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Preparing for an Exit: Selling Your Robotics Company

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"Personally, I'm not afraid of a robot uprising. The benefits far outweigh the threats."
-- Daniel H. Wilson

Robots are everywhere. Healthcare, logistics, manufacturing and other critical areas of the economy are being redefined by the robotics and artificial intelligence advances of today's technology entrepreneurs. With this explosion we are seeing an extraordinary growth in private investment in robotics companies. According to research firm CB insights, VC investments in robotics more than doubled in 2015 to $587 million, excluding drones. In addition to increased investment we are also seeing a flourishing of M&A transactions in the robotics space. Google's shopping spree was well-publicized (8 robotics acquisitions in a several month period) but the trend has accelerated since then with 32 acquisitions in 2015 totaling over $2.27 billion according to The Robot Report.

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Just as each warehouse logistics robot or copter-drone will utilize different technologies to address unique problems, each robotics company will follow a unique path to its eventual exit transaction. For those considering a company sale, there are several things you can focus on early in the process that can help give you the best chance of success.

Select Your Team

The sale process is an emotional and potentially life-changing experience for owners. It is also as unpredictable as it is exciting. While some paths are linear and relatively quick to fruition, most are not. It is critical to have advisors on hand who can guide you through this process. Having the right legal, accounting and financial team in place can help provide critical structuring insight as well as objective advice when decisions become difficult and fraught with risk.

Preparing a Data Room

A potential buyer for your company will only commit to a deal once it has completed a thorough diligence process. The more time this process takes the more likely a change in circumstance or priority will cause the buyer to move in a different direction and abandon its efforts. Uncertainty, inconsistency or mistakes in responding to the buyer's requests can also lead to distrust, reduced sale prices or broken deals. Luckily, you can accelerate this timeline by organizing your legal and business information early in the process and populating a secure virtual data room. This will allow you to not only be responsive to buyer requests for information but also identify and either resolve or better position weaknesses that might otherwise be a red flag to your suitors.

Assess and Position Your IP

Like other technology companies, robotics companies often rely on open source software in order to develop their products. While open source software offers benefits, open source software licenses vary in scope, obligations and restrictions. Recently, the open source software community has been more aggressive in enforcing open source software licenses through litigation. The discovery of open source software by potential buyers can be a red flag and lead to reduced valuation or even kill a potential deal. In preparation for a sale (and even earlier if possible), companies should rigorously assess and manage their open source compliance. Programs such as Black Duck can be a critical tool and IP counsel can assist in positioning the company to avoid missteps that might threaten your transaction.

Many robotics companies have also funded their early development through contracts with the U.S. government, such as procurement agreements or grants with government agencies such as DARPA. Procurement agreements are generally governed by the Federal Acquisition Regulations, or FAR, which can provide IP rights to the government (such as “March-In Rights”) that may be of concern to a potential buyer of the technology. Government and other third party contracts should be assessed early in the process for these and other potential issues.

Think Early on About Deal Structure

For many buyers, the most critical asset of a robotics company, particularly an early stage company, is the talent behind the technology. For that reason, many sale transactions are structured to incentivize key employees of the business to continue to work for the buyer following the closing. There are many ways to structure a deal around the talent in the business, which may include significant potential bonus payments within a post-closing compensatory scheme or an earnout, where a portion of the deal consideration is contingent upon future performance of the business or other milestones. These arrangements can be very complex and difficult to implement in a way that protects the sellers’ opportunity to realize any additional value following a sale. Careful structuring is important because it can have significant tax implications and other consequences for the founders of the business. The structure is often determined early in the negotiation process and set in stone in the term sheet well in advance of a definitive agreement.

Protect Your Confidential Information

In a potential sale of the company transaction with a strategic acquirer, the seller must be very careful with its confidential information to avoid the information being obtained and used by a person that does not buy the company. In an auction process, a banker representing a technology company in a potential sale may reach out to several companies with an interest in the company’s technology who may in fact be mounting similar efforts on their own. Carefully managing the flow of information to keep the potential buyers engaged but avoiding the disclosure of sensitive information too early in the process is something your advisors can help you with. It is also possible that a company’s important customers or vendors will also participate in a sale process. In this situation, information regarding sales and pricing, including as it relates to other partners, may be particularly sensitive. The virtual data rooms described above can be modulated to provide certain information to some parties in the process and not others, though some sellers are more comfortable withholding certain information from the data room to exercise more control over its distribution and timing of its release.