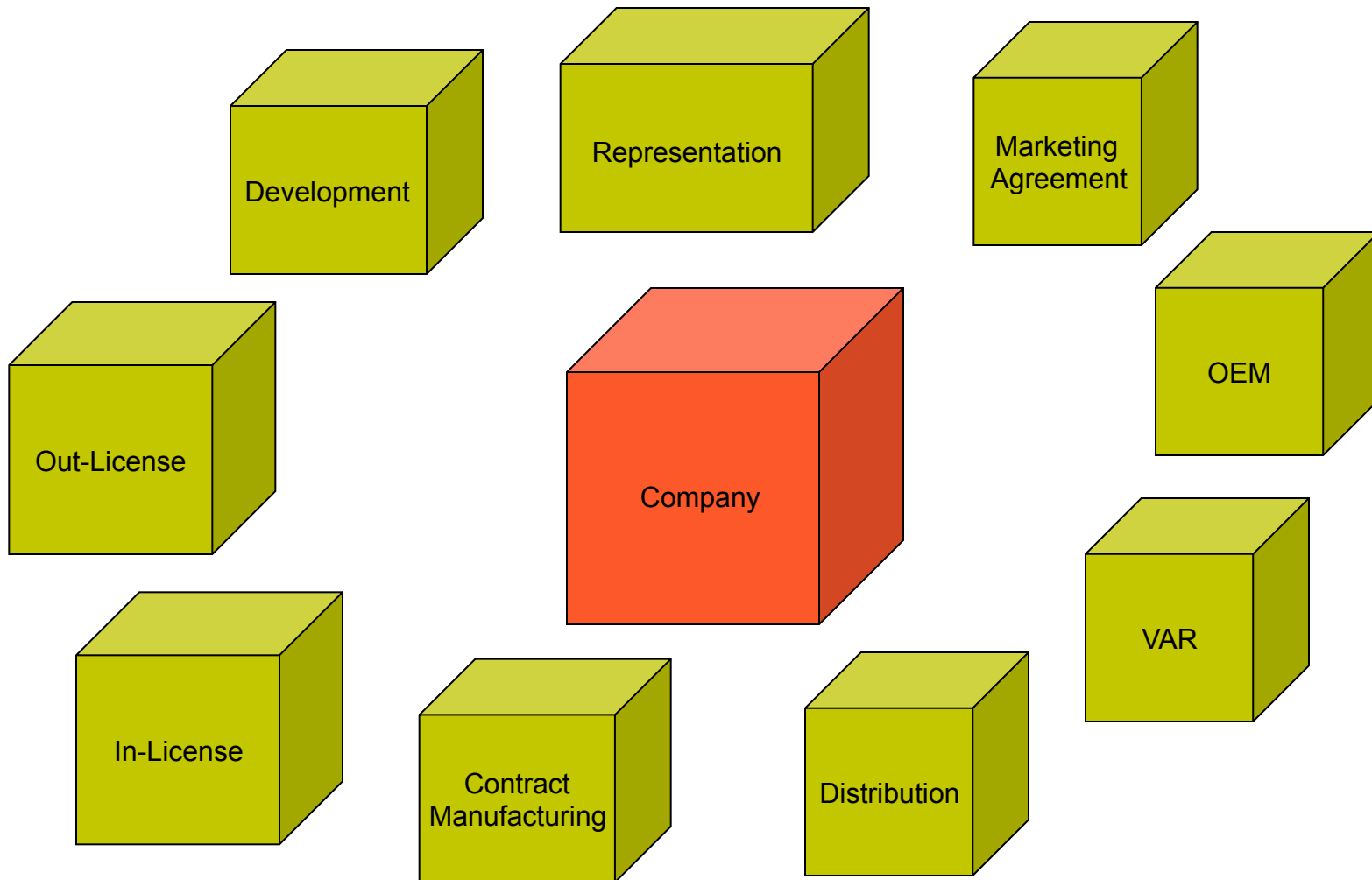


Agenda

- What are Strategic Relationships?
 - Why enter into Strategic Relationships?
 - General Framework and Common Issues
 - Closer look at certain Strategic Relationships
 - Questions and Answers (But Don't Wait!)
-
- Objective: Consider Strategic Relationships as an alternative approach

Strategic relationships are all around us!



