

Launching the Start Up

John Hession,

Managing Partner, Boston Office

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Firm Overview

- ▶ National full-service law firm serving high-growth companies and the investors and financial institutions that fund them
- ▶ Approximately 600 attorneys nationwide with deep substantive expertise across a range of legal specialties
- ▶ Represent clients across numerous industries and company growth
- ▶ Offices in *Boston (July 2007)*, Palo Alto, San Diego, San Francisco, Broomfield, Colorado, Reston, Virginia, Washington D.C., and New York
- ▶ Client Team approach

Cooley Representative Clients

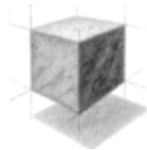
Levi Strauss & Co.



PRICEWATERHOUSECOOPERS



BIOSITE



DUPONT FABROS

AMGEN

ORACLE

SONY



Firefox



Morgan Stanley



AMYLIN



YAHOO!



PacifiCare
A UnitedHealthcare Company



Cooley Representative Clients



Cooley Representative Clients

Tax



Litigation



Fund Formation



Cooley Representative Clients

Technology Transactions



Intellectual Property



Cooley Representative Clients



Mergers & Acquisitions



Cooley Representative Clients

Employment & Benefits



Corporate



Venture Capital



National Leader in Representing Emerging Companies

- ▶ Represent over 1,800 emerging companies in all industries, including software and information technology, telecommunications, semiconductors and life sciences
- ▶ **Ranked #2 nationally from 2002 to date in representing venture-backed companies in financings; ranked #1 in each of Southern California, DC/Virginia & Colorado** (VentureSource 2007)
- ▶ Extensively experienced in all aspects of practice, including corporate formation, venture financing, employee incentives, intellectual property protection, employment and severance matters, mergers and acquisitions, bankruptcy and litigation
- ▶ Provide business counseling to entrepreneurs, reflecting relevant industry experience and personal and firm-wide knowledge base

Emerging Companies Expertise

- ▶ Frequently called upon to review client business plans and meet with founding teams to assist them in identifying their key strengths and weaknesses before approaching financing sources and other potential founders
- ▶ **Help clients in identify appropriate financing sources and assist with introductions to those sources**
- ▶ Routinely help clients structure the transfer of intellectual property from founders, universities and other third parties in light of their business models, organizational needs and strategic direction
- ▶ Assist clients in structuring the commercialization of their products or services in coordination with our Technology Transactions and Life Science Transactions groups

Emerging Companies Expertise

- ▶ Experts in structuring, negotiating and documenting significant strategic alliances, joint ventures and other agreements with potential partners, vendors and customers
- ▶ *Frequently attend board meetings and offer strategic advice, counseling and assistance in forming and maintaining an effective board of directors during a company's initial phases*
- ▶ Especially skilled in advising clients on financing strategies and in managing and implementing virtually any type of financing transaction—from venture capital and mezzanine private placements to initial and follow-on public offerings to PIPES deals, Rule 144A, convertible debenture and Regulation S placements

Venture Capital Financings Expertise

- ▶ Expertise in every type of transaction, as well as throughout the stages of each transaction
- ▶ Current on—and influence—the emerging trends in market terms of venture capital financings
- ▶ Corporate and securities law expertise in IPOs and mergers and acquisitions enables effective negotiation of venture financing documents with such liquidity events in mind
- ▶ **Close over 250 private financing transactions each year (that is, about one financing per day)**
- ▶ Areas of Focus
 - Early seed rounds
 - Mezzanine financings
 - Structuring transactions
 - Term sheet negotiations
 - Document review and negotiation
 - Due diligence and closing

Cooley's National Venture Capital Practice

- ▶ **Since 2000, Cooley has:**
 - ▶ **Worked on over 1,000 financing deals**
 - ▶ **Helped raise over \$10 billion**
 - ▶ **Counseled companies in over 40 industry classifications**

2006 VC Financings Nationwide

| Name | Number of Deals |
|-------------------------------------|-----------------|
| Wilson Sonsini Goodrich & Rosati | 214 |
| Cooley Godward Kronish | 152 |
| Gunderson Dettmer | 100 |
| DLA Piper Rudnick Gray Cary | 77 |
| Heller Ehrman White & McAuliffe | 75 |
| Wilmer Cutler Pickering Hale & Dorr | 73 |
| Fenwick & West | 66 |
| Orrick Herrington & Sutcliffe | 46 |
| Pillsbury Winthrop Shaw Pittman | 33 |

