June 29, 2015

Mr. Russell Golden  
Chairman  
Financial Accounting Standards Board

Mr. Hans Hoogervorst  
Chairman  
International Accounting Standards Board

Via Electronic Mail

Re: Proposed Accounting Standards Updates, Revenue from Contracts with Customers (Topic 606), Identifying Performance Obligations and Licensing; and Proposed Accounting Standards Updates, Revenue from Contracts with Customers (Topic 606), Deferral of the Effective Date

Dear Sirs:

Intellectual Ventures appreciates the opportunity to comment on the above-referenced Proposed Accounting Standards Updates ("ASU"), Revenue from Contracts with Customers (Topic 606), Identifying Performance Obligations and Licensing (the "Proposed Licensing ASU"), and Deferral of the Effective Date (the "Proposed Deferral ASU"). Intellectual Ventures supports the efforts of the Financial Accounting Standards Board ("FASB" or the "Board") to clarify this important new standard on revenue recognition with respect to licensing activities in advance of its effective date, and to allow participants sufficient time to implement the new standard to ensure a seamless transition to this important new standard.

Founded in 2000, Intellectual Ventures (IV) is the global leader in the business of invention. IV collaborates with leading inventors, partners with pioneering companies and invests both expertise and capital in the process of invention.

Like most companies, IV's investments are diverse: IV invests in and patents its own inventions based upon ideas it comes up with (build), IV purchases patents (buy) and IV collaborates (partner) with more than 4,000 inventors and nearly 400 institutions including many leading universities, governments and companies around the world to come up with new ideas that IV then patents. IV's monetization efforts also take different forms. IV monetizes its investments through licensing agreements, through selling patents directly to companies or by developing spin-out companies and technologies.

IV provides a variety of solutions for companies looking to develop and enhance their intellectual property (IP) strategies. IV has a patent portfolio of more than 40,000 intellectual property (IP) assets in more than 50 technology areas and counts many of the world's leading technology companies as customers and partners.
Comments regarding the Proposed Licensing ASU

Overall, we believe that the clarifications related to licensing are helpful and that the Proposed Licensing ASU will therefore achieve its objective of improving the operability and understandability of the licensing implementation guidance. We offer the following comments and suggestions for your consideration:

The ASU should clarify that patents for functional items are functional IP

We believe that the proposed guidance in paragraph 606-10-55-59 that distinguishes between functional intellectual property ("IP") and symbolic IP is a practical and useful approach. However, we suggest that the FASB consider providing additional clarity on how to apply this distinction to different types of licensing arrangements. For example, we note that paragraph 606-10-55-54d. groups patents and trademarks together as examples of licensing arrangements. Under the new approach, our understanding is that patents would generally be considered functional IP, whereas trademarks would generally be considered symbolic IP. Continuing to group the two together as examples could, therefore, cause confusion. In particular, because there is no example illustrating the application of this distinction to a patent, we believe it would be useful to include the following statement that appears in paragraph BC 45 in the body of the ASU, so that it will remain once the Proposed Licensing ASU is incorporated into the codification.

“Functional intellectual property generally includes intellectual property such as software, biological compounds or drug formulas, and completed media content (for example, films, television shows, or music). Patents underlying highly functional items (for example, a patent to a specialized manufacturing process that the customer can employ as a result of the patent regardless of the entity's ongoing activities) also would be functional intellectual property.”

The ASU should clarify that activities to maintain patent rights also do not constitute a separate performance obligation

We also agree with the proposed approach in paragraph 606-10-55-63 that activities to support or maintain functional IP do not significantly affect the utility of the IP, and therefore should not impact the basic revenue recognition model set forth; that is, if the license to functional IP grants a right to use the IP as it exists at the point in time, and the criteria in paragraph 606-10-55-62 are not met, the entity has granted a right to use the IP (as opposed to a right to access the IP), and revenue should be recognized at a point in time. We believe that activities to support functional IP, such as maintaining and defending a patent, are tangential to the basic licensing of the patent itself, and should therefore not impact the conclusion that revenue should be recognized at a point in time.

Furthermore, we believe that the proposed language in paragraph 606-10-55-64 b. is consistent with and elucidates the application of the proposed framework; namely, that guarantees provided by the entity that it has a valid patent to intellectual property and that it will defend that patent from
Unauthorized use do not constitute a separate performance obligation because such guarantees and actions protect the value of the entity’s intellectual property assets and solely provide assurance to the customer that the license transferred meets the specifications of the license promised in the contract. To ensure absolute clarity on this point, and to be consistent with the language in paragraph 606-10-55-63 that refers to an entity’s activities to maintain IP, we recommend that the language be modified slightly to state that activities by an entity to maintain a patent would be treated in the same manner, as suggested below (our proposed changes are underlined and deleted):

b. Guarantees provided by the entity that it has a valid patent to intellectual property and that it will defend that patent from unauthorized use—A promise to defend and/or maintain a patent right is not a performance obligation because the acts of defending and maintaining a patent protects the value of the entity’s intellectual property assets and it solely provides assurance to the customer that the license transferred meets the specifications of the license promised in the contract.

