

LARRY K. ROBERTS
PETER J. REITAN

LAW OFFICES OF
LARRY K. ROBERTS, INC.
P. O. BOX 8569
NEWPORT BEACH, CALIFORNIA 92658-8569

TELEPHONE
(949) 640 6200

FACSIMILE
(949) 640 1206

July 5, 2005

Marc A. Maury
Maury Microwave, Inc.
2900 Inland Empire Boulevard
Ontario, CA 91764

VIA E-MAIL
CONFIRMATION BY MAIL

Re: License Fee Considerations
MAU2.012

Dear Marc:

This is further to our conference on June 7th, and your letter of June 13th regarding compensation percentages for licensing an invention, and particularly the inventions of Philippe Boulerne.

As we have discussed, there are no "standard" percentages, and no hard and fast rules. That said, I can provide the following guidance. In the following discussion, the technology owner/inventor is sometimes referred to as the "licensor," and the party taking the license is sometimes referred to as the "licensee."

Royalty Types

License agreements for product-oriented inventions often use a royalty rate based on the amount of product sold. So, for example, for a "widget" product, this might be a flat amount per product sold (e.g. 25 cents per widget sold). Or it might be a percentage of sales, typically a percentage of net selling price per widget, e.g. 3% of the net selling price per widget sold in a given reporting period. In this case, if the net selling price is \$10 per widget, and the royalty rate is 3%, the royalty per widget sold is \$.30. Sometimes there is an up-front payment, which might be applied against future royalties.

Factors

Factors which may affect the royalty rate determination are varied, and include the following:

1. The stage of development of the invention. If the invention is fully developed, and the final product designed and prototypes constructed and proven, the less risk is involved, and the lower the expense to the licensee to complete commercialization. This would weight in favor of a higher royalty. In contrast, if the invention is unproven, and substantial cost and effort is needed to test the invention, and design commercial embodiments, a lower royalty would seem in order.

2. The scope of intellectual property rights, typically patent rights. Is the invention patented? If not, can it be patented, and what scope of protection may be expected? If the licensee cannot expect that competitors will be blocked from copying the new product, then the value is substantially diminished. The licensee would be at a competitive disadvantage if he were paying royalties to the inventor, and the competitor could compete without paying any royalties. Some licenses include provisions that provide a reduced royalty rate after some period of time, if patent applications are finally rejected.

3. The profitability of the invention, e.g.. the profit margin on commercial sales. The lower the profit margin, the lower would be the expected royalty. Some of the commentators on royalty rates suggest using, as a start point, a royalty figure which would be 25% of the pre-tax margin, thus allocating 75% of the profit to the licensee, and 25% to the inventor/licensor. Other factors, including those discussed here, might move the royalty rate down/up from this start point.

4. The scope of the license. Royalty rates for non-exclusive licenses are lower than rates for an exclusive license. Geographic limitations may also affect the royalty rate.

5. Allocation of costs. Another factor in establishing royalty rates is the allocation of R&D costs, legal and patent fees. If the costs are borne by the inventor, the royalty rate may tend higher; conversely, if the licensee bears this cost, the royalty rate would typically tend lower.

Exemplary Rate Data

Most licensing arrangements are not in the public record. There have been some surveys conducted, and I've searched the web for some public data. There are two survey graphs I've located, and attach copies. Both list royalty ranges per industry. As you can see, one survey for the electronics industry shows that 50% of the royalties surveyed were in the range of 2% to 5%, 25% of the royalties were in the 5-10% range, and 25% were in the 10-15% range. The second survey shows, for the "electrical & electronics" industry, the average royalty was 4.2%.

Patent litigation sometimes concerns determination of a "reasonable royalty" for patent infringement damages. These typically would be on the high side, i.e. higher than royalties between a willing licensor and willing licensee, since the patent owner has been forced to litigation. I've attached excerpts from a patent law treatise listing a number of royalty rate determinations in judicial proceedings.

Marc A. Maury
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Please let me know if you have any questions regarding this letter.

Very truly yours,

A handwritten signature in black ink that reads "Larry K. Roberts". The signature is written in a cursive style with a large initial "L" and a prominent "K".

Larry K. Roberts

LKR:cma
Attachments

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