



Managing Intellectual Property in a Consortium:

Striking the Right Balance Between Protection and Sharing in a Collaborative Environment

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ABSTRACT

In a collaborative environment, the management of intellectual property is crucial to ensure both the protection of innovations and the sharing of knowledge, while preserving the competitive edge of each member involved. To succeed, it is essential to put in place clear, appropriate mechanisms to secure rights, facilitate exploitation and enhance the value of the results obtained.

Maintaining this balance within a consortium also necessitates carefully anticipating the consortium's evolution and implementing contractual mechanisms that align both with the consortium's strategic collective objectives and the specific interests of each member.

This article explores some of the contractual mechanisms that are essential for preserving the common and individual interests of members, and for maintaining the right balance within the consortium between protecting innovations and sharing knowledge.

In a world marked by an unprecedented acceleration in innovation, and increasingly competitive, the ability to create value and anticipate change is becoming a major challenge for companies. In response to this challenge, companies are choosing to form consortia to pool their resources and share their knowledge. This collaborative approach enables them to not only strengthen their competitive position in the market, but also to access opportunities they would not have been able to seize individually.

The consortium, however, introduces a real challenge in terms of intellectual property (IP) management, and in particular how to reconcile sharing knowledge and protecting inventions, while preserving the competitive advantages of each member.

The Foundations of a Successful Balance

This challenge must be anticipated by the members in the consortium contract. Indeed, although IP rights are governed by a complex legal system, the contract is the only tool that makes it possible to organize the distribution of rights among members, and to structure the joint management of results generated by the consortium. Nevertheless, its effectiveness depends on addressing several key aspects to maintain an optimal balance between "protection" and "sharing" within the consortium.

One of these fundamental aspects is the distinction between IP rights acquired prior to the consortium ("Background"), IP rights generated within the consortium ("Foreground") and IP rights developed by a member independently alongside the consortium ("Sideground"). This distinction is essential for assigning ownership rights and to define their access conditions and use limitations. It represents the first step toward a considered balance, by clearly defining what forms part of individual assets and what belongs to collective creation.

The consortium contract must define and categorize them before specifying how they are to be allocated. It must also lay down the conditions of co-ownership, joint management and the rights of each co-owner, particularly in terms of filing, maintaining and defending IP rights.

Balanced Exploitation of Results Generated by the Consortium

The consortium contract must also provide a framework for the exploitation of the results generated by the consortium, whether this involves direct exploitation by a member, joint exploitation, or the granting of licenses to third parties. It must also anticipate collective and individual valorization strategies in order to reconcile the interests of individual members with those of the consortium and thus ensure a balanced exploitation of results.

The consortium contract must also organize members' access to results and ensure that such access is compatible with the consortium's strategic objectives. To this end, it may distinguish between three types of access rights (access for research purposes, access for exploitation purposes and access for third parties) and specify, for each of these rights, its scope, duration, terms and conditions, and any potential restrictions.

The flexibility of these mechanisms enables the consortium to adjust the balance between openness and exclusivity according to the consortium's strategic objectives. Accordingly, depending on the consortium's strategic objectives, licenses may be exclusive or non-exclusive, free of charge or subject to royalties, and may also be limited to a specific field of application or geographical territory.

Implementing Concrete Mechanisms for Controlled Sharing

To guarantee the coherence and security of these mechanisms, it is equally essential to establish in the consortium contract robust measures for tracking and controlling access to data generated within the consortium. This traceability is vital to ensure controlled sharing and to prevent any unauthorized use or disclosure of sensitive data.

To ensure this traceability, the consortium must implement tools to identify, classify and document any data deemed confidential as soon as it enters the collaborative perimeter. These tools may include:

1. A register in which all information relating to the nature of the data exchanged between members is recorded and specifying, for each data, its origin and status, as well as the persons authorized to access it and any restrictions on its use.
2. A collaborative platform equipped with access controls, timestamping tools or systems for authenticating members' contributions.

These tools not only make it easier for the consortium to identify results likely to be protected by an IP right and to allocate them among the members, but they also make it possible to determine whether results generated by a member should be protected by the consortium, and to adapt the conditions of disclosure of these results.

Such tools provide additional security for members against unauthorized use and encourage them to implement more transparent sharing.

Maintaining a Balance between Scientific Communication and the Protection of Innovations

Beyond this security, collaboration between academic and industrial members may pose a major challenge: their respective interests often diverge, particularly with regard to the publication of scientific results and the protection of innovations

resulting from research. This divergence of interests between members can generate tensions within the consortium. In order to anticipate such tensions, the consortium contract must define a procedure for publication that reconciles the imperatives of publication and the need to protect the consortium's results.

Several mechanisms can be implemented toward this end, depending on the strategic objectives set by the consortium. The consortium contract may thus provide for an approval procedure to protect the consortium's IP rights without hindering publication or provide a procedure allowing publication to be delayed or prohibited pending the filing of a patent application.