So ...*who is John Hession?*

- ▶ ***Former High School Teacher, Former Sales Rep for Burroughs, Office Products Division (Legion of Honor in Sales – top 10% in first two years)***
- ▶ ***Now: Past 25+ years an Advisor & Attorney for emerging-growth, technology companies from cradle, through financings, through strategic alliances, through culmination***

My Representative Experiences

- ▶ **150 Acquisitions**: *representing Buyers & Sellers*: Silknet Software (\$4.2B merger with Kana); Excel Switching (\$1.2B sale to Lucent); i-Prospect.com (\$50M, bought by Aegis plc); Eigner (\$22M, bought by Agile); Netlink (\$185M, by Cabletron); Mainspring (bought by IBM); Feanix (\$50M earn out to Axon plc); Apama UK (bought by Progress)
- ▶ **200 VC & Angel Financings**: *representing either companies or VC investors*: Turbine (\$15m, Highland & Polaris); Polaris (\$16M investment in Meridio, Northern Ireland); TD Capital (\$5m investment in Contour Semiconductor); Powerspan (\$30m, Rockport, Beacon Energy, First Energy Corp.); Highland (\$20M in AMP Resources)
- ▶ **100+ Strategic Alliances**: representing **ALWAYS** the small tech company against IBM, Microsoft, AOL, Tandem, Compaq, HP, Apple, Samsung, EMC, Allied Signal, Pratt & Whitney, GE, Lucent, Alcatel
- ▶ **25+ Public Offerings**: Silknet, Excel Switching, CVC Products, Mainspring, Integrated Genetics, Focus Enhancements, Netegrity, Tecogen, Astea International, Alloy Systems, DynaGen, Mortgage.com

Let's get Started

*Launching the
Start Up*

Cooley
GODWARD KRONISH LLP

What is the Secret Sauce?

- ▶ **Intent**
- ▶ **Opportunity**
- ▶ **Capability**
- ▶ **Identity**

YOUR INTENT

- ▶ *What do you want to do with your life?*
- ▶ *What is your passion in business?*
- ▶ *How can investors harness your energy, vision & expertise?*
- ▶ *Understand that building a business is building long-term relationship*
- ▶ *Trust, Integrity, Acute Listening Skills are Universally Required*

YOUR OPPORTUNITY

- ▶ **Size and seize your Market Opportunity**
- ▶ **Understand your market dynamics -- \$1 billion or \$100 million**
- ▶ **How BIG do you want to become?**
- ▶ **Then understand the “cost of capital” required to scale your business -- maybe angel financing is better than venture financing**
- ▶ **Who is your competition – who is likely to come into your space**

YOUR OWN CAPABILITY

- ▶ **What is your special contribution – your unique capabilities?**
- ▶ **Understand your weaknesses, and what you need to attract to fill gaps**
- ▶ **Need to have a sense of optimism – but also a sense of honest self-assessment**
- ▶ **Integrity, Honesty and Courage are critical attributes**

YOUR IDENTITY

- ▶ **Who is your team?**
- ▶ **Who does your team need – now and later?**
- ▶ **Understand what qualities you need in your team members**
- ▶ **What qualities do you need in your Investor**
- ▶ **Example: The Cooley Boston Start Up Story - collaboration, team behavior, desire to build together, not motivated by money, Matching of Value Systems (see Gary's slides)**

Common Mistakes of the Entrepreneur

- ▶ **Failure to Listen**: great vision (eyesight), but significant hearing impairment (no earlobes)
- ▶ **Failure to Protect**: Intellectual Property (if I paid for it with cash or equity, how come I don't own it)
- ▶ **Failure to Smartly Divide**: Division of Equity based on head count, not contribution or commitment (“The Equal Slice of the Pie Fallacy”)
- ▶ **Failure to Identify**: the right financing strategy: angels now, build value, and go for larger financing later; use of strategic partners and strategic providers
- ▶ **Failure to Step Aside**: bring in better talent for the functional role you desperately need

More Common Mistakes of the Entrepreneur

- ▶ **Love Affair with Technology**: The Field of Dreams Syndrome – if I build it, they will come
- ▶ **No Passion**: It is hard to motivate others, when you lack the passionate vision – so get caffeinated
- ▶ **Disdain for Sales & Business Development**: People with technical backgrounds often believe sales is all B.S. and testosterone – good sales are rare >> they sell away from price and focus on value and benefits
- ▶ **The Captive Subsidiary Syndrome**: sign up an exclusive arrangement and you become the slave of the large partner, never achieving independence
- ▶ **Developing the Indirect Sales Channel**: is very hard work; you need to treat that indirect as if it were your own sales force – do not abdicate responsibility

