

THIS MONTH'S MEETING

TUESDAY,
 APRIL 13, 2010

WPI, WORCESTER
 Campus Center Odeum

NETWORKING: 5:30 – 6:30 P.M.

MEETING: 6:30 – 8:30 P.M.

ADMISSION:

Free – \$125 members & students

\$30 – general public

\$15 – WPI alumni

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The WPI Venture Forum is a
 program of the Collaborative for
 Entrepreneurship & Innovation at
 Worcester Polytechnic Institute



Find Financing and Stay a Full Owner

Most entrepreneurs need financing to launch their great idea into the marketplace, but don't want to hand over a percentage of their new company in exchange for funding. Non-equity financing is possible in today's challenging marketplace, as three experts explain alternative avenues to funding at the April 13 WPI Venture Forum meeting.

John Hession, partner with Cooley Godward Kronish, will discuss case studies that demonstrate the value of strategic partnerships for start-ups; **Natalie Rudolph**, PhD, of Rudolph Biomedical Consulting, will explore federal research funding options through the SBIR and STTR programs; and **Luis Miguel Barros**, senior vice president with the Massachusetts Life Sciences Center (MLSC), will describe opportunities to apply for the state's Accelerator Program for early-stage companies. A facilitated audience question and answer session will follow their presentations.

As a partner in the firm's venture capital financing and emerging companies practice groups, **Hession** has worked with both start-up and later-stage companies in the medical device, life sciences, software and digital media fields, as



JOHN HESSION,
 Cooley Godward
 Kronish



NATALIE RUDOLPH, PhD,
 Rudolph Biomedical
 Consulting



LUIS MIGUEL BARROS,
 Massachusetts Life
 Sciences Center

well as with venture capital and angel funds in these areas. He helped to open Cooley's Boston office in 2007. Previously, he was a lead attorney for more than 20 years with Testa, Hurwitz & Thibault LLP, representing venture-backed technology companies at all stages of financing. Listed in *Best Lawyers in America* in 2009, he was also named to the *Super Lawyers* list, and has taught at Boston College Law School and Boston University Law School. He earned his JD degree *cum laude* from Boston College and his BA degree *summa cum laude* from the University of Notre Dame.

Rudolph provides consulting services to small biomedical companies and research institutions to identify government grant funding opportunities, plan research and development projects, write grant and contract proposals, and coach scientists on the grant application process. She

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100 INSTITUTE ROAD, WORCESTER, MA 01609
Gina M. Betti, Administrative Director
508.831.5075 | ventureforum[at]wpi.edu

A LETTER FROM THE CHAIR

Financing's Tight Wire Act

As an entrepreneur that has raised more than \$18 million in unconventional financing in the past 11 years, I am no stranger to the subject of the April 13 WPI Venture Forum Program: non-equity financing. Start-ups always face trade-offs and a delicate balancing act when taking investment capital versus non-dilutive funds, such as development funding and grants.

What are some of these trade-offs?

- **Private equity:** Taking money too early from investors can reduce your ownership in the company. However, owning 100 percent of a company worth very little makes no business sense, and the right investor (family and friends, angel or venture capital) can make a real difference. If the investor has industry-specific knowledge and/or a track record for achieving solid returns on investments, it can help guide the company throughout its lifecycle of transactions, subsequent financing rounds, and achievement of liquidity.
- **Development funding:** Taking development funding too early from a strategic partner has the downside of potentially settling on a low royalty payment that could hurt the company in the future or prevent a successful exit. After settling for smaller-than-preferred royalties for my first few deals, my new rule of thumb is that for anything less than \$1 million in development funding, I offer a limited period of exclusivity and technology "peeking rights."

- **Grants:** There is almost no downside to receiving Small Business Innovative Research (SBIR) grants except perhaps the length of time to receive the funds and their minimal coverage



Mitchell Sanders, PhD

of general and administrative expenses.

Grants can be a major PR boost for a company. The fact that you have secured funding provides greater credibility that often leads to equity investments.

Like anyone that has a balanced stock portfolio to mitigate risk, the best approach for an entrepreneur is to have a balance of partnerships, private equity and grants to fuel the company's growth.

Join us on April 13 for advice from three talented people in the biotech field: John Hession, an incredible lawyer with a finely-honed instinct for raising capital and structuring deals; Natalie Rudolph, one of the most talented consultants and SBIR grant writers I have ever met; and Luis Miguel Barros, who has deep experience on both the investment and entrepreneur sides of the equation. Bring your notepads and prepare to be schooled in entrepreneurial success. I look forward to seeing you there.

