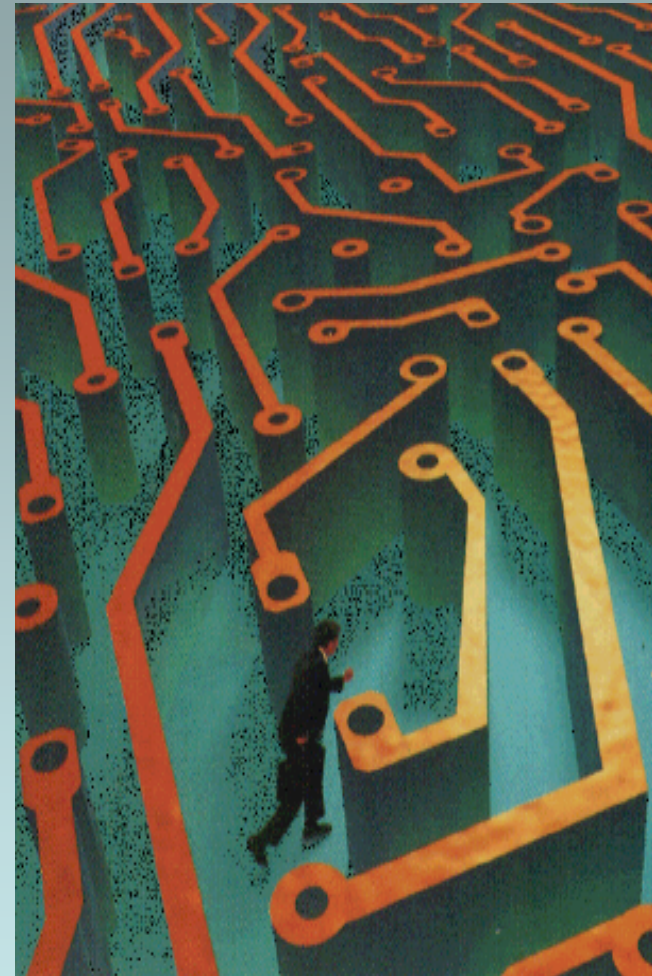


STRATEGIC PATENT ACQUISITION

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**Best Practices for
Buying, Selling, and Licensing Patents**
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DISCUSSION TOPICS

- The Current Patent Market
- Strategic Objectives for Buying or Selling
- Transaction Process Issues
- Pricing and Valuation Factors
- Due Diligence
- Negotiation Issues

THE CURRENT PATENT MARKET

- The patent trading market is inefficient and illiquid --
 - Due to confidentiality concerns (usually on the part of the buyer), transaction data is usually not publicly available
 - Patents tend to be unique and generally not amenable to a “comparables” value analysis
 - Transactions are impeded by the difficulty of assessing value in terms of validity risk, claims construction risk, design-around risk, etc
 - Transaction costs are high and not necessarily proportional to transaction value
 - The majority of patents are not worth the cost of determining their value

THE CURRENT PATENT MARKET

- Despite marketplace inefficiencies, there has been a significant increase in patent sale activity over the past several years
- But it is hard to quantify due to the private nature of transactions
- Trends -
 - Supply is increasing: many large corporate IP organizations are selling patents (e.g., IBM, HP)
 - Demand is increasing: corporate strategic patent acquisition programs (e.g., Intel Capital) and funded patent aggregators (e.g., Acacia; Intellectual Ventures; Open Invention Network)

THE CURRENT PATENT MARKET

- Trading Intermediaries
 - Corporate licensing/assertion spinouts
(e.g., Lucent; BIPCO; SBC Knowledge Ventures)
 - Licensing/assertion agents
(e.g., ThinkFire; IPValue, General Patent, BTG)
 - Litigation funds
(e.g., Altitude, Rembrandt, Oasis)
 - Patent brokers
(~5 active brokers in 2000, ~30 in 2006)
(e.g., Bramson & Pressman; Pluritas, iPotential)
 - IP investment/merchant banks
(e.g., Inflexion Point; Ocean Tomo)

THE CURRENT PATENT MARKET

High profile transactions

- JGR (Novell) \$15.5M acquisition of Commerce One's web services patents at bankruptcy auction

CommerceOne Patent Buyer Turns Out To Be Novell Monday, May 2nd, 2005

Late last year, there was some surprise when a secretive company named JGR Acquisitions outbid everyone else to get CommerceOne's sought after e-commerce patents -- keeping them out of the hands of patent hoarder Nathan Myhrvold. Many people have been waiting to see if the new owner would start enforcing those patents, but now it's been revealed that the buyer was actually Novell -- and they bought the patents for "defensive purposes." Since Novell is becoming a much bigger supporter of open source software, it seems they viewed the \$15.5 million that went into buying these patents as a sort of insurance fund against a SCO-style lawsuit against their open source offerings.

