

The Top 10 Deal Breakers in Patent Brokerage and IP-driven M&A

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1. Lack of trust between Buyer & Seller –

Role of brokers in establishing a three-link chain of trust:
seller to seller's broker →
seller's broker to buyer's broker →
buyer's broker to buyer

2. Valuation – How much is it really worth?

Role of intermediaries in managing expectations of seller and buyer and bringing limited market data (e.g. comparables) to bear.

3. Corporate buyers desire for anonymity (vis-à-vis price, infringement target exposure, etc.) vs. corporate seller reluctance to sell to Trolls.

4. Seller desire to retain “limited use” rights with some ability to transfer vs. Buyer reluctance to create a “back door” to its licensing market via seller-retained sub-license and/or transfer rights.

5. Diligence – Buyer discovery of encumbrances (e.g, licenses) on seller IP where agreement creating encumbrance is subject to confidentiality restrictions in favor of third party.

6. Seller Reps and warranties – Disagreements re risk allocation vis-à-vis validity, third party infringement, title defects, encumbrances, third party ownership claims, etc.

7. Sale process – Providing buyer with adequate time and visibility (e.g., access to inventors, prosecution counsel) to evaluate offered IP.

8. Sale process – “Controlled descent” approach so that neither side commits too much resources before getting to the next stage

9. Accounting methodology re future revenue split between buyer and seller from future exploitation of assigned patents (private auction vs, public)
10. Motivation - Distinguishing *serious* sellers from *curious* sellers