

# SNATCHING DEFEAT FROM THE JAWS OF VICTORY

## CAUTIONARY TALES FOR INVENTORS

BY TREVOR LAMBERT

In the last decade it has been my great privilege to work with independent inventors as they seek to commercialize their inventions. On a daily basis I see the inner workings of some deals come to fruition, while watching others collapse miserably. The path for inventors is an arduous one, and surprisingly the hurdles and set-backs encountered can be a product of the inventor's own making. The inventor can obstruct a deal from going through due to their actions, attitudes or expectations.

The following stories should teach you what not to do during this deal making process. (Names, companies and products have been changed to protect the guilty.)

### Story #1 - Arrogance

A Fortune 500 company (I'll call ABC Corp.) contacted us in search of technologies in fabric care. We discovered a very unique technology developed by a small R&D firm on the East Coast and convinced them to allow us to represent them.

At a meeting between both parties, ABC Corp. asked our clients to provide a technical overview of the product. Rather than positioning their product as complementary to ABC Corp.'s product line, our clients continued to state that their technology was "better" and were outwardly negative toward ABC Corp.'s technologies.

It was no surprise when ABC Corp. passed on the technology. The company liked the technology, but not the inventors. To this day the technology has not made it to the market and considering ABC Corp. projected yearly sales of \$250 million, the inventors are out a significant amount in royalties.

### Story #2 - Greed

We represented an inventor who invested about \$25,000 in his product. After a trade show, a company we'll call XYZ Co. expressed keen interest in licensing. XYZ had an extensive product line with retailers like The Home Depot, Lowes and Ace Hardware and wanted

to explore putting together a deal.

At the meeting, everyone was prepared to move forward and we were able to reach a consensus on many aspects of the agreement. My client then decided that he would require an advance of \$750,000 in order to agree to the proposed deal. With little development and no sales history, this was an unreasonable request, but despite my warnings, he would only reduce the amount to \$400,000.

XYZ passed without even providing a counter offer. The inventor created a hostile environment because his excessive demands came off as insulting. Instead of establishing a sense of mutual collaboration wherein the two parties choose to forge ahead in teamwork, our client's greed killed what could have been a very good opportunity.

### Story #3 - Haste

In this last instance, we represented a newly patented product in the hardware industry and entered into substantive discussions with a company with a very well-recognized brand.

Although eager to enter into the specific market segment of our client's product, the interested company had no experience with licensing, which meant there was a learning curve required, creating some delays. Our client grew impatient, and a few months into negotiations threatened to withdraw the offer to license his patent if an agreement wasn't reached over the next two weeks.

I cited evidence that proved the interested party was operating in good faith and that the inertia of the deal was moving forward, but nothing would sway his opinion. With no other options, I had to represent the wishes of our client.

As with the past two stories, the company chose to pass. The artificial timeline was viewed as completely absurd and the president did not want to enter into a contract with someone who made such irrational demands.

### Moral of the Stories

My goal is not to paint all inventors as unreasonable, greedy prima donnas. Rather,

my hope is that these extreme cases of inventor mistakes will provide guidance for budding inventors on what to avoid. None of the mistakes made had to do with the development of the product. The deals did not go through because of an emotional or mental mistake made during the interaction with the licensee.

Licensing requires a level of synergy between the company, invention and inventor. The two parties need to have a positive working relationship because the company is considering entering into a long-term relationship to develop and market your invention and wants to be reassured that the inventor is stable.

Many inventors think companies are trying to steal or knock-off their invention. However, in all my years of pitching products, I have found that the companies behind the recognized brands in any industry are usually very trustworthy. You should always protect yourself by filing the patent, but do not question their intentions or let suspicious thoughts cloud your judgment.

Inventors must also realize that they are not negotiating a used-car purchase. The company on the other side of the table is composed of sophisticated professionals and any demand, term or condition should be backed with solid supporting data. Carefully consider what you are hoping for related to the royalty rate, minimum sales volumes and the advance, and perform market research so that your offer is within the range for that industry.

Finally, putting together these deals takes time – months, not weeks. Depending on how developed your product is, the company will be investing a large amount in tooling, engineering, packaging, marketing, inventory, and they will want to consider the product carefully from a number of different angles, which is a good sign so be patient.

Remember the three P's. Remain positive, professional and patient and you can avoid the self-inflicted heartbreaks that can happen to inventors. This will ensure a relationship with the licensee is one of mutual respect that will pave the way for a successful licensing deal. ■