THE CURRENT PATENT MARKET

High profile transactions

- Five Linux companies buy patents and form Open Invention Network (OIN)

OPEN INVENTION NETWORK FORMED TO PROMOTE LINUX AND SPUR INNOVATION GLOBALLY THROUGH ACCESS TO KEY PATENTS

Investors Include IBM, Novell, Philips, Red Hat, and Sony

New York (November 10, 2005) - Open Invention Network (OIN), a company that has and will acquire patents and offer them royalty-free to promote Linux and spur innovation globally, was launched today with financial support from IBM, Novell, Philips, Red Hat, and Sony. The company, believed to be the first of its kind, is creating a new model where patents are openly shared in a collaborative environment and used to facilitate the advancement of applications for, and components of, the Linux operating system.

THE CURRENT PATENT MARKET

High profile transactions

- \$453MM acquisition of Intertrust by Sony/Philips JV to hold DRM patents

Intertrust sells DRM patent portfolio and infringement suit against Microsoft to Sony/Philips Joint Venture

November 13, 2002 – Intertrust Technologies Corporation of Santa Clara, founded in 1990, announces the sale of the company for \$453 million to a joint venture owned by Sony, Philips and Stephens Bank. At the time of the sale, the only real assets left in the company are a portfolio of 30 issued U.S. patents and over 100 pending applications worldwide, and a pending patent infringement suit against Microsoft asserting 11 of the US patents. According to a joint press release, "The most important objective of the transaction is to enable secure distribution of digital content by providing wider access to InterTrust's key Digital Rights Management (DRM) intellectual property on a fair and reasonable basis."

THE CURRENT PATENT MARKET

High profile transactions

- Medtronic \$800M acquisition of Dr. Michelson spine-related patents in settlement of patent/trade secret litigation

Medtronic To Acquire Broad Patent Portfolio From Karlin Technology, Inc., And Gary K. Michelson, M.D.

MINNEAPOLIS, April 22, 2005 – Medtronic, Inc. (NYSE: MDT) today announced that it has entered into an agreement to acquire substantially all of the spine-related intellectual property of Karlin Technology, Inc. and Gary K. Michelson, M.D., and related contracts, rights and tangible materials.

Based on initial estimates, Medtronic would acquire technology based intangible assets valued at approximately \$800 million related to the purchase of the intellectual property and license agreements.

THE CURRENT PATENT MARKET

High profile transactions

- Broadcom \$18M acquisition of Cirrus Logic storage patents

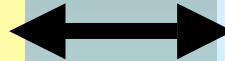
InternetNews.com
February 12, 2004
Broadcom Snares Storage Patents for \$18M

Broadcom continued its push into storage this week, acquiring \$18 million worth of patents from Cirrus Logic, a maker of analog, digital signal processing (DSP) and mixed-signal chipsets for consumer electronics. "We remain focused on continuing to expand the size and breadth of our patent portfolio, both organically and through acquisition."

STRATEGIC OBJECTIVES

BUYER

- **Fill Critical Gaps in Patent Coverage**
- **Obtain Initial Patent Base in New Area**
- **Remove Risk of Assertion by Troll (Take off Street)**
- **Deter/Deflect Patent Attack by Competitor**
- **Obtain Leverage for Cross-licensing**
- **Support Valuation for Liquidity Event**
- **Generate Royalty Revenue**



SELLER

- **Technology No Longer Core to Business**
- **Patent Scope Larger Than Anticipated Business (Sale plus Field-of-use Grant-back License)**
- **Monetize "redundant" patents**
- **Need Operating Cash**
- **Reduce Administrative Burden of "Overhead" Patents**
- **Contribution to Joint Venture**
- **Realize capital gain**

BUYER'S PERSPECTIVE ON THE TRANSACTION PROCESS

- How do successful product companies deal with the flood of unsolicited “offers” to sell patents?
 - Where do offers typically come from?
 - Are offers from brokers treated differently?

