry has certain technology standards, then advanced efforts to license out your company’s tech-

nology to competitors can establish both a “defacto” standard and become the basis for a “real” standard. Simply put, it is much better to have an industry standard based on your own technology rather than being forced to use another company’s technology.

5. Licensing out of a technology can promote economies of scale

For technologies that may provide only a small or no competitive advantage, licensing out competitors through industry suppliers can yield substantial increases in shareholder value. For example, at Ford, we found that we could create “win-win” deals with suppliers that generated new sources of revenue through earned royalties but, perhaps more importantly, reduced part or system costs by allowing the supplier to increase its business by leveraging your company’s technology—while providing a means for the suppliers to increase their profits.

6. It minimizes the risk of employee raids

Finally, it would be considerably less costly for a firm to recruit a key employee or employees from your company versus starting up from ground-zero to develop a technology your company is successfully utilizing. By licensing your competitor, you remove the incentive to make such a raid.

Now I realize that, some of what I said in the above rationale may sound like a “glaring glimpse of the obvious.” Yet, I found when I was at Ford, and now in providing guidance for my clients, that these seemingly simple arguments convey a great deal of weight in changing entrenched company policy not to “help” competitors in any way.

Examples: Two Success Stories

In this next section, I will provide two examples of how we in the Ford Technology Commercialization Office created successful licensing arrangements with our competitors—through leveraging the industry supply base.

- *Ford Motor Company and Parker Hannifin Corporation’s Racor Division*

Jointly Developing and Licensing Diesel Fuel Conditioning Module (DFCM). This is an excellent example of an OEM and a supplier collaborating to provide a new, high-tech system for the automotive industry. In March 2000, we licensed out the rights for Racor to use Ford IP and know-how related to diesel fuel conditioning modules. As a result, Ford gained a new source of revenue by having its competitors pay a royalty for the new system, “shortstopped” anticipated competitive developments for a comparable DFCM, and a lower price as Racor was able to increase its business by supplying more companies than Ford alone...thereby creating new economies of scale.

- *Ford Motor Company Licensing Out Its Passenger-Side Air Bag Deactivation Switch IP and Technology.* In this example, Ford began licensing out the rights in 1997 to use its IP

and know-how related to providing automobiles with a passenger-side air bag deactivation switch. That licensing effort included arrangements with a leading Tier 1 automotive supplier and with several competitors directly. The benefits to Ford included (1) the competition paying more for the system because of the royalty, (2) a “defacto” industry standard for such a system, and (3) lower costs overall for both Ford and its competition through new economies of scale, particularly those associated with the supplier increasing its manufacturing volumes versus supplying only Ford.

Conclusion

To answer the question one more time, “yes, you should license your competitor.” The key caveat is timing where careful consideration must be given to (1) when your company has achieved recognized

technological and/or market leadership for the technology and (2) how sustainable is this leadership. Thus, prior to losing that advantage, the licensing/technology transfer office should initiate efforts to license out the technology for competitive use, by doing deals directly with competitors and/or with industry suppliers.

And why you should license your competitor has been provided by the six arguments presented above. In essence, all of them provide certain benefits for your company in terms of bottom-line monetary improvement and in terms of maintaining a competitive advantage. While I cited two examples from Ford, I have found this approach to licensing as one being practiced by many excellent firms that also have reaped similar benefits.

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