Best regards,
Mitchell Sanders '88, PhD '92
Chair, WPI Venture Forum
CEO and Founder, ECI Biotech

The False Marking Statute:

Change in Measure of Damages

Warrants Change in Defensive Measures

Most patent holders know that in order to recover damages from an infringer they must mark their product with the patent number. In patent infringement litigation, a patent holder who proves infringement may not recover damages unless the product is properly marked. Therefore, patent holders diligently make sure their patent numbers are visible.

But many patent holders fail to keep their marks current. As a product changes, it may no longer conform to the original patent claims. If the mark reflects an expired patent or the current product does not conform to the claims, the patent holder could be in violation of the False Marking Statute.

The False Marking Statute protects against the use of bogus patent numbers on products. It provides:

Whoever marks upon, affixes to, or uses in advertising in connection with any unpatented article the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public ... shall be fined not more than \$500 for every such offense. (35 U.S.C. §292)

"Every such offense" was previously interpreted as a violation involving a product type and/or patent number. Damages for violation of the False Marking Statute rarely exceeded \$500.

On December 28, 2009, the United States Court of Appeals for the Federal Circuit changed the false marking landscape in its *The Forest Group, Inc. v. Bon Tool Company*, (CAFC, 2009-1044) decision. On appeal, the Federal Circuit reversed the trial court on damages. The Court deviated from prior

decisions, and stated that false marking damages must be based on a "per article" basis, rather than per product type or patent. Every falsely marked article now constitutes a separate violation warranting damages of up to \$500.

Patent holders now face significant exposure if found in violation of the False Marking Statute. In particular, for companies that produce patented low-cost, high-volume products, this exposure could be astronomical. To make matters worse, the Statute allows *anyone* to file a claim for false marking, whether or not he or she has been harmed. Half of any award must be shared with the U.S. government; however, that will not discourage filing if large damage awards are possible. *The Forest Group* decision will likely provide abundant incentive.

As a result of this decision, patent holders will face increased scrutiny of their marking practices. Failure to remove the mark from a product that is outside the patent claims could result in significant damages. To avoid the risks arising out of *The Forest Group* case, patent holders should consider the following:

- Compare all patented products with the actual patent prior to approving the initial marking;
- Audit all existing products to determine whether their current marking practices conform with the patent claims;
- Prepare a schedule for expiring patents, and implement procedures for removing marks where appropriate; and
- Implement procedures following change in status of any patent claims, such as invalidation through litigation, to review marking procedures and adjust where necessary.

by
JOHN T. MCINNES,
Mirick O'Connell

MIRICK O'CONNELL
ATTORNEYS AT LAW

Additional protection against false marking claims can be achieved through opinion of counsel letters. An appropriate review by attorneys, accompanied by an opinion letter confirming the product is covered by the patent, should limit any false marking claims by eliminating the knowledge/intent requirement. Opinion letters will only be effective to the extent the product has not changed significantly after the analysis. Therefore, regular review of the products may be necessary.

Licensing practices should also evolve. A licensor should now require that licensees remove all patent markings upon request, and a licensor should now demand indemnification for any claims resulting from a licensee's false marking. A representation that

CONTINUED ON PAGE 6

A LOOK AT MARCH 2010'S MEETING

Break the Rules and

by

MICHAEL LAFLECHE



Keynote speaker John Huck



Co-moderator Ryan McDermott

It was back to basics at the March 9 meeting of the WPI Venture Forum with a session that focused on the strategies and tactics of the sales process, starting with an Ask the Expert session during the networking hour with sales consultants from Kurlan & Associates, Inc. and Bronze Sponsor QuiVivity Marketing Partners, and concluding with a case presentation from a local company trying to enter the office products market with green technology.

After the networking hour, co-moderator Jerry Shapiro, President and CEO of Fem-Medical, introduced keynote speaker John Huck, one of the principals of WINNING, Inc., who has more than 20 years of sales, sales management and entrepreneurial success, ranging from startups to billion-dollar companies.

Based on the Sandler Selling System that WINNING, Inc. provides to local businesses, Huck's presentation explained how the sales process had changed over the last few years and that success requires a system. Huck's

upbeat talk encouraged audience participation. He asked audience members to take out their business cards and write down three or four things they could do personally to increase sales, and then asked a few to share their ideas for his comment. How much could they gain by taking those steps?

