



European IPR Helpdesk

Fact Sheet

Intellectual property and business plans

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Introduction¹

A business plan is a strategic document providing details on how a given innovation is going to be commercialised and brought to the market by an existing company or a newly created venture. The document typically describes the entire path to the market and provides details on the following issues:

- Description of the company: status, objectives, managers, shareholders, and mission;
- Description of the products and services offered, including further developments being foreseen;
- Description of the target markets/clients and the competition;
- Description of the marketing strategy of the company and the sales and distribution channels being used;
- Description of the business organisation, including employees, suppliers, manufacturing sites, purchasing and outsourcing issues, as well as technology partners;

¹ This fact sheet was written by Catherine Delevoye, expert in legal issues at Technoport (business incubator, co-working space and FAB lab in Luxembourg).

- Provision of a financial plan including profit and loss projections, a pro-forma balance sheet, an estimation of the external funding required and the sources of funding available for the business (e.g. bank loans or equity investors).

1. Business plans: purpose and link with IP

1.1 The purpose of business plans

Business plans are written for communication and strategic planning purposes. They fulfil different business needs:

- Internally: business plans can be used as support tools for guiding strategic decisions and providing team members with a common vision and clear objectives in terms of technical and commercial developments. They moreover provide financial targets and others indicators which are extremely useful for performance management purposes inside the company.
- Externally: business plans are used to explain the business strategy of the company to external investors and partners in order to raise money or enter into specific collaborations with other businesses. The scope is not only to arouse interest in the company's activities but also demonstrate that the entrepreneurs have precise plans for the future and that those are based on sound and documented strengths and assets. From this point of view, business plans can be used not only to describe the company itself to external stakeholders but also to position it precisely inside the larger commercial and technological surrounding ecosystem.

1.2 The link between business plans and IP

Since the scope of the business plan is to describe not only the business logic behind the commercialisation plans, but also the assets and resources that will make the business successful, the definition of a strong intellectual property (IP) protection and management policy and the business planning exercise are strongly interconnected.

First of all, the IP owned by or accessible to the company owners will strongly influence the business model chosen for operating on the market. Secondly, the business plan will typically refer to intellectual property (IP) and intellectual property rights (IPR)-protected elements to describe the company's unique specificities and the assets and resources that can be called upon for establishing win-win collaborations with clients, partners and investors. Finally, the comparison of those assets with the IPR owned or likely to be acquired by both clients and competitors are to be considered key indicators of the commercial viability of the business and should influence its strategic positioning inside the broader ecosystem.

IP should therefore be taken into consideration both when drafting the global strategy that will be described in the business plan and when actually writing the document itself.

2. IP-related information in the description of the business

The IP policy of the company is to be considered a key element in the business plan, which can bring very strong added value to the venture if appropriately described and valued, but can by contrast hamper the confidence and interest of external stakeholders in the business if not described in a very clear or comprehensive way. Any uncertainty in terms of freedom to exploit the technology underpinning the products or services or the ability of the entrepreneurs to secure sound relationships with other players on the market will raise doubts about the viability of the business. The activities should moreover be communicated in the business plan so as to be easy to understand and globally coherent with the global business goals.

In terms of describing the business model, the issues listed below are frequent challenges and drawbacks which entrepreneurs may come across when elaborating business plans. All of them are related to a description of the IP assets available to the business which is poor, vague, not practical enough or not business-oriented.

2.1 The description in the business plan of the IP assets owned

2.1.1 Details needed in the description of the products and services

When writing a business plan, a first problem for the entrepreneur is to assess how many technical details and specifications should be included in the description of the products and services being offered. That issue heavily depends on what is actually needed to understand the technology being commercialised and its added-value for the targeted customers. The focus should actually be on the latter topic, the typical scope of the business plan being to present what the company has to offer in order to raise the interest of potential business partners.

The good news from this point of view is that disclosure in detail of the secret know-how owned by the company, which should be considered confidential information and be very carefully disclosed to third parties, is usually considered as not necessary in the description of the products and services. The main scope in the business plan is to be able to picture the technology from the point of view of an industry client, answering questions such as “what does the product do?”, “How do I know that it actually works?”, “What is the added-value compared to other technologies?”.

Technical drawings are welcome in the business plan to illustrate the technological offer, but technical processes and concepts should be described in a concise and user-oriented way. Do not hesitate to have your description

reviewed by people with a business profile, who may be more able to have a synthetic view of the technology than the development team or technology experts.