BUYER'S PERSPECTIVE OF THE TRANSACTION PROCESS

- For product company initiated purchases, how are target patents identified?
 - Often in connection with business deals and new product development or product IP clearance studies
 - Searching: top-down (broker network) vs. bottom-up (data mining)
 - For obtaining leverage (“pain point” analysis)
- How important is maintaining buyer anonymity? What mechanisms are used?
- How frequently is the search and negotiation process outsourced to brokers and other intermediaries?

SELLER'S PERSPECTIVE OF THE TRANSACTION PROCESS

- What are typical approaches to the identification and contacting of potential buyers?
 - Buyers with potential infringement exposure
 - Buyers needing defensive leverage against potentially hostile competitors with stronger patent portfolios
 - Speculative buyers amassing portfolios in selected industries for assertion against operating companies

SELLER'S PERSPECTIVE OF THE TRANSACTION PROCESS

- Exchanges and auctions are sometimes used to attract buyers --
 - Patent & technology exchanges (e.g., yet2.com, Tynax).
 - Live (real-time) auctions (e.g., Ocean Tomo).
 - Bankruptcy auctions (e.g., Commerce One).
 - Online auctions (e.g., eBay, IP Auctions).
 - Private sale - non-real time auction with bidding process and deadlines.

SELLER'S PERSPECTIVE OF THE TRANSACTION PROCESS

- What are the different ways in which the patent opportunity is “packaged” and presented to the buyer(s)?
 - Approaches of brokers vs. assertion companies
 - Evidence of infringement - Claim charts
 - Market/usage data
 - Expert opinions
 - When to include buyer's impacted revenue
 - Staging of presentation materials and confidentiality
 - Price

PRICING AND VALUATION FACTORS

- Pricing and valuation of patents is an inexact science—what are some of the factors that affect price?
 - How many *non-related* issued patents?
 - Current infringement vs. “the next big thing.”
 - Pending continuations.
 - Foreign counterparts.

PRICING AND VALUATION FACTORS

PATENT METRICS

- Claim scope and quality of prosecution
- Scope of patent family (including pending & foreign)
- Likelihood of infringement and ease of detection
- Impacted revenue (present and future)
- Comparables
- Ease of design-around
- Validity issues

REDUCING FACTORS

- Chain of title defects
- Encumbrances (existing licenses, joint owners, security interests)
- Terminal disclaimers
- Standards problems
- Existence of blocking positions and restrictions on freedom to practice
- Cost of enforcement

BUSINESS DRIVERS

- Buyer's need to resolve a specific threat or problem
- Identity of and history with seller
- Time and ability to conduct due diligence given likely value range
- Litigation risks
- Internal dynamics within management structure -- e.g., risk tolerance, approval processes, prior patent purchases

DUE DILIGENCE

- Given that patent due diligence can be expensive and time consuming, how does a buyer determine which opportunities justify what level of due diligence?

DILIGENCE - LEVELS OF REVIEW

BASIC

(Value < \$50-100K)

- Patent review of claims, file history, basic validity
- Title clear, fees paid, no encumbrances
- Valuation: informal assessment by business unit

INTERMEDIATE

(Value > \$50-100K)

Basic review plus more

- Deeper claim and validity analyses
- Formal title and encumbrance searches
- Subject matter expert review
- Detailed business unit assessment and valuation
- Outside valuation

FULL

(Value > \$1M)

Intermediate review plus more

- Litigation-style infringement and validity assessments
- Multiple independent valuations and market investigations
- Potential scorched earth approach to investigating risk factors
- Management consensus and clear understanding of expectations from purchase

NEGOTIATION ISSUES

The negotiation process and lessons learned:

- Seller side
- Buyer side

Is this really a “shakedown”?—the patent troll debate

ALTERNATIVES TO PURCHASE/SALE

- Exclusive field of use licenses in selected “non-core” vertical applications
- Joint ventures—bundling patent rights and know-how
- Spin-off/spin-out of technology or business unit
- Patent Pooling