The basics of the sales technique, he said, were to abide by the "BAT success triangle." To achieve success, focus on all three sides – Behavior, Attitude, and Technique. Techniques are important, but techniques alone (such as marketing) are rarely the key to success. The most important part of this triangle is behavior. If you don't undertake the day-to-day activities consistently, it doesn't matter how many techniques you employ or how wonderful your product is, you won't get results. This is where having a coach for accountability and tools to track your progress can be very helpful.

Unless the salesperson has their own selling system, the default sales system takes over, and that one is controlled by the prospective

buyer. About 50 years ago, Huck noted, salespeople developed a successful system that focused on "features and benefits." The first step uncovered a customer's need, the salesperson then presented a solution that solved that need and closed the deal. They later followed up with the customer to ensure the product or service was still satisfactory.

Customers eventually developed their own counter-system. When the salesperson uncovered a need and proposed a solution, the customer would then gather information, thus acquiring unpaid consulting services from the salesperson during the product demonstrations. When the salesperson tried to close the deal, they would hide and stall.

Huck's system breaks the rules of this traditional system. As he described, the first stage is "Bonding and Rapport," in which you communicate to your prospects the way they prefer to be communicated to while "Matching" your prospect's posture, body movements, rate of speech, volume, tone, favorite phrases, etc. Next is the development

Win More Business



Panelists and the case presenter they critiqued are (from left) John Huck, Rawl Rutter '88, Chris Golden and JMD Manufacturing's Carl Kinkel.

of an "Up-Front Contract." Create these mini-agreements every time you communicate with the prospective customer, he said. Then uncover the pain the customer experiences by asking good questions. If there is pain that your product can solve, the very next step is to ask if there is budget available to solve the problem. If there is funding, you move on to ask about the client's decision-making process and who is involved in that process.

Only after you gather all this information does the "Fulfillment" phase begin. Clearly review the up-front contracts made with the prospect and then present only what the prospect requires to resolve their pain. If you have a good up-front contract that states how your product responds to the customer's pain and the customer has the budget to purchase the product, then you have a sale.

The scariest part of this process, Huck said, is that once the customer agrees to purchase the product, the salesperson should ask "Do you really think this product can work for you?" This clears up any uncertainty about

the purchase and avoids the "buyer's remorse" syndrome. Huck's presentation demonstrated how a controlled and fair selling process can be a winning situation for both salesperson and customer.

Case Presentation:

JMD Manufacturing

Co-moderator Ryan McDermott, managing director of McDermott & Thomas Associates, introduced Carl Kinkel, director of sales for JMD Manufacturing. JMD is developing environmentally friendly products for document destruction and identity theft prevention. They feel their product, the Docu-Pulper™, can change the way companies destroy sensitive information. An environmentally-friendly product, it is a low-noise, portable and lightweight unit for document deinking and the destruction of sensitive and confidential documents.

Kinkel explained that the document annihilation industry is one of the fastest

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A Look at March 2010's Meeting

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growing segments of the office product industry. The JMD team includes several key executives, including Sushil Bhatia, CEO and founding member of the company, who helped develop the technology, as well as Jerry Faazee, Chief Operating Officer.

After taking questions from the audience, Kinkel was joined onstage by a panel of industry experts who reviewed his business proposition and sales pitch and offered their insights. The panel included Chris Golden, chairman of the Boynton Angels (a private investor group focused on early stage companies), who provides consulting services in marketing and strategic planning to various organizations involved in the high tech and telecommunications markets. Rawl Rutter '88, General Manager of Greystone/Indulplate in North Providence, Rhode Island also spoke, and John Huck provided sales advice.

The panel provided candid feedback to Kinkel. Rutter addressed JMD's sales channel and how important it is to have a plan in place. Golden added that companies should keep their plans concise, invoking the "KISS" adage (Keep it Simple, Stupid). Overall, the session helped the case presenter and



Networking is an important part of every meeting.

audience realize that basic selling skills are always in demand, and that good old-fashioned hard work remains the best predictor of success.