A must-have in the business plan is a summarised description of the products and services in a few short sentences at the very beginning of the document to describe the company's mission.

Example of a description of the products and services:

"We are an innovative high-tech start-up company, whose goal is to bring emerging technologies like the semantic web, location-based services, and ubiquitous computing together for new mobile applications. We use these technologies for enabling our clients to provide personalised services to their customers with very little effort and cost."

Apart from the extensive use of technical jargon, another confusing element for business plan readers may be if a multi-element technology is described as a whole and that the different modules which may be sold separately by the company are not clearly identified. Think in terms of products and related trade marks and possibly describe the different products in the business plan under the specific brands that will be used to promote them.

For consistency purposes, it may be useful to have one trade mark for the global product range and then break it down into different solutions or modules, as indicated in the following example:

"Our current financial software product line includes four different modules collectively known as the ABCD™ Suite. The first module, ABCD™ Tracker, is aimed at customer identity verification and transaction monitoring. The second module, ABCD™ Server..."

2.1.2 The description of the IP ownership and the IP protection policy inside the company

Innovation is often the result of team work. The technology being commercialised may have been developed by different employees or partners and may then have been further packaged and refined with the support and involvement of third party researchers, external designers, software or hardware suppliers, among others.

Bringing a proven and fine-tuned technology to the market is obviously an added value in the business plan, and having involved suppliers and customers in the product development process at a very early stage is typically considered an additional asset.

However, that may induce uncertainties about who is the actual owner of the IP assets being commercialised.

The following wording for instance raises questions from the point of view of IP ownership, given the fact that the legal basis under which the IP has been co-created, published and shared in the context of a consortium is not clarified and that the final ownership of the research results is not clearly defined:

"A prototype showing the feasibility of fully-secured personalised proximity messaging systems was developed by researchers in the framework of an ESA-funded project involving seven leading universities and research institutions. The technology involved has been extensively published and presented on numerous international scientific papers and conferences. Based on this research experience, the manufacturing and distribution of a commercially successful system is the main current business goal of our company."

From the point of view of ownership of IP, the plan should raise no doubts as to which parts of the products and services are actually proprietary to the company and what parts are accessible under (ideally already negotiated and secured) co-ownership or licensing agreements with others.

The transfer of the ownership to the business is the simplest and best solution when possible and is very often required by private equity investors. In the case of co-ownership of the IP, a potentially exclusive and in any case long term licensing agreement has to be alternatively sought to secure access to any required technology and freedom to operate on the market. Due diligence performed by investors heavily focuses on IP. Investors will typically check the status of all intellectual property rights owned by the company and take them into account in their pre-money valuation of the business.

A second element which has to be made clear in the business plan is the extent to which the rights on the know-how being commercialised by the company are or can be registered and therefore efficiently prevent the entry to the market of potential copycats.

If the IP cannot be registered, how a technological advantage will anyway be maintained in the future is a key point to address. This can be linked for instance to a very strong governance policy in terms of file management inside the company and restriction of know-how access to a very limited group of people (e.g. funders and the top management team with shareholder agreements in place).

The following examples illustrate how to clearly describe the situation in terms of IP ownership (including trade marks) and the reasons why the products involved cannot be easily reproduced or copied by third party entrants:

"To date, our company has deposited five patents that have been developed in just a few months of research (see list below). Three of these patents cover our core production technologies. The others cover complementary applications of the system. We have identified additional areas where patent applications are currently being formulated."

"Our story started with the invention of a machine that generated sinusoidal mechanical vibrations. Although that invention was patented, it was never commercialised. Realising the patent's considerable potential, we contacted the inventor. We bought out the inventor's stake in March 2014, taking ownership of all intellectual property and prototypes and founding our company. The intellectual property was fully transferred to the company at the time of incorporation."

"Our technology is software-based and cannot be easily patented, at least in Europe. The product lifecycle is moreover quite short in our business areas. Product leadership will therefore be maintained mainly via an ongoing investment in new product development strategy. Key founders are engaged by contract to remain in the business for the next 5 years at least. Access to their know-how and their commitment to the business development are therefore fully secured."

"We will keep our trade secrets that we acquire in manufacturing, assembly, control and support closely to ourselves and will not outsource production or even services to a country with low ethical standards on intellectual property. The company's technological basis, administration and customer correspondence is secured on encrypted servers. In addition, strict employee management policies and contracts have been put in place to avoid any leakage of confidential information inside the group. "

"The community trade marks X and Y, as well as the domain names Q and Z are registered and held by the company. The domain names are registered in their .net, .com and .eu variants."

