



INDEX

Commercialising Your Invention	1
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Issue 220 - January 2023

Welcome to 2023!

Commercialising Your Invention

This is a fairly common matter that we receive questions about at this time of the year.

“How do I commercialise my invention – I think it’s ready for the market?”

Many people do not realise the issues that need to be discussed and answered if you are going to be able to successfully commercialise your invention.

In this article we will discuss the issues that are involved. If this discussion raises questions that you would like to discuss with us please do not hesitate to contact the accountant in our organisation that you normally deal with.

✚ Research and Development Phase

This is what you have been working on up to this stage. Have you developed a prototype? Does the prototype work? Has it been evaluated by an expert? Have you considered what it will look like as a final product?

Who paid for the research and development expenditure? Have you heard about the Research and Development Tax Offset that is administered by the Australian Taxation Office. If you want to claim the Research and Development Tax Offset there are some important matters that you need to consider:

- The entity undertaking the research and development expenditure must be a company.
- Do you have a company for this purpose at this time?
- How much additional expenditure do you think is necessary to get the prototype to a “commercial ready status”?
- Depending on whether you have already undertaken the research and development expenditure or not, have you got at least \$20,000 worth of expenditure to undertake at this stage? (There is a minimum amount of expenditure for research and development purposes of \$20,000)

✚ Protection of the Intellectual Property

- Have you documented the work process/system that you have utilised?
- Have you had discussions with a patent attorney? (It is not mandatory that you appoint a patent attorney but it is generally good business practice to do so)
- Have you applied for a provisional patent via the patent attorney?
- If so, when does the provisional patent expire?



- Have you discussed with your patent attorney effective protection for your invention not only in Australia but also the rest of the world?
- Has your patent attorney provided you with a timeline document highlighting when the patent application needs to be lodged and what the costs estimates are for an effective intellectual property protection strategy not only in Australia but also including the key countries that you have identified that competitors could emerge from?

✚ Research and Development System



If you are incorporating a company to claim the research and development expenditure you will need our advice on the establishment of an appropriate research and development system so that you have records of the research and development process that will support the claims being made for Research and Development Tax Offset.

We will discuss with you the searches that you are required to make relative to “prior art” and we will advise you on the record-keeping that is required relative to the “prior art” searches.

✚ Prototype

Depending on what your invention relates to, it is always desirable that you prepare a prototype of what your new product will look like and how it will function. There could be many changes before the final commercial product design is available but the initial prototype will be very important especially if you need to raise loan funds or capital to finance the project (which most people do).

✚ Market Research

If you are going to try to raise funding to assist with the research and development project you will need to undertake market research or appoint a market research consultant to undertake this review for you.

This is very important!

The key aspects of market research is to identify the key components of your prototype and to then compare what you envisage your prototype will look like as a final product with what is currently available on the marketplace.



This research should be documented onto a spreadsheet identifying the key components of your prototype and then showing a comparison to what is included in other products currently available. What you need to identify is the key aspects of your invention that are improvements on what is currently available in the marketplace.

This research could involve actual documentation that you have been able to obtain including brochures from competing organisations and information you have downloaded from the Internet. It is always beneficial to assemble additional documentation or professional opinions from experts who will certify that your prototype, when it is completed into a final commercial product, will be significantly different and more efficient than competing products.

Part of the market research could be a focus group meeting which is a market review process (and this is okay because you have the protection of the provisional patent) where you assemble a group of people who have some knowledge of the competing products and the market conditions who make comments about improvements that they believe will be beneficial in the design of the product.

Out of this process you could prepare a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) of your product v competing products.



Project Budget

You need to take the time to sit down and to carefully consider what expenditure needs to be undertaken from your current position until you have a “commercial ready product”.

Items to be considered include:

- expenditure to finalise the prototype;
- expenditure based on recommendations from the focus group;
- salaries and wages from now until such time as you realistically expect income to be earned from the product being developed;
- patent attorney expenses;
- patent registration fees for countries that patent protection will be applied for;
- legal fees;
- accounting fees;
- rent of premises;
- business agent costs to assist in negotiations with potential customers and distributors;
- travelling and accommodation relating to the project;
- all of the other expenses that relate to the operation of a business.