Michael LaFleche is the Regional Technical Manager with Computer-Aided Product (CAPINC). Michael has been helping New England manufacturing companies develop better products in less time for less cost for over 10 years with 3D CAD and simulation solutions. He can be reached at 203.494.5999 or mlafleche@capinc.com. ✓

Spotlight on Entrepreneurs

The WPI Venture Forum invites technology entrepreneurs seeking investors or potential partners to make a one-minute elevator pitch at monthly programs. We welcome pitches for funding, new team or board members, or technology licensing opportunities. Fill in the online form **one day prior to the program** and, if you meet the criteria, we will place it into a PowerPoint slide to be projected during your pitch. One pitch per business idea, per season. Please visit:

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The False Marking Statute

CONTINUED FROM PAGE 3

a licensee's products fall within the patent claims accompanied by indemnification should provide sufficient protection.

The *Forest Group* case has changed the rules governing false marking. Should trial courts start awarding significant damages on a per article basis, the number of false marking suits is guaranteed to multiply. These changes in the law have made the patent world a more dangerous place; however, prophylactic measures can shield a patent holder from potential liabilities.

John McInnes is an associate in Mirick O'Connell's Litigation Group and a member of the firm's White Collar Defense Group and Intellectual Property Litigation Group. His practice focuses on representing individuals and companies in business and intellectual property disputes, including patent and trademark infringement cases, and he can be reached at jmcinnes@mirickoconnell.com. ✓



PITCH FOR THE STARS

4th Annual WPI Venture Forum Five-Minute Pitch Contest

Got a great business idea? Ready to give it a reality test for prize money?

Applications now accepted from entrepreneurs starting, running or operating early-stage technology ventures in New England. Applicants will be judged by a committee.

At least 10 finalists will be selected to compete for prizes at the Five-Minute Pitch Contest held at the June 8 program. Enter at www.wpiventureforum.org.

Entry deadline is April 30

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Find Financing and Stay a Full Owner

CONTINUED FROM FRONT PAGE

has more than 20 years of experience in the biomedical/biotechnology industry and has helped raise more than \$22 million in non-dilutive grant funding. Prior to launching Rudolph Biomedical Consulting, she was director of scientific development at TSI Corporation (formerly Transgenic Sciences, Inc.) in Worcester. Rudolph earned a BS degree from Rutgers University and a doctorate in genetics from the University of Wisconsin (Madison), and has held post-doctoral research positions at the University of Rochester and the Harvard Medical School.

Barros serves as the senior vice president of investments and industry development for MLSC, part of the team responsible for implementing Massachusetts' ten-year, \$1 billion Life Sciences Initiative. Signed into law by Governor Deval Patrick in June of 2008, this economic development program was established to strengthen Massachusetts as a global leader in life sciences research, innovation, commercialization and employment. Barros has more than 20 years of

experience in the life sciences and healthcare technology industries, including I.C. Sciences Corp., Lilly Ventures, the Securities and Exchange Commission, as well as management positions with two businesses subsequently acquired by publicly-traded companies. He holds an MBA from MIT's Sloan School of Management, a BBA as a W.E.B. DuBois Scholar from UMass Amherst's Isenberg School, and he has completed the Harvard Business School Corporate Governance and Board Leadership Program. ✓

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The WPI Venture Forum has a Facebook group that is open – spread the word!

We also have a members- and sponsors-only LinkedIn group with special announcements and member benefits.

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2010 CALENDAR OF EVENTS

Second Tuesday Monthly Programs

*WPI Campus Center Odeum
5:30-8:30 p.m.*

- APRIL 13** Non-equity Financing in 2010
- MAY 11** New Opportunities in Robotics
- JUNE 8** Five-Minute Pitch Contest

WPI Venture Forum Radio Programs

WTAG 580 AM/94.9 FM

Saturdays, 5-7 p.m.

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Call in number: 508.755.0058

Networking Events and Focus Workshops

pre-registration required

- MAY 19** Boston Biomedical Research Institute, Watertown, 5:30-9 p.m.

Check the wpiventureforum.org home page announcement box for program listings throughout the year.

WPI Venture Forum RADIO SHOW

Are you looking for an entertaining, educational and interesting way to spend a couple of hours on a Saturday evening? Tune into the WPI Venture Forum radio show, every Saturday* from 5 to 7 pm on **WTAG 580 AM** or **94.9 FM** to hear interviews with area business professionals from a variety of industries. Call 508.755.0058 to participate in the discussions and ask your questions about entrepreneurship and managing technology-based companies.

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Visit wpiventureforum.org/Programs/radio.html and click on the Guest Form link at the bottom of the page.

**Sports events or late-breaking news stories may occasionally pre-empt the regularly scheduled program.*



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