2.2 The description of the contractual relationships with third parties

2.2.1 Technical agreements in place or foreseen

The contracts secured or planned with external contractors, researchers, integrators or suppliers should be clearly identified in the business plan and a policy should be in place for developing sound strategic relationships with those external stakeholders. The scope and framework of any technical partnerships should be clearly defined. Access to key IP needed for future product developments should be secured, while too restrictive and locking-in alliances should be avoided. Make sure that the company has access to what it needs but remains free to act and react in a competitive way notwithstanding existing formal agreements. Those issues will typically be checked by potential investors or new technology partners interested in the business. Setting out the global partnership scheme chosen for the company in the business plan will provide a

clear vision and roadmap in terms of collaborations and will help to clarify any potential uncertainties.

Here are some examples of wording which can be used to describe the technical partnerships of the company in the business plan in a precise and sufficiently well-defined way to set the scene for external readers:

"That partner will supply engineering services to our company under a non-exclusive short-term manufacturing contract basis. No transfer of rights from our side and no access to our proprietary IP are involved in the agreement."

"Pursuant to patent cross-licence agreements, we license our patent to our automotive partner for integration into their own product range in the United States and, in return, receive rights from that corporation in respect of the following patents which they own and license:.."

"Our company will benefit from fundamental or applied research results in new computational algorithms based on its long-term partnership with X. Future product developments with X will be the subject of collaboration or R&D agreements that clearly define who owns the IP. In the event that the company funds the research, it shall own the IP. In the event that foreground IP in a project is meant to be owned by X, the company will negotiate a first option on an exclusive, worldwide sub-licensable license on those assets in the framework of the collaboration agreement signed for that specific project."

2.2.2. Commercial agreements in place or foreseen

The sales strategy is one of the most important sections of the business plan, since the overall goal of the document is to help clarify, focus and question the business strategy chosen to exploit a given know-how or technology. A typical mistake made by entrepreneurs when describing their market size is to describe the global market potential without questioning the part of it which is actually achievable to them.

Most businesses require establishing ties with adequate partners and allies to be able to reach and fulfil the needs of a very wide range of somewhat diverse target customers. Those relationships should be carefully drafted so as not to give unlimited access to the company's core intellectual assets to third-party organisations without proper legal frameworks in place between the partners.

Be as precise as possible in the description of your existing and future partnerships: Are they long-term, exclusive, limited to a given territory? Are there some contractual milestones and targets which have to be achieved by each specific partner?

The following wording for instance is to be considered too vague to be highly relevant in the context of a business plan:

"We will support and enhance our direct sales efforts through the development of strategic partnerships arrangements at different levels:

- *consulting partners;*
- *solution partners;*
- *hosted solution providers;*
- *OEM partners."*

Commercial exclusivity is typically to be granted only when there is a specific reason why and when it is fully justified by the global business strategy (e.g. exclusivity is given on the commercialisation of a 3D camera to a very large consumer device manufacturer with worldwide distribution channels, given the fact that the entrepreneurs are not interested in serving that B-to-C market themselves and intend to focus in the long term on a number of B-to-B professional market segments instead). From a general point of view, exclusivity has a price, which should be reflected in the revenues derived from the commercial agreement as described in the financial plan for the business.

On the other hand, direct and indirect sales channels, if co-existing, should be organised in a way so as not to cannibalise each other. A clear vision and strategy in the field of IP commercialisation naturally induces a clear repartition of roles on different market segments or different territories.

The following examples illustrate the description of the commercial agreements being sought in the business plan, referring to precise IP-based distribution schemes:

"It is our strategy to have a business model that will generate recurring sustainable revenues. Actually, as soon as the company has a perfect mastery of its technologies (in two years from now), it will enter commercial agreements with already identified leading manufacturers in their respective market. The partnership model has three arms:

- *the mere selling of finished products by our partners as far as RFID tags are concerned;*
- *manufacturing and distribution contracts with payment of licensing fees (industry standards are just under 10% but with excellent margins), as far as solar cells are concerned;*
- *fee-based know-how transfer contracts where we will put at our partners' disposal our skills and core competencies for improving their own product line as far as biochips are concerned."*

"We will target potential non-exclusive licensors for our equipment, looking for organisations which have:

- the capabilities to install the equipment;*
- access to our specific end-user industrial markets as described in the market section;*
- an established marketing, sales, distribution, fulfilment, customer service and maintenance support infrastructure;*
- past history of licensing other organisations' products and services."*

2.3 IP-related elements in the financial plan

The "Financials" section of the business plan is aimed at describing the current status and expected development of the business, both in terms of assets and financial revenues. A correct estimate of the value of the company itself and the market value of its products and services will provide credibility to your financial estimations. Although those sections typically require the involvement of a professional accountant, make sure that you understand the global logic behind the numbers and are in a position to answer questions on the different assumptions and values integrated into the business plan. This means being aware of the value of the IP assets owned by the company on the one hand and being able to discuss the IP-related revenues which can be obtained from the target customers on the other hand.

