

License Your Portfolio – Surviving Due Diligence



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Panel Introductions

Moderator:

Steve Rutt, Partner, Foley & Lardner LLP

Panelists:

Daryl Boudreaux, Founder and former CTO, NanoHoldings LLC

Luka Erceg, President and CEO, Simbol Mining Corp.

Julie Heinrich, Intellectual Property Counsel, Plextronics

Adrian Cyhan, Senior Counsel, Foley & Lardner LLP





Welcome to Foley's Session on Surviving Due Diligence

In this panel, we will address:

- The importance of due diligence
- Understanding the people aspect of due diligence
- Ensuring success from the top: management perspective
- Key indicators of value and success throughout the life cycle
- Problems to avoid
- Suggestions for surviving due diligence



The Importance of IP Due Diligence

- What are investors looking for in a clean/nanotech company's IP when conducting due diligence
 - How do you get your company ready for venture funding
 - What internal due diligence steps do you need to take
 - How important is the management team early in the development cycle of the company and what are the "must have" positions
 - How important is spending on IP, freedom to operate, and picket fence when you are pre-funded and have limited resources



The Importance of IP Due Diligence

- Competitive Advantage (“CA”)
 - Review current / future products
 - Identify CA features
 - Are products / CA features covered by claims of existing patents
 - Pending applications
 - Patentability search / analysis
 - Ease of design around



The Importance of IP Due Diligence

- Freedom to operate
 - Major concern for investors
 - Search quality versus project budget
 - Can be a deal breaker
 - “Product drift”



The Importance of IP Due Diligence

- IP Ownership
 - Verify inventorship
 - Government rights
 - Government reporting



The Importance of IP Due Diligence

- Mergers and Acquisitions: Due diligence issues that can affect a deal
 - When is the right time to get acquired
 - Why is an acquisition better than a collaboration
 - What are the key issues in the due diligence process that can hurt the value of the deal
 - How do cleantech companies prepare for pricing negotiations and how can a seller be prepared




The Importance of IP Due Diligence

- What types of steps can be taken to prepare a forecast that drives value negotiations
- How can this analysis be leveraged in negotiating a collaborative or co-partner agreement



Understanding the People Aspect of Due Diligence

- Strengthening the vital relationships needed to move forward
- Where investors and founders may fit together and align their business interests
- Establishing clear communication and general principles to set expectations early on
- How to avoid misunderstandings and best practices to consider when misunderstandings arise



Ensuring Success from the Top: Management Perspective

- How does a CEO incorporate shareholder valuation into the due diligence process
- How does a company measure acceptable risk
- What due diligence factors does a company use in selecting a partner for a collaboration agreement



Key Indicators of Value and Success Throughout the Life Cycle

- Approaches for developing valuation and valuation assumptions
- Evaluating the future impact of key items when reviewing a cleantech IP portfolio
- How does your evaluation of a project differ in the big company setting vs. a more entrepreneurial setting



Key Indicators of Value and Success Throughout the Life Cycle

- Identifying factors that executives use to arrive at a starting value, and then quantifying the deductions depending on the results of the IP due diligence
- Valuation methodologies used for early-stage vs. late-stage products



Problems to Avoid

- Spotting problems that can hinder realization of the full value, or lack of value, of the deal
- What to expect and preparing for the unexpected



Suggestions for Surviving Due Diligence

- Relationships are critical to due diligence – the relationship between investor and investee is forged during due diligence
 - Failure to build trust during that period will not bode well for the management, board and investors



Suggestions for Surviving Due Diligence

- Recognize the role of attorneys in due diligence
 - Attorneys are risk managers, and once involved, will do that job well
 - It is up to the investors and founders to decide how to manage that function
 - Some investors wait for attorneys to drudge up “facts” with which to “correct valuations”
 - This is outright wrong – if you have a valuation issue, resolve it right away



Suggestions for Surviving Due Diligence

- Companies to best protect yourselves, favor the investors who get deep into due diligence before they sign a term sheet – then keep other parties at the table as well
 - If you accept a term sheet from a VC, 1 hour after you sign it, it will be known (remember, VCs don't sign NDAs)
 - Then in the midst of due diligence, you can easily have re-valuation issues arise



Suggestions for Surviving Due Diligence

- When managing attorneys, it is up to the company and founders to determine the probability of a risk manifesting – not the attorney’s responsibility
- Always strive to lead the information flow – do not be passive



Contact Information

- Steve Rutt, (202) 672-5351, srutt@foley.com
- Adrian Cyhan, (619) 685-4635, acyhan@foley.com