The Business Plan

- ▶ **What do you do or vision of what you will do**
- ▶ **Give historical background but only if it strengthens your presentation**
- ▶ **State your company's product**
- ▶ **State your objective. What is your plan? What are you seeking?**

Your Value Proposition: The Heart & Soul

- ▶ **What is the “Market Pain” of Customer?**
- ▶ **How does your product/service address the Market Pain?**
- ▶ **What is different about your product?**
- ▶ **Why would a customer buy from you?**
- ▶ **Can you acquire reference customers?**
- ▶ **How many customers have you chatted?**

The Business Model

- ▶ **What is your Business Strategy?**
- ▶ **What is your Pricing Strategy: How will you make money?**
- ▶ **What is your Sales Strategy? (the most overlooked)**
- ▶ **Who are your customers and why will they pay for your product?**
- ▶ **Make a credible presentation of your addressable market**
- ▶ **Revenue, cash flow, profitability matter now**
- ▶ **How do you plan to grow your company?**

Your Technology/Product/Service

- ▶ **Describe your technology/product/service**
- ▶ **What is the status of development?**
- ▶ **Financial support of technology-grants, angel or VC funding (grants offload risk)**
- ▶ **Intellectual Property status**

Your Competition

- ▶ **Who are your competitors (now and potential)?**
- ▶ **Be specific; Be generous (Direct & Indirect)**
- ▶ **Why are you better?**
- ▶ **Risks & challenges -- Are you protected?**
- ▶ **There is always competition: never say “we have no competition”**

Management Team

- ▶ **Money is invested in people (“Bet on the jockey, not the horse”)**
- ▶ **What is your role in the company?**
- ▶ **Who are you working with? Establish their credentials and experience.**
- ▶ **Communicate that you know how to execute**

Present Your Financials

- ▶ **Present your financials briefly and simply**
- ▶ **Use graphics as much as possible**
- ▶ **Make them CREDIBLE!!**
- ▶ **Know that detailed pro formas WILL follow in detailed meetings (business case presentation)**

Exit Strategy

- ▶ **State your exit strategy --- strategic alliance, acquisition, licensing, funding ??**
- ▶ **How, when?**
- ▶ **What is the ROI for the potential partner, investor?**

Summary Thoughts

- ▶ **Review your product, value proposition and opportunity**
- ▶ **Highlight why your company**
- ▶ **Indicate what you are seeking**
- ▶ **Insert contact information**

Delivery is Everything ---- Style

- ▶ **Open your story with verve and vigor**
- ▶ **Build your case with confidence**
- ▶ **Be sensitive to flow & eye movement (the “three second rule”)**
- ▶ **Conquer anxiety -- What is the worst that can happen?**
- ▶ **End with passion**
- ▶ **Practice! (at least three times before final)**

Delivery, Style & Aesthetics

- ▶ **Fewer bullets --- the most important ones go first**
- ▶ **Do not create dissonance!**
 - **What they see should support what they hear**
 - **Do say what is on your slide, and elaborate**
 - **But make the bullets SHORT**
 - **You should be the focus of the presentation**
- ▶ **No more than 3-4-5 bullets per slide**

Cooley's Team Approach

- ▶ **We routinely become part of the “inner circle” of our clients, not just an outside advisor**
- ▶ **We provide practical business solutions to legal issues, not academic analysis**
- ▶ **We focus on the issues that you really care about, and don't waste your time or money on theoretical issues**
- ▶ **We have a network of relationships that includes many of the companies and people that you'll want to connect with**
- ▶ **We offer our clients access to strategic partners and customers and practical savvy on how to get deals done**
- ▶ **We pride ourselves on being on-call and available at all times, understanding that timing is critical for our clients' businesses**

Cooley's Strategic Advantage

- ▶ **Partners and associates on the team are career corporate/securities and licensing experts focused on representing emerging companies and established growth companies in the high-growth space**
- ▶ **Transaction volume and market leadership position assures the best training of associates**
- ▶ **Critical mass to assure consistent, high-quality work**
- ▶ **Experienced teams who have worked together for years**
- ▶ **Our “team” approach avoids internal competition, ensures access to all the firm’s resources and helps develop and retain extraordinarily talented and devoted attorneys**
- ▶ **Partner teamwork: no partner gets “credit” for the fees paid by any particular client – every client is truly a firm client, ensuring access to all the firm’s resources**