A Rose is a Rose...

- “Joint Venture”
- “Partner”
- “Strategic Alliance”

Why Bother with Strategic Relationships?

- Use assets of third parties
 - Marketing/reseller – Marketing Resources
 - Out-License – Various Resources
 - In-License –Technology
 - Joint Development
 - Technology
 - Capital
 - Resources (e.g., lab, people, expertise)

Strategic Alliance Headlines - Credibility

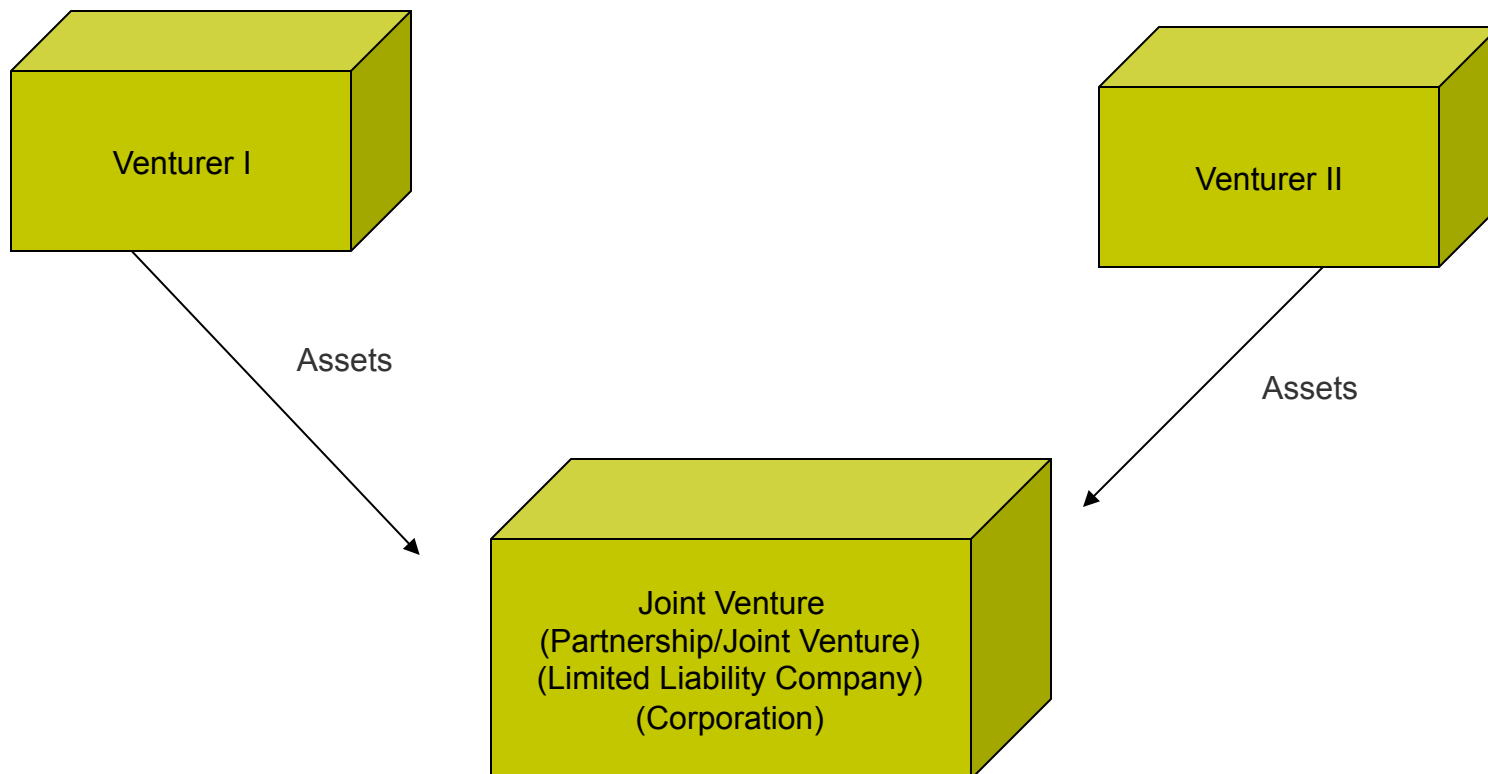
- “Fiserv partners with InvestEdge to Expand Reporting Capabilities for the Wealth Management Industry”
- “Thorley Industries lands \$215 M Hasbro deal, hiring”
- “Biogen, Knopp Strike Deal to Develop Treatment for Lou Gehrig’s Disease”
- “Philips, Immunetrics Unite to Target Infectious Disease”

