

When “In” Means “Out” - Or How Advanced Micro Devices Collected \$1.25B Without Having to Make a Single Computer Chip

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Most every technology startup relies heavily on its own research efforts when developing new products and services. Nurturing a strong reputation for innovation can be essential to the long term health of a new venture.

The intellectual property rights in such unique know-how can themselves be a source of additional, high margin revenue. This “out-licensing” activity can also lead to strategic relationships with more established competitors. Most any entrepreneur would be envious of Medivation, who recently licensed their experimental Alzheimer drug Dimebon to Pfizer for \$225 million, a deal that could eventually earn the startup a cool \$725 million.

On the flip side, by acquiring rights to manufacture and/or sell a technology that has already been developed by someone else, the up front expense and uncertainty of new product development can sometimes be avoided. The upside is that a company can directly launch into more immediate, profitable marketing and selling activities. The downside of an “in-licensing” strategy is that it usually involves making up front cash payments or at least sharing revenue with the licensor.

However, a recent, well publicized development demonstrates how even in-licensing activity can lead to lucrative cash in-flows. Despite what is seen as a David and Goliath battle for dominance in the computer chip market, Intel and smaller rival Advanced Micro Devices (AMD) have actually shared their technology for years by cross-licensing each others patents. AMD has historically been limited to using Intel’s technology only in products that AMD directly made for itself. However, the apparent long cooperation ended earlier this year when AMD threw down the gauntlet and spun off a new company called Global Foundries (GF). With the formation of GF, AMD looked to end its direct involvement in the capital intensive semiconductor manufacturing business. Intel quickly responded by filing a patent lawsuit against AMD, with Intel arguing that AMD violated their cross-license agreement by forming GF -- the spin-off being a legally impermissible extension of Intel’s technology rights to third parties.

On November 12th, 2009, AMD and Intel struck a deal that appears to favor AMD. Intel agreed to pay AMD a cash settlement of \$1.25 billion, an obvious and immediate boost to AMD’s bottom line. This may also be a good deal for Intel considering it is facing \$1.45 billion in possible antitrust fines in the European Union.

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When “In” Means “Out”...
continued page 2

Intel also agreed to drop its patent case. AMD in turn agreed to drop its antitrust case against Intel that included lawsuits in the U.S. and Japan, and complaints filed with various regulatory agencies throughout the world. In what amounted to letting bygones be bygones, both parties agreed to avoid yet another long and expensive legal battle.

Lastly, AMD and Intel agreed to a new patent cross license. Most notably, the new license allows AMD to have others, such as GF, produce chips for AMD using technologies licensed from Intel. Not only will this spare AMD the enormous continued cost of having to make its chips in-house, but it will also allow AMD to sell off GF as a possible profitable and legally viable venture to outside investors.

Thus, with careful protection of their own technology, and savvy engagement with their primary competitor, AMD lives to see another day. The rest of us should expect a new phase of the microprocessor industry with perhaps even more viable competitors to Intel.

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