Cooley Godward Kronish LLP --- *Fast Facts*

- ▶ Cooley Godward opened in 1920 in San Francisco
- ▶ Cooley Godward formed Draper, Gaither and Anderson in 1959—the first institutional venture capital limited partnership in the United States
- ▶ Cooley Godward was one of the first firms to open an office in Silicon Valley in 1980
- ▶ Cooley Godward LLP and Kronish Lieb Weiner & Hellman LLP of New York merged in October 2006 to become Cooley Godward Kronish LLP
- ▶ Cooley Godward Kronish opens an office in Boston in summer 2007



San Diego



Palo Alto



San Francisco



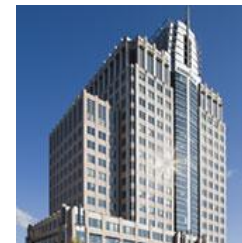
New York



Broomfield, Colorado



Washington, DC



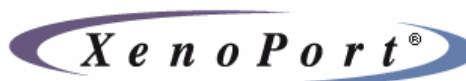
Reston, Virginia

Full Service Expertise

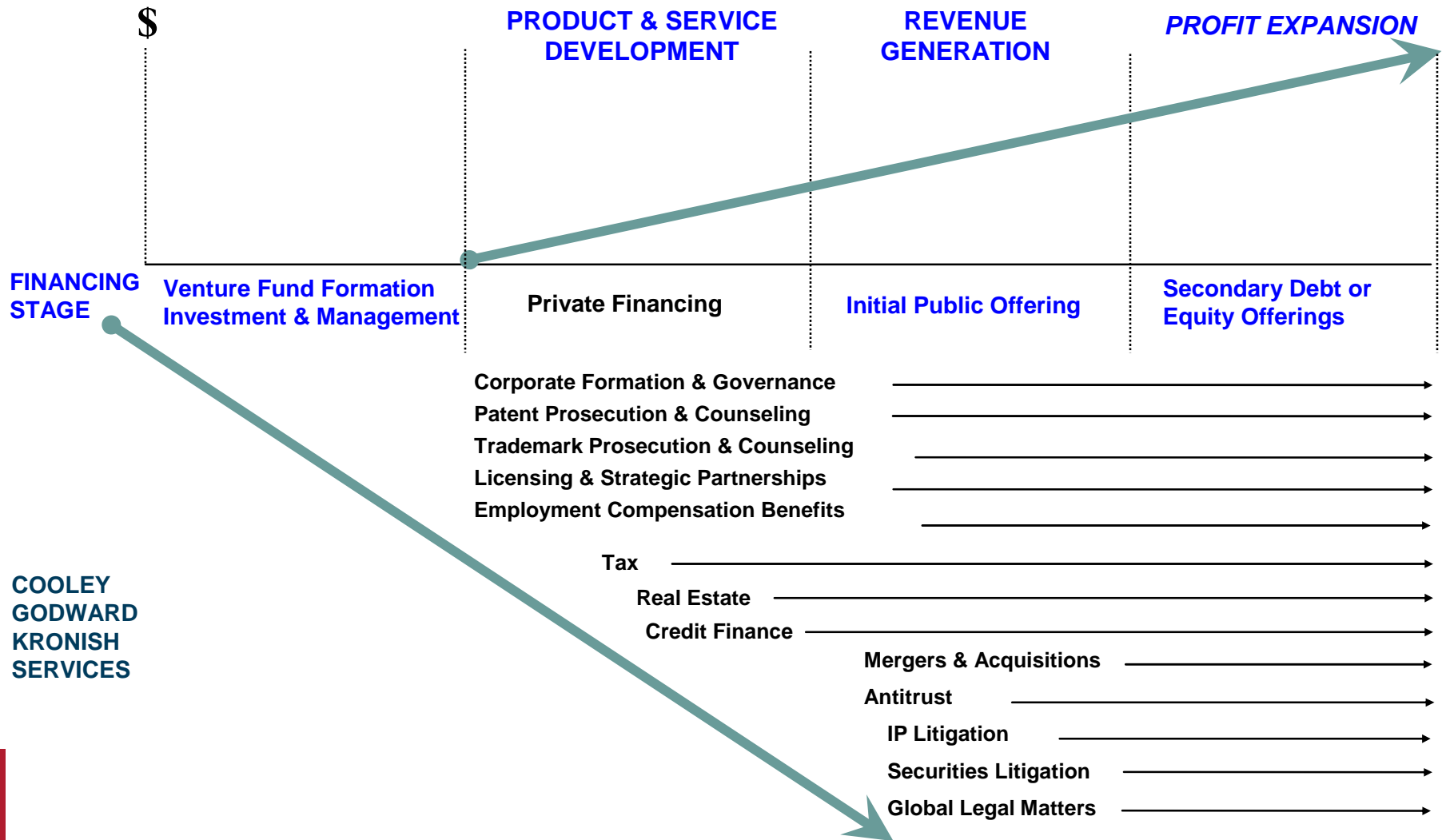
- ▶ **We represent high-growth companies, as well as the investors and financial institutions that fund them. Our practices include:**
- Antitrust & Trade Regulations
 - Bankruptcy & Restructuring
 - Complex Contract & Commercial Litigation
 - Compensation & Benefits
 - Credit Finance
 - Emerging Companies
 - Employment & Labor
 - Environmental
 - Intellectual Property
 - International Trade
 - Internet Law
 - Life Sciences
 - Mergers & Acquisitions (including LBO and MBO)
 - Outsourcing
 - Patent Counseling & Prosecution
 - Pro Bono
 - Public Offerings
 - Real Estate
 - Securities Litigation
 - Tax
 - Technology Transactions
 - Trademark, Copyright & Advertising
 - Venture Capital
 - White Collar & Regulation Defense