Potential Benefits of Strategic Relationships

- Non-dilutive
- Potentially faster/cheaper
- Exploit third party assets – fewer mistakes

Two Flavors of Strategic Relationships

- Separate Entity



Reason for Entity Alliances

- Liability (marketing a new product)
- Value in enterprise (e.g., BillingZone)
- Deeper relationship
- Tax
- Accounting (consolidation)

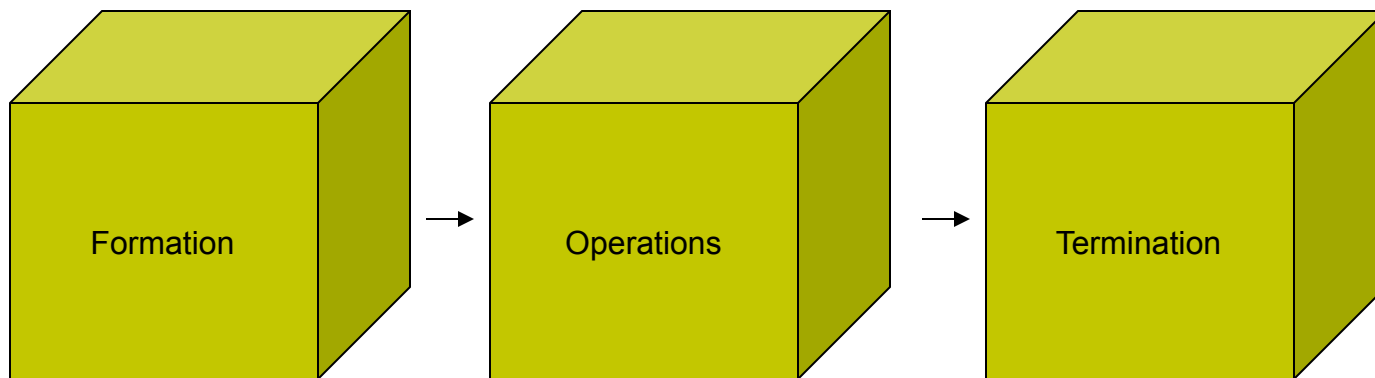
Reason for Contractual Alliances

- Lower Investment Cost
- Easier to commence relationship
- Easier to exit
- Shorter duration

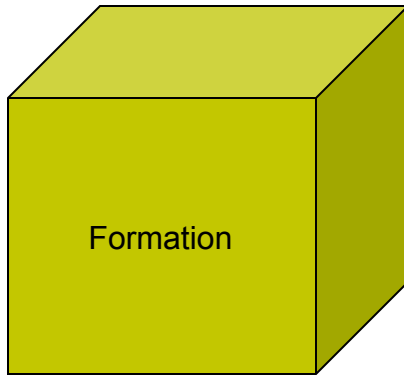
Cautions

- Remember the little person on your shoulder
- Consider the future of the business (e.g., reseller/branding) – Don't mortgage the future
- Consider
 - Time
 - Cost (somebody has to pay the lawyers)
 - Risk

Framework for a Strategic Relationship

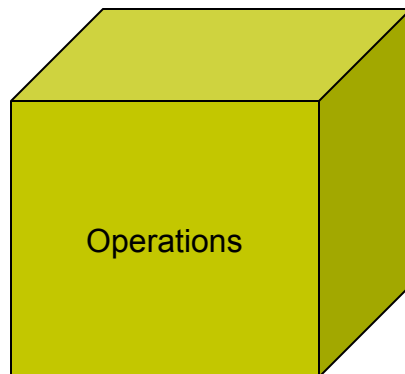


Framework for a Strategic Relationship



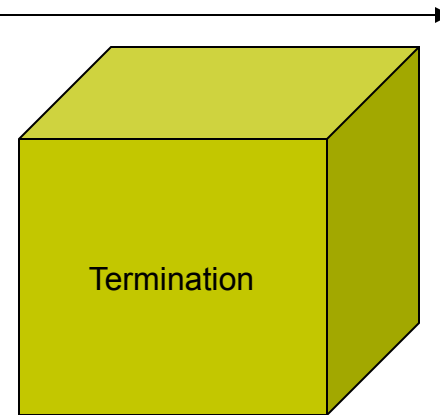
- What is each party contributing?
- What is each party NOT contributing?
- Exclusive vs. non-exclusive rights

Framework for a Strategic Relationship



- Who is operating?
- Who makes decisions? (Who decides who decides?)
- What if additional resources are necessary?
- How are proceeds allocated?
- Who gets paid for operating?

