

How to Help the Little Startup in the World of Tech Giants

by Martensen IP | Oct 25, 2018 | Intellectual Property Due Diligence



When consumers think of "tech" companies, Apple, HP, Cisco, Microsoft, Samsung, and many other technology giants come to mind. While all of these organizations are clearly innovators, they do not, even when combined, account for the majority of innovation in the United States. The vast majority of innovation occurs in small companies, many of which have fewer than 10 employees. Small, innovative companies live to create new technology. They are passionate about discovery, research, development, and modernization.

While full of ideas and talent, they are often scraping by on a shoestring budget. Management discussions at small tech companies are more likely to be over pizza and a beer, talking about how to make next month's rent, than in a boardroom figuring out expansion plans. But one thing all technology companies share is that their foundation and their potential for success rests on the ability to conceive, develop, and produce new technology.

SBIR Intellectual Property: Government Programs That Enable Innovation

The government has long recognized that fostering growth in this field of tech seedlings is a good investment in our country's future. Indeed, supporting small business is the entire focus of the Small Business Administration (SBA). Recognizing that the easiest way to promote technology development is to offer money for new ideas, the SBA came up with the [Small Business Innovative Research \(SBIR\)](#) and Small Business Technology Transfer (STTR) programs.

These programs identify fields of study in which the government is seeking advancements and offers funds for development of proposals, prototypes, and in some cases, products. The amount of funding provided is not insignificant either. Depending on the topic and agencies involved, a phase I grant (preparation and submission of a proposal) can reach \$225,000. And if the government likes the proposal, they can grant up to \$1.5 million to develop a single prototype (phase II).

Gaining an Enormous Customer Without Sacrificing Intellectual Property Rights

So, what's the catch? Well, in exchange for this SBIR funding, the government has the right under the SBIR patent rights clause, sometime in the future, to make or produce the product, or to have others make and produce it on its behalf. That right occurs four years (five years when dealing with the DoD) after the date your last delivery to the government. In the meantime, the government is obligated to buy the product (assuming it likes the product) from you. And here is even better news: you own the rights to the product and are only granting a license to the government! Any commercial opportunities that exist reside solely in your corner. That is, if you have taken the steps to protect the technology.

These rights are laid out in various regulations dealing with government acquisitions such as the Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation (DFAR) supplement. But ultimately, from the small business' perspective, the SBIR and STTR programs provide undiluted capital. Companies look fondly upon the opportunity to be the sole source supplier to the government without giving up ownership, and indeed SBIR/STTR grants provide that path forward.

A Strategy for Protecting SBIR IP Rights

So, what does a small company need to consider when taking this approach and leveraging an SBIR intellectual property agreement?

1. **Define a long-term protection strategy.** While the FAR and its supplements will govern your relationship with the government in terms of rights to use the IP you develop, those directives do not govern protection in the commercial market. A long-term protection strategy should be in place to preserve your competitive advantage in both the government and commercial marketplace, and that strategy has to begin upon the submission of the proposal.
2. **Have an accounting system.** Rights in government contracts are often driven by who pays for what. Having an adequate cost accounting system is critical to understanding and controlling IP rights when dealing with the government.
3. **Assert and mark your IP.** Using proper marking nomenclature and legends preserves your SBIR IP rights.
4. **Expect to work with one of those tech giants.** The government, like any large institution, is risk sensitive. Despite the acceptance and excitement about a piece of technology that a small company produces, the fact that it comes from a small company presents risk. The government will direct large companies to work with the small company as a way to mitigate that risk. That alliance can be both an opportunity and a gamble. Identifying, asserting, and marking what the small company owns is critical in maintaining that relationship. Doing so demonstrates to the large company the value the small business brings to the table.

Utilizing the SBA's [SBIR](#) and other programs not only allows federally funded small businesses a chance to employ their passions in creating and developing new technology, it creates opportunities for smaller companies to compete with these tech giants and expand their business.

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