2.3.1 Estimate the value of the IP assets owned by the company

Being realistic on the value of the IP is especially relevant when looking for external investors or if you plan to use your IP assets as security for a loan. The use of external expertise and a well-known accounting method is highly recommended for the valuation of your business assets. The figures included in the business plan should be realistic and based on a proven IP valuation methodology. A range of existing literature can be used to familiarise yourself with the different methods, as well as their advantages and drawbacks².

Please note that the calculation is always an estimate and that the value may be subject to further negotiations when discussing with potential partners or investors. In the business plan, it is however to be incorporated as a fixed amount in a projected balance sheet, being considered an intangible asset of the business, as illustrated in the projected balance sheet here below.

² See for instance the IPR Helpdesk Fact Sheet on Intellectual Property Valuation, available in our online library.

Projected Balance Sheet						
Years ending: December 31, 2006 - December 31, 2011						
	2006	2007	2008	2009	2010	2011
ASSETS						
Current Assets						
Cash	282'420	1'437'520	-118'386	3'989'646	18'371'246	46'162'846
Material and Stock	0	1'200'000	1'200'000	1'200'000	1'200'000	1'200'000
Total Current Assets	282'420	1'437'520	-118'386	3'989'646	18'371'246	46'162'846
Fixed Assets						
Property	0	0	300'000	300'000	300'000	300'000
Assembly Hall	0	0	2'200'000	2'200'000	2'200'000	2'200'000
Equipment and machinery	0	500'000	500'000	500'000	500'000	500'000
Mobile Prototype	150'000	150'000	150'000	150'000	150'000	150'000
Less: accumulated depreciation	75'000	412'500	915'000	1'417'500	1'920'000	2'422'500
Total Net Fixed Assets	75'000	237'500	2'235'000	1'732'500	1'230'000	727'500
Intangibles						
Intellectual property	12'000	25'500	145'500	147'300	149'100	150'900
Less: accumulated depreciation	6'000	18'750	85'500	146'400	148'200	150'000
Total Intangibles	6'000	12'750	60'000	900	900	900
TOTAL ASSETS	363'420	1'687'770	2'176'614	5'723'046	19'602'146	46'891'246
LIABILITIES AND OWNER'S EQUITY						
Current Liabilities						
Accounts payable	0	0	0	0	0	0
Total Current Liabilities	0	0	0	0	0	0
Long-term Liabilities						
Long-term loans payable	0	0	0	0	0	0
Total Long-term Liabilities	0	0	0	0	0	0
Owner's Equity						
Invested capital	512'500	2'512'500	2'512'500	2'512'500	2'512'500	2'512'500
Accumulated retained earnings	-149'080	-824'730	-335'886	3'210'546	17'089'646	44'378'746
Total Owner's Equity	363'420	1'687'770	2'176'614	5'723'046	19'602'146	46'891'246
TOTAL LIABILITIES and OWNER'S EQUITY	363'420	1'687'770	2'176'614	5'723'046	19'602'146	46'891'246

2.3.2 Set (realistic) expectations in terms of IP-related revenues

Standard royalty rates in a given technical field can be derived from searches on the internet and business databases as a basis for checking the adequacy of expectations with the rates used on the market.

If licensing or other IP-based revenues are representing a significant amount of your projected revenues, it may be worth describing your global policy in the business plan from this point of view. Standard licence agreements should set minimal expectations, clearly stated and included in the formal collaboration agreements with the commercial partners.

Here are some examples of information about the existence of such target-oriented clauses in the standard licensing agreements of the company:

"Each licence agreement includes a performance clause that ensures that the licensing agreement doesn't remain into force if the licensor fails to perform as forecast."

"Our licence agreements include clauses setting pricing options and discounts to ensure that licence income levels are being maintained."