Finally, we find the flowchart in paragraph 606-10-55-63A helpful in illustrating the proposed approach.

**Additional guidance in the ASU on license restrictions is useful**

We also agree with the proposed guidance as set forth in paragraph 606-10-55-64a., that restrictions of time, geographical region, or use define the attributes of a license, and therefore shall not impact whether revenue arising from the license should be recognized at a point in time or over time; and we believe that the additional example 61B. (paragraphs 606-10-55-399-K through O) is helpful in illustrating this concept.

In our business, we often grant customers the right to a patent for a specified period of time. The patent is for IP with significant standalone functionality; the customer can derive substantial benefit from that functionality regardless of our further activity. Typically our licensing agreement terms routinely promise to defend the patent and pay ongoing maintenance fees on the patent, but as noted above, these are promised solely to provide assurance to the customer that the license meets the specifications of the license promised in the contract; the contract does not require, and the customer does not reasonably expect, that we will undertake activities to change the IP that is subject to the patent. Consequently, the nature of the patent is to provide a right to use functional IP, and the licensing agreement’s performance obligation is satisfied at a point in time. Accordingly, we agree with the proposed amendment in 606-10-55-64a., as it would clarify that revenue would be recognized at the point in time that the license is transferred to the customer.

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2We refer to the following statement in paragraph 606-10-55-63 (emphasis added): “Therefore, the entity’s promise to the customer in granting a license to functional intellectual property does not include supporting or maintaining the intellectual property.”
Additional guidance on royalty arrangements that do not vary based on a the occurrence of a future event is needed

Finally, regarding the guidance for sales or usage-based royalties in paragraph 606-10-55-65: We have encountered situations in which the royalty fee charged by a licensor to a customer for a given year is set based on the customer’s prior year’s usage, and is payable in the current year. However, if the customer’s current year usage exceeds the prior year, the total royalty fee for the current year is not adjusted (either upwards or downwards) - that is, the current year’s total royalty fee is fixed at the beginning of the year. Under the guidance in 606-10-55-65, the licensor would be required to wait until the end of the current year to recognize the revenue on this type of contract, as technically, the contract references the current year’s usage. However, we believe the licensor’s performance obligation has been satisfied as of the beginning of the year, and waiting until the current year’s usage occurs is not relevant, as the consideration paid by the customer does not vary based on the occurrence of a future event. Accordingly, we recommend modifying the wording slightly in 606-10-55-65 as follows (proposed additional language is underlined):

606-10-55-65...an entity should recognize revenue for a sales-based or usage-based royalty promised in exchange for a license of intellectual property only when (or as) the later of the following events occurs:

a. The subsequent sale or usage occurs, to the extent that the total amount of royalties charged varies with such subsequent sales or usage

b. The performance obligation to which some or all of the sales-based or usage-based royalty has been allocated has been satisfied (or partially satisfied).

Comments regarding the Proposed Deferral ASU

We support the proposed deferral of the effective date of the new standard for non-public entities to annual reporting periods beginning after December 15, 2018, and interim reporting periods within annual reporting periods beginning after December 15, 2019. We believe that deferral is advisable in light of additional standard-setting activity such as this proposed clarification on identifying performance obligations and licensing agreements, as well as ongoing industry discussions about how to interpret the new standard. Deferral will ensure that companies for which important industry-wide issues are not yet resolved as of the original effective date will not have to undergo the burden of changing the application of the standard once it is implemented.

In addition, we support the decision of the International Accounting Standards Board (“IASB”) to proceed with a similar proposal to defer the effective date of IFRS 15, Revenue from Contracts with Customers. In light of the fact that this is an almost-fully converged standard, we agree with the recommendation of the IASB staff that it would be less confusing for the market to have both IFRS and US GAAP preparers implement the standards at the same time.

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Again, we appreciate the opportunity to provide you with our feedback, and hope you find our suggestions useful. If you have any questions regarding our input, please contact either Esther Mills at emills@accountingpolicyplus.com or (646) 418-1716 or Magdeline Maita at mmaita@intven.com or (425) 247-2498.

Sincerely yours,

Russell L. Stein
EVP & Chief Financial Officer
Intellectual Ventures