Framework for a Strategic Relationship



- When is the Strategic Relationship terminated?
- Cause/No cause
- Who gets which assets upon termination (e.g., intellectual property; developments; customers; trademark)?
- Buy/Sell

Dispute Resolution – Common Issues

- Avoid Disputes
 - Information Exchange/Meetings
 - Align interests/Identify different interests
 - Quality partners
 - Consider escalation/mediation
 - Ask the “What if’s”

Dispute Resolution

- Where does the fight occur?
 - Venue
 - Forum
 - Arbitration v. Court
 - 1 arbitrator v. 3 arbitrators
- Governing Law
- Who pays for the fight?
- What happens during the fight?

Dispute Resolution – Common Issue

- Remedies
 - Termination (out-license)
 - Damages/Liquidated Damages
 - Injunctive Relief (e.g., reseller)

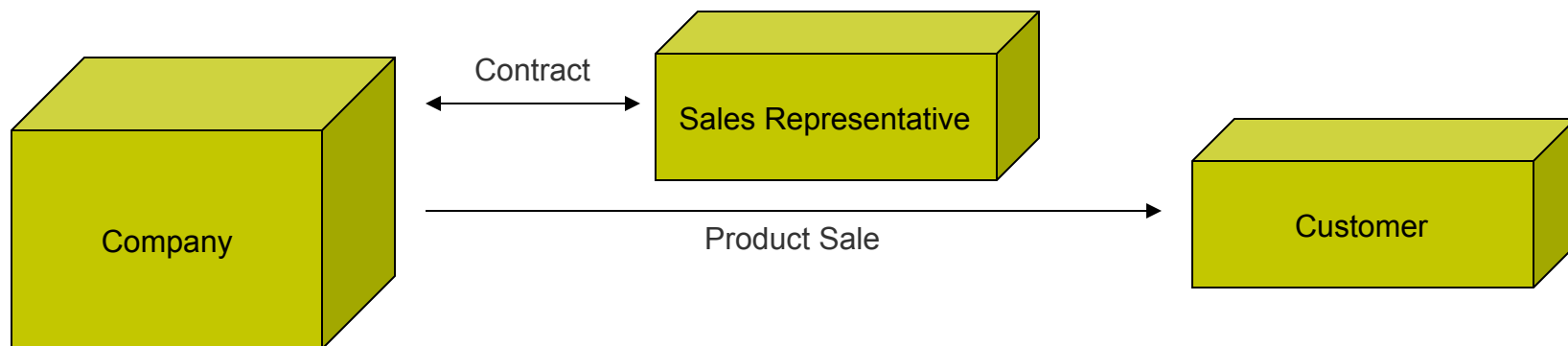
Assignment – Common Issue

- Third Party
- Competitors
- Successors
- Bankruptcy

Introductory Example - Lease

- Economic Matter: Leveraging Landlord's ownership of property
 - Rent includes
 - Operating expenses
 - Carrying Costs
 - Amortization of tenant improvements/lease cost
- In Reality: Debt transaction
- What is each party's contribution
 - Initial premises
 - Expansion premises
- Term
 - Initial Term
 - Extension
 - Early Termination

Sales Representative/Marketing Agreement



- Overview – Note: Sales Rep never takes title
- Benefits to Company
 - Leverage third party sales force/marketing team
 - Maintains goodwill/trademark of company
- Benefits to Third Party
 - Use already existing sales force – add another product

Sales Representative/Marketing Agreement

- Special considerations
 - Sales effort
 - Exclusivity (territory and product)
 - Company
 - Sales Representative
 - Limit Representations
 - Not an agent (can't bind company)
 - Protect goodwill – use of trademark/trade name