Example of an approval procedure that may be adjusted:

- Communication of the draft publications to the IP Committee for review
- Set a reasonable deadline for the IP Committee to examine the publication project (between 30 and 60 days).
- Limit the legitimate reasons for refusing or postponing publication, which must be based on objective arguments.
- Provide for an escalation mechanism to resolve any difficulties.
- Balanced Governance and Inclusive Decision-Making

Solid governance structures, including the establishment of an IP Committee (whose role is notably to oversee and define the strategic direction of the consortium's activities related to IP), play a crucial role in maintaining balance. They ensure fair and transparent management of IP resulting from consortium. The role, composition and decision-making processes of these governance structures must however be carefully defined to balance the interests of the various consortium members.

These structures must be composed of representatives who best reflect the plurality of stakeholders, while ensuring balanced representation and thus avoiding that one member or interest group does not predominate decision-making to the detriment of others. The inclusion of clauses laying down precise rules governing the appointment of these representatives, the duration of their term, their possible replacement, and the management of conflicts of interest, helps to ensure this balance.

The decision-making processes of these governance structures must also be clearly specified in the consortium contract (including procedures for convening meetings, quorum, voting and arbitration in the event of disagreement). Depending on the

importance or sensitivity of the decisions to be taken within the consortium (e.g., those relating to patent filings, publication of results or licensing), the contract may provide for reinforced voting rules, including qualified majorities or veto rights to protect the strategic interests of certain consortium members.

Finally, the implementation of escalation procedures to an independent authority in the event of persistent deadlock is strongly recommended to guarantee the continuity of the consortium's activities. This higher authority must have the necessary powers to settle the dispute.

Maintaining the Balance Over Time

The consortium is likely to undergo changes over time, whether through the renewal of its representatives within the governance structures, the arrival or departure of members or the end of certain projects. To anticipate these changes, it is essential to implement solid adaptation mechanisms in the consortium contract to preserve cohesion and maintain the balance between all members.

Several mechanisms can guarantee this stability:

- **Entry clause:** Any new member must undertake to respect the terms of the consortium contract, under the same conditions as if it had initially been a signatory, by signing an application to join the consortium.
- **Exit clause:** In the event of withdrawal, the terms and conditions applicable to the IP rights of the departing member must be clearly defined in the consortium contract. In particular, it must determine whether the departing member retains, or not, certain operating rights and maintain confidentiality obligations to protect sensitive data and preserve the consortium's competitive advantage.
- **Maintaining access rights:** The consortium must ensure the continuity of access rights to essential common resources to guarantee the continuity of the consortium's activities. The consortium contract must therefore clearly define the conditions for maintaining these access rights.

Resolving Tensions and Disputes While Preserving Balance

Despite the implementation of these protection mechanisms to ensure the balance between "protection" and "sharing," disputes may arise between members. In such cases, striking the right balance between sharing the information needed to resolve the dispute and protecting the consortium can be complex, as the resolution of a dispute necessarily involves the disclosure of such data which may expose sensitive consortium data to risks of disclosure or unauthorized use.

Given these risks, some members may be reluctant to share some of their data, even within a secure framework.

In this context, contractual dispute resolution mechanisms must incorporate strict data protection and security guarantees to ensure that data are not compromised during exchanges between the parties, whether during the amicable phase or in mediation or arbitration proceedings.

The amicable phase is an essential preliminary stage which, to be effective, must be governed by the consortium contract. To this end, the conclusion of a confidentiality agreement specific to this amicable phase and the implementation of traceability mechanisms for exchanges between parties, via a secure digital platform, make it possible to limit the risk of unauthorized disclosure of sensitive consortium data outside the strict framework of dispute resolution.

Amicable and alternative dispute resolution methods, such as mediation or arbitration, offer advantages for collaborative structures in an international context, and should be preferred as part of a consortium. They enable disputes to be resolved more quickly and limit the risk of disclosure of sensitive consortium data, which traditional courts cannot guarantee. They also help maintain lasting business relationships between members, which is essential in long-term collaborative projects.

Conclusion

The success of a consortium thus depends on its ability to create a robust contractual framework that effectively balances the occasionally conflicting interests of its members, while preserving their shared objective of value creation. This framework must be sufficiently comprehensive to ensure the legal certainty essential for protecting IP and innovations, but also flexible enough to enable dynamic, productive and mutually beneficial collaboration among all members.

Beyond the legal aspects, the success of a consortium also depends on a culture of trust and transparency between its members. This human and relational dimension, although less formalized, is a decisive factor in maintaining the balance between protection and sharing over the long term.

In a world where technological challenges call for increasingly diversified skills, the ability to build and manage consortiums effectively now represents a major competitive advantage. The players who master this delicate art of balancing protection and sharing will be best positioned to transform the potential of collaborative innovation into sustainable economic success. ■