



Practically Preparing for and Surviving Your Deal

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Presentation Overview

- Preparing for a Deal
 - Good Corporate Hygiene
- Making the Deal
 - How to Share Confidential Information Safely
 - Communicating Your IP Strategy
- Closing the Deal
 - Survival Tips and Tricks
- Questions

Procopio, Cory, Hargreaves & Savitch LLP

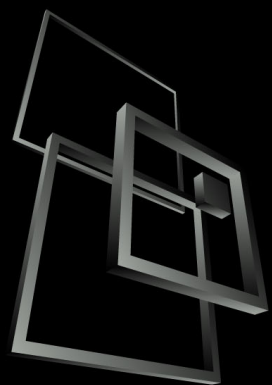
- Founded in 1946
- Largest law firm in San Diego
- Offices: Phoenix, San Diego, Del Mar, Irvine, Palo Alto, Las Vegas, Washington, D.C.
- 200 attorney full-service firm
- 120+ attorneys practice intellectual property, corporate & technology transactions law

Procopio's Life Sciences Practice

30-member multi-disciplinary team that regularly counsels companies and innovators in all aspects of the life sciences sector - e.g.: therapeutics, genomics, medical devices, diagnostics, and digital health.

Life Sciences Legal Services include:

- Intellectual Property Protection and Litigation
- Licensing & Technology Transactions
- Funding, Formation and Growth
- Commercial Real Estate
- Privacy and Cybersecurity
- Employment Law



Preparing for a Deal

Corporate Hygiene

- Start organized...
 - Or get organized before there is a deal on the table.
-
- **Identity**
 - Corporate existence
 - Cap table
 - Assets (IP)
 - Financials
 - **Relationships**
 - Shareholders
 - Service Providers
 - Licensors
 - Development partners
 - Vendors/Lenders/Landlords
 - Customers
 - PMYs

Show Don't Tell

- At least **one document** with each person with whom the Company has a relationship.

- Is the document:

- ✓ Free of comments and evidence of revision.

“Bob – I hate this term, lets try to push for less”

- ✓ Complete i.e. are all the spaces filled in.

“The Company will pay a Royalty of [___]% of Gross Revenue”

- ✓ Signed by all the parties (or shows it was filed).

*“I don't think we ever got back his signed PIAA...
but we fired him/he works for a competitor/
he started his own company/he is dead.”*

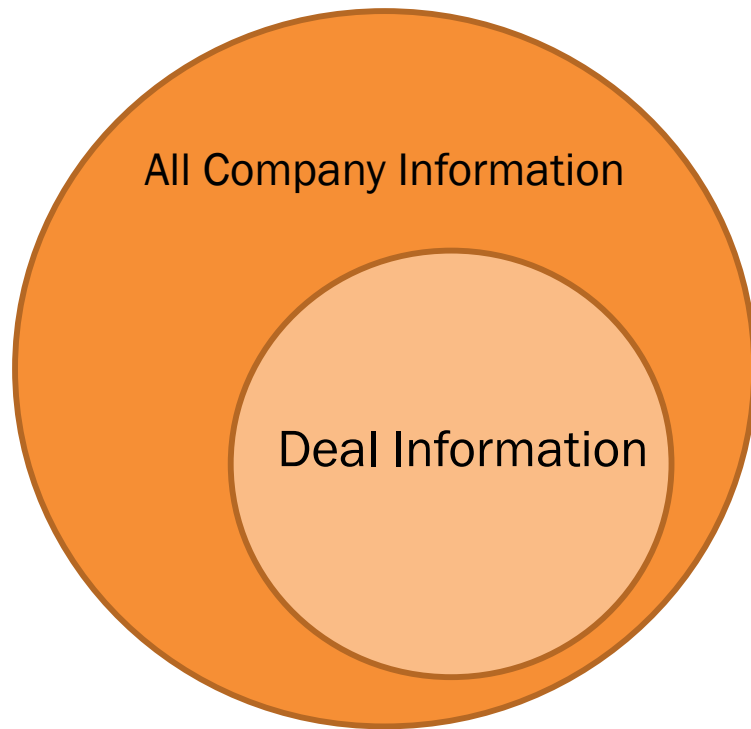
- ✓ Provided with all the Exhibits, Schedules, Annexes.

*“There's meant to be a list of the actual patents that are being licensed
as well as the 30 page license agreement?”*

- ✓ Current.

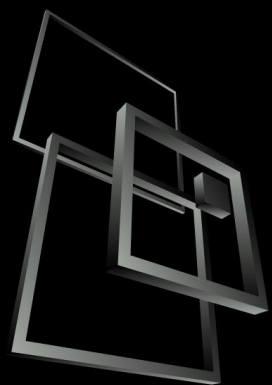
“Well that was the first development agreement... things have changed since then”

Document Management to Deal Data Room



The content of your deal data room is a subset of the content of your document management system (DMS).

DMS to Staging to Live.



Making the Deal

Confidential Information is at the Heart of the Deal

- Confidential Information
 - Ranges from know-how to trade secrets
 - All companies have confidential information
 - Becoming more prevalent and more valuable
 - Trend in life sciences from a pure patent play to a patent/trade secret combination

Before you begin sharing Confidential Information ...

- Ensure that your company's approach to protecting its CI is in order:
 1. Employees/contractors should be bound to appropriate confidentiality/non-disclosure agreements
 2. Catalog your company's IP ranging from generally applicable know-how to highly valuable trade secrets
 - Ensure that the protection level is consistent with the value of the confidential information

When you begin sharing Confidential Information ...

1. Start with a non-confidential deck
2. Consider whether any last-minute patent filings should be made
3. Provide confidential deck only if a suitable NDA is in place
4. Limit disclosure of trade secrets to an executive summary
5. Purchasers can tie-up trade secrets through reps/warranties and consulting agreements

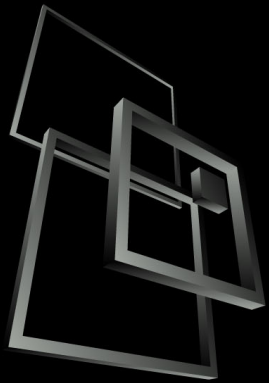
High-Level Communication of Your IP Strategy

- This is a significant value driver; it helps distinguish your business from your competitors
- Difference between what/how you share in a pitch vs. what/how you share when you are in the later stages of making a deal

General  Granular

Communicating Your IP Strategy

1. Be able to define your company's IP (present & future)
2. Ensure that your company has FTO (or a defensible FTO position)
3. Perfection is not necessary – a reasonable plan is



Closing the Deal

Survival Tips

Helen

1. It will never close... until you least expect it.
2. Bigger \$ the more they care about the small stuff.
3. Keep in touch with anyone who needs to sign anything.

Jeff

1. IP due diligence takes more time than you plan for – start early.
2. Ensure that IP ownership (chain of title) is clean.
3. Always be aware of the shifting IP landscape.

Thank you!



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