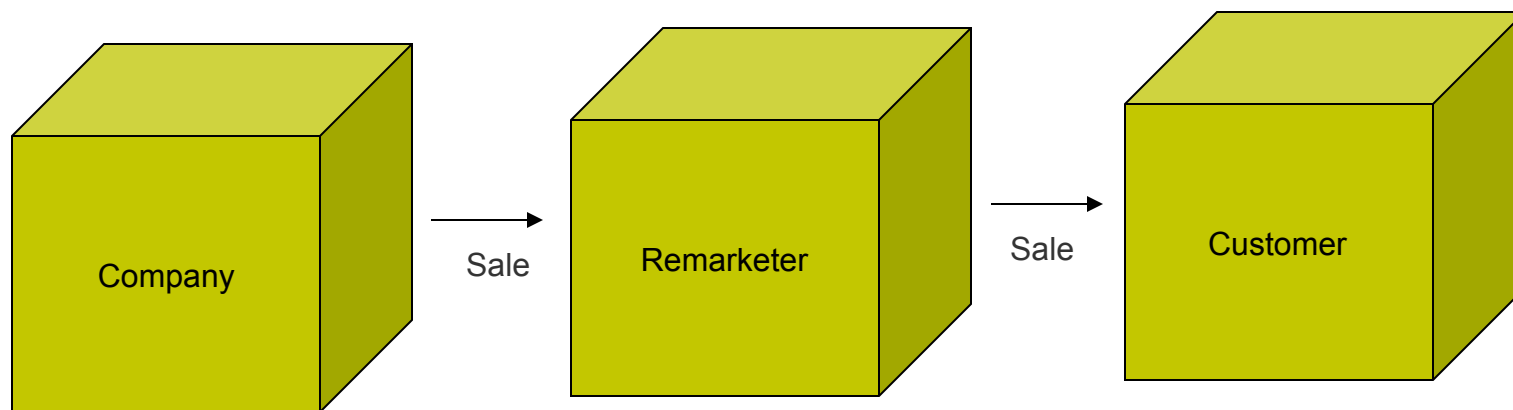
Sales Representative/Marketing Agreement

- Consideration/Payment
 - Amount per sales
 - Costs and expenses
- Termination
 - Notice
 - Company – short
 - Sales Rep – long
 - Cause – no cause
 - There may be laws
 - Avoid franchise characterization

Sales Representative/Marketing Agreement

- Post-Termination
 - Post-termination commissions (“Tails”)
 - Post-termination rights/obligations (e.g., non-compete)
 - Customer list
 - Confidentiality
- Dispute
 - Termination is final – only remedy is damages

Remarketing Agreements



- Remarketing/Distribution
- OEM (Original Equipment Manufacturers)
- VAR (Value Added Reseller)

Remarketing Agreements

- Lose/diminish value of goodwill
 - Trademark – use (mandatory and control)?
- Changes to product/service
 - Control
 - Liability
 - Warranties
- Payment
 - Verification
 - Reports
 - Incentive to pay (interest/penalty/pay for audit)

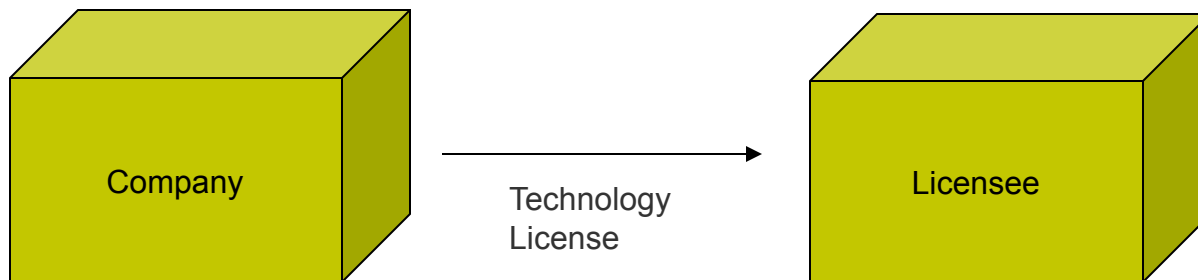
Remarketing Agreements

- Special Considerations (continued)
 - Pricing of Products and Services
 - Potential of undercutting
 - Minimum pricing (pay attention to anti-trust considerations)
 - Combination products
 - Inventory Control
 - Technology (see licenses)