Funding Required

You will now have a better idea of the level of funding that is going to be required to take the project from the current prototype that you have to the final commercial product that you are confident can be sold and that you will be paid the price that you have calculated, by customers.

Do you have this funding available?

If not (and that is the situation for most entrepreneurs) you will need to consider whether you are going to try to borrow the funds required or raise capital from the market.



Borrowing Money

If you are contemplating borrowing the money a loan application will need to be prepared and submitted together with Budgets, Cash Flow Forecasts and Projected Balance Sheet for the company.

These Predictive Accounting Reports should be prepared for five (5) years and have appropriate supporting evidence and details of calculations that have been made attached.

One of the biggest issues relating to borrowing money is that most lenders require security. Do you have access to assets that can be pledged to the lender as security?



Capital Raising Opportunities for SMEs

The Australian Government has enacted legislation that enables a private company to be able to raise capital direct from the public without having to produce a prospectus in the following instances:

- Raising capital under section 708 of the *Corporations Act*.
- Raising capital because the raising company qualifies as an Early Stage Innovation Company.
- Raising capital as a Crowd Sourced Funding Equity Raising Company because the raising company qualifies for that program.



Section 708 of the *Corporations Act*

A private company can raise capital without issuing a Prospectus and without undertaking any advertising of a maximum capital raising in 12 months of \$2,000,000 from a maximum of 20 investors.

✚ Early Stage Innovation Company

A young company can qualify as an eligible entity for the status of being an Early Stage Innovation Company. This status enables investors in the company to be able to obtain an income tax benefit on their original investment (so long as the investment is made after a specified date) and to be able to avoid Capital Gains Tax on that investment if the shares are held for longer than twelve (12) months and less than ten (10) years.

Investing in an Early Stage Innovation Company has become popular for sophisticated investors who understand the benefits that can accrue to them if they are investing in a company that qualifies under the legislation as an Early Stage Innovation Company.

✚ Crowd Sourced Funding Equity Raising Company

This status of being a Crowd Sourced Funding Equity Raising Company is available for eligible private companies and unlisted public companies which have an aggregated international turnover of less than \$25,000,000 and gross value of assets calculated on an international basis of less than \$25,000,000 and are not listed on a stock exchange anywhere in the world.

Eligible companies are able to raise a maximum of \$5,000,000 from the public in a twelve (12) month period.

The legislation introduced the concept of Crowd Sourced Funding Intermediaries who are appointed by the Australian Securities & Investments Commission to undertake due diligence reviews on a company seeking the Crowd Sourced Funding Equity Raising status and to then implement the approved capital raising process for a company that has entered into a commercial agreement with a Crowd Sourced Funding Intermediary.

✚ Predictive Accounting Reports

To raise capital from the public it is desirable that the Company Directors ensure that appropriate Predictive Accounting Reports have been prepared by an expert to identify the projected financial performance of the company for at least the next five (5) years.

The documentation includes:

- Business Plan – this is the leadership team's vision for the business operations.
- Budgets – month by month budget projections covering the business operations.
- Cash Flow Forecasts – detailed summaries which reflect, creditors payments, debtors income, capital expenditure, inventory investments and other expenditure items envisaged for the next five (5) years
- Projected Balance Sheets – this is the forecast Balance Sheets for each year so that you are able to illustrate to potential investors what you envisage that the company's position will be at various future dates. This is a financial summary of the expected financial performance of the company.



✚ Action

This is an overview of the steps required to enable the commercialisation of an invention to be undertaken. If you are contemplating this type of process we would like to have a discussion with you before you proceed further so that we can ensure that appropriate strategies have been implemented.

An Important Message

While every effort has been made to provide valuable, useful information in this publication, this firm and any related suppliers or associated companies accept no responsibility or any form of liability from reliance upon or use of its contents. Any suggestions should be considered carefully within your own particular circumstances, as they are intended as general information only.

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