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## Patent Sales - A New Marketplace

Most technology companies are familiar with intellectual property (patents, trademarks, copyrights, etc.) and the benefits of owning a patent portfolio. Many have taken the time, effort and expense to work with patent attorneys and the United States Patent and Trademark Office to obtain patents covering their technological innovations.

The value provided by a patent can take many forms. A patent can be used offensively against a competitor selling an infringing product, defensively against an aggressor to fend off a patent infringement allegation, as evidence of a company's innovative culture, as proof to investors and venture capitalists of appropriate protection of key innovative assets, etc. All of these types of value are real and critically important to a business, yet they are primarily intangible and illiquid. Short of suing an infringer (which brings with it high monetary and time commitments, risk of retaliation, uncertainty as to outcome, and possible bad publicity), there typically was no efficient way for a company to monetize (i.e., generate cash from) its patent portfolio.

### The Power Of Patents

Over the past few years, the market for patent sales has evolved, thereby providing an efficient way for patent owners to monetize their patents. There are several reasons the market has grown so quickly. One is the increased awareness of the power and importance of patents. Several high-profile patent lawsuits have been in the news recently (the BlackBerry case, for example) with high damages being awarded or large settlements being reached. Seldom does a week go by where a patent-related article isn't seen in the Wall Street Journal or New York Times.

Also, the Supreme Court has decided to jump into the patent arena, as they have heard numerous patent cases over the past few years. This is quite rare since they typically decline to hear patent cases, but several recent decisions by the Supreme Court, as well as lower federal courts, have broken new ground in patent law. Additionally, Congress is presently working on reforming the nation's patent laws. Consequently, the subject of patents, which years ago may have only rarely been broached in corporate boardrooms, now is routinely addressed. So the once obscure subject of patents - formerly the province of inventors and patent attorneys toiling behind the scenes in a niche profession - has gone mainstream.

### All Patents Are Not Created Equal

Many technology companies believe they can never let go of any of their patents. This is simply not true. A patent is valuable for the reasons above, but they are also an asset like any other, and assets have different levels of value to their owners. So all patents are not created equal.

"Crown-jewel" patents are those that cover technology that is core to a company's business, but these patents are typically few and far between. Instead, most patents cover particular aspects of a product or service, but often do not cover the fundamental core technology. Reasons for this may include significant "prior art" cited by the Patent Office that was used to restrict the breadth of coverage of a patent, and changing company strategy over time to different technologies or products, thereby rendering patents for old technology "non-core."

Therefore, there may be many patents in a portfolio relating to technology that isn't being used by the

company. Or there may be patents for technology that is currently being used, but which may actually have more value on the open market. Consequently, valuable patents may be unused or under-used, lying in a drawer gathering dust, but yet still be extremely valuable (i.e. veritable “Rembrandts in the Attic,” to borrow the title of a renowned book on the subject).

### **The Market For Patent Sales**

In addition to the importance of patents being emphasized in recent years, or perhaps because of it, the market has witnessed an explosion in entities seeking to acquire patents. One of the first transactions that generated interest was the auction several years ago of Internet commerce patents out of bankruptcy proceedings in California. Those patents sold for \$15.5 million, and the market for buying patents has been growing ever since.

Patent buyers come in all shapes and sizes. In recent years, patent holding companies have been formed to acquire patents to license for royalties. Other buyers include consortiums created to acquire patents for defensive purposes (i.e. to take patents “off the street” to protect their investors). Some buyers seek to do both. But it is not only patent holding companies that seek to acquire patents. Publicly-traded companies also are in the market to buy patents - to bolster their existing portfolio, to instantly obtain a portfolio in a line of business they are seeking to enter, or to keep a portfolio out of the hands of competitors and companies that buy patents only to license. Several large publicly-traded companies have created business units the sole purpose of which is to acquire patents.

Different entities have sprung up to serve this market, including companies that hold live patent auctions, Internet services that seek to match buyers and sellers, and patent brokers that directly market patents for sale on behalf of patent owners.

As with any other asset, patent sale transactions occur between a willing seller and buyer. This eliminates the adversarial nature of patent litigation and allows transactions to close quickly, typically within a matter of months, demonstrating that patent sales can be a terrific cash source and provide significant near-term revenue.

### **Conclusion**

With no signs of slowing down, the market for patent sales should only continue to grow, and should provide patent owners with the opportunity to sell their patent assets on the open market to generate revenue that several years ago would have been difficult to imagine.

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