Remarketing Agreements

- Termination
 - Notice
 - Carry-over inventory
 - Reliance
 - Trademarks
- Post-Termination obligations

Out-Licenses



- Description (common with Drug Development)
- Benefits
 - Use underutilized assets
 - Accelerate development and/or commercialization

Out-Licenses

- Keys to Grant
 - Identify the technology with specificity
 - Territory
 - Field of Use
 - Exclusivity (Note: Clarity re: exclusivity as to Licensor)
 - Transferability
 - Term

Out-Licenses

- Commitment of Licensee
 - Milestones/performance
- Royalties
 - Amount
 - Royalty-Base
 - Minimums
 - Joint Products

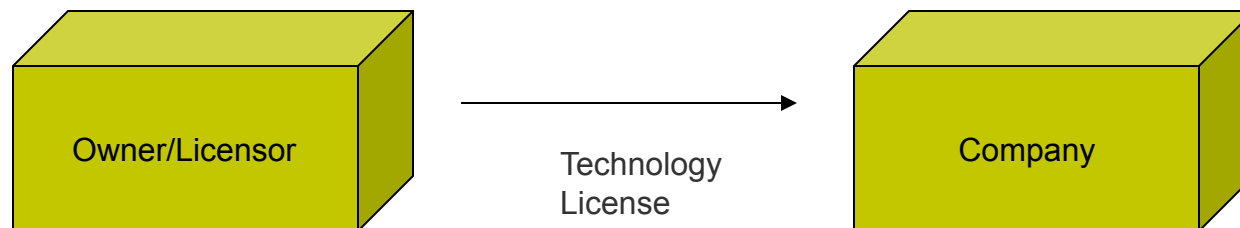
Out-Licenses

- Improvements/Developments
 - Licensee improvements/Licensor improvements
 - Rights to use
 - Licensor
 - Licensee
 - Obligation to pay royalties on Developments
 - Licensee
 - Licensor

Out-Licenses

- Term of royalty obligation
 - Consider survival beyond life of patents
- Intellectual property prosecution and infringement
 - Who prosecutes? Who pays?
 - Protect the base intellectual property
 - Who can sue? Who benefits?

In-Licenses

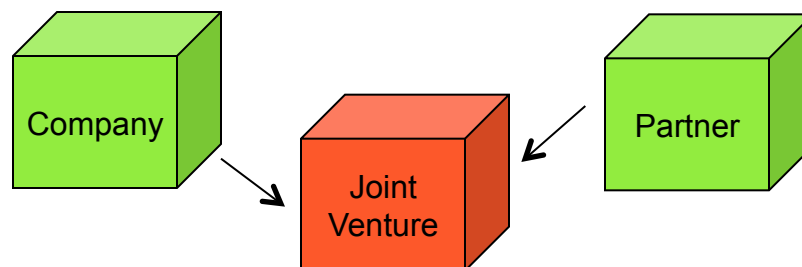


- Similar Issues
- Reasons
 - Critical asset
 - Develop more than 1 product
- Remember the “Shoulder Person”
 - Pay attention to Termination
- Improvements are key

Joint Development

- Formation

- Critical as to what is being contributed (and what is not)
 - Intellectual property
 - Cash
 - Technology
 - Lab/people
- Background technology v. new technology
- License v. transfer



Joint Development

- Operation
 - Decision-making – Typically a “Steering Committee”
 - What is being developed?
 - Who is on the steering committee?
 - How are decisions made?

Joint Development

- Ownership/Use of Development
 - Identify improvements/development/How do you know?
 - Use/commercialization
 - Royalties
 - Intellectual Property Prosecution
 - Intellectual Property Enforcement

Joint Development

- Joint Ownership of Patents → $1 + 1 < 2$
 - Each owner can exploit patent
 - Each owner can grant non-exclusive licenses
 - No right to grant exclusive licenses
 - No obligation to “Pay Over”
 - Need other owner to enforce patent

Joint Development

- Alternatives to Joint Ownership
 - Vest technology in one party, with a license
 - Allocate by field of interest/use
 - Place technology in an entity
 - Express agreements
- Royalty-Base
 - What is the base?
 - How are derivatives handled?
 - Reporting, etc.

Conclusion

- Pursue, consider and exploit Strategic Arrangements