3. IPR-related information in the description of the global business and technological ecosystem

Since opportunities always arise in a given context, a precise description of the chosen market segments is required in the business plan. Moreover, explaining how those markets will be successfully approached in spite of pre-existing competition or the availability of alternative technologies is a very important element in the description of the business model and the commercialisation strategy. IPR-related information can be extensively used to perform that specific exercise.

3.1 IP intelligence as a market analysis tool

Searching registers for detailed legal, technical and business information about other market players indeed brings flesh to the bones for the market analysis in the business plan and allow the mapping of the most relevant business and technological ecosystems. Patent databases especially can be used for such purposes.³ Beyond ensuring that you have freedom to operate and can market your technology, it can provide objective and neutral knowledge to feed the market related section. Here is an example of knowledge derived from patent search which can be integrated in the market-related section of the business plan:

"The evolution of patent activity over the years for fraud in electronic funds transfer or fraud in financial transactions shows a strong need and interest in new technologies. This technology had a first peak in 2000 and is currently still very active. Based on the list of countries in which a high number of patents have been filed, there is a worldwide market with strong opportunities in the United States, Australia, Europe, and Japan."

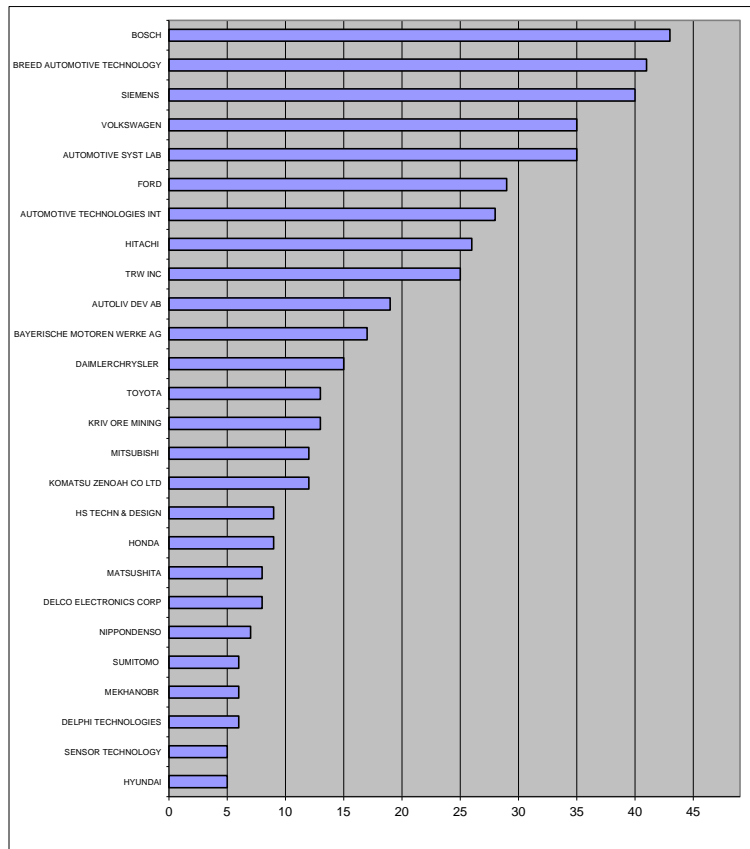
3.2 IP monitoring as a competitive positioning tool

A thorough and detailed analysis of the competition provides strong-added value to any business plan. Competitors should not only be identified but their market presence, strategies and strengths should be well known and described. It is recommended to include a table in the business plan summarising the positioning of the competitors from those different points of view. That can serve to illustrate the unique character of the products or services of the company and how they are superior to competing offers available on the market. Patent and trade mark databases are very useful tools in which to research to gather information on existing competitors.⁴ Here is an example of such an analysis:

³ For details on patent search, please consult the fact sheets "How to search for Patent Information" and "Automatic Patent Analysis" available in the online library.

⁴ For details on trade mark search, please consult the fact sheet "How to search for Trade Marks" available in the online library.

Out of 899 patents in crash sensors, the following top commercial patent owners can be identified:



Among those, Bosch, Siemens and Delphi Technologies are our closest competitors, given the technical features of the sensors which they offer. A detailed comparison of our technology versus their own systems is provided in the table below.

GET IN TOUCH

For comments, suggestions or further information, please contact

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ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects focusing on RTD and CIP. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

Helpline: The Helpline service answers your IP queries within three working days. Please contact us via registration on our website – www.iprhelpdesk.eu – phone or fax.

Website: On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

Newsletter and Bulletin: Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

Training: We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email at training@iprhelpdesk.eu

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