Top Ranking Legal Counsel for IPOs Nationwide

- ▶ A national leader in IPOs, with nearly 100 completed IPOs since 1998
- ▶ Ranked #3 in issuer-side IPOs from 2000–2006*
- ▶ Ranked #1 in the United States as counsel for venture-backed issuers in IPOs in 2006**
- ▶ In 2006, we were involved in a total of 38 public offerings, raising in excess of \$3.39 billion



Company Life-Cycle Approach



Specialized Expertise – Financing Transactions

Credit Finance and Leasing

“Cooley’s knowledge of the tech industry coupled with their loan deal expertise is a tremendous combination.”

Mike Selfridge,
Silicon Valley Bank

- ▶ **Counsel clients in connection with all aspects of their debt and lease financing needs**
 - ▶ Senior, mezzanine and subordinated debt financings
 - ▶ Bridge loans
 - ▶ Acquisition financings
 - ▶ Public and private high-yield
 - ▶ Guaranties and letters of credit
 - ▶ Equipment leases
 - ▶ Synthetic leases
 - ▶ Technology receivables financing and other structured financings
 - ▶ Vendor financing and other debt and lease transactions
- ▶ **Assist clients with referrals to debt and lease financing resources and evaluation of debt and lease financing proposals**
- ▶ **Help clients structure, negotiate and document their debt and lease financings**
- ▶ **Provide clients with useful information and insight regarding current market terms and trends in the industry**
- ▶ **Work closely with Cooley experts in corporate, tax, employment, real property, intellectual property law and other areas to provide essential depth in our representation**

Mergers & Acquisitions

- ▶ **Over the past five years, we have handled more than 350 M&A transactions, ranging in size from less than \$5 million to more than \$5 billion, making our practice one of the most active in the country**
 - ▶ **Approximately 50% of our M&A transactions are between \$50-\$400 million in deal value**
 - ▶ **High-profile matters**
 - ▶ **Adobe's \$3.4 billion acquisition of Macromedia**
 - ▶ **Sale of Siebel Systems to Oracle for \$5.85 billion**
 - ▶ **eBay's acquisition of Skype Technologies for up to \$3.9 billion**
 - ▶ **eBay's \$620 million acquisition of Shopping.com**
 - ▶ **Sale of Verity to Autonomy for \$500 million**

Mergers & Acquisitions *(Continued)*

Recent Statistics

- ▶ 78 **announced** transactions in 2006 (41 buy-side, 37 sell-side)
- ▶ Consistently ranked among the top 20 M&A firms nationally*

Handling complex deal structures is a daily routine for our M&A lawyers

Going private transactions

Stock-for-stock negotiated mergers

Registered share exchange tender offers

Cash tender offers

Divisional asset acquisitions

Spin-offs and joint ventures

* Mergerstat; Thompson Financial

Mergers & Acquisitions *(Continued)*

- ▶ We are one of the few law firms in the western United States with a dedicated M&A practice group—a significant competitive advantage
- ▶ We have approximately 20 attorneys who devote over 50% of their time to M&A matters, including a core group of five partners who—together with a team of dedicated associates—focus exclusively on M&A deals
- ▶ Our M&A attorneys lecture extensively, have held leadership positions in the ABA's 2,000-member Committee on Negotiated Acquisitions and work closely with leading jurists
- ▶ We emphasize the training and education of our M&A attorneys
- ▶ Representative of our team approach, our M&A practice drives activity across a wide range of other practice areas, including:

Antitrust

Employee benefits

Litigation

Securities

Tax

Technology transactions