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An Introduction to Patent Monetization **Resources for Corporations and Entrepreneurs**

For corporations and entrepreneurs seeking to monetize their un- or under-utilized patent rights for the first time, it can be difficult to know where to begin. The patent monetization market is not yet mature and, as with other emerging marketplaces, no established methodologies and few experts exist to guide patent owners through the process. Today, there are as many as 17 different business models used to monetize patent rights. More will likely spring up as the market continues to evolve, even while some of the current models will certainly fall away. With such a range of options, it is not surprising that those seeking to sell their patent rights may be confused about what path to take.

This article is intended to provide an overview of ways that corporate and individual patent owners can most effectively monetize their patent rights in today's market. The models discussed in this article were chosen because they are currently the most common. Significantly, due to the great variability in patents and the individual needs of patent owners, the best model for a particular patent owner might actually be one that is not discussed here. Nonetheless, it is hoped that after reading this, a corporation or entrepreneur seeking to sell their patent rights for the first time will be better able to understand and execute on the opportunities and challenges present today in the patent monetization market.

Thinking of Selling a Patent Directly to a Corporation Without an Intermediary? Forget About It

Most patent owners assume that it is possible to sell a patent directly to a company that might play or seek to play in the product or technology space covered by the patent. This is rarely the case, however.

When I was employed as a senior IP attorney in a consumer products company, it was corporate policy to reject all unsolicited offers to purchase or license patents that came into the organization. Thus, a patent owner did not stand a chance to get their patent sold to my company.

This absolute prohibition on unsolicited ideas is not the policy at all companies, but, in truth, few companies today actively seek to acquire products and technology from outside sources (although this is starting to change with the drive toward open innovation at many companies). Thus, even if a patent is a perfect fit for a company's product or technology offerings, most organizations will nonetheless prefer to pass on an opportunity to purchase the patent because external technology acquisition is not part of their technology development model. It is therefore doubtful that most patent owners can hope to successfully sell their patent rights directly to a corporation because the latter is not in the business of buying patents generally, and specifically not from individual patent owners.

Patent Aggregators: Buyers of Patents if a Patent Owner Can Get a Foot in Their Door

In recent years, companies have emerged that hold business models centered on the buying of patents held by others. Well known patent aggregators today include [Intellectual Ventures](#), [RPX](#) and [Allied Security Trust](#). Each of these companies has a different reason that it seeks to acquire patents, but each can serve as a great resource for patent owners seeking to sell their patent rights in certain technology areas. Nonetheless, there are many more patent owners seeking to sell their rights than exist patent aggregator buying opportunities. As a result, if a patent owners obtains a "no" answer, how does he know it is because his patent is worth nothing to the aggregator or whether it's because he did not know the right person to get his patent in front of at the patent aggregator company? For most patent owners, especially those participating in the patent monetization market for the first time,

patent aggregators will not serve as a likely direct purchaser of their patent rights.

Patent Brokers: Facilitors of Patent Sales, For a Price

Brokers such as [ThinkFire](#), [IPotential](#) and IP Transactions Group can assist patent owners in presenting their patent to a likely buyer, the most likely of which are patent aggregators, [non-practicing entities \("NPE's\)](#) and, sometimes, corporations. By leveraging their relationships and reputations, patent brokers effectively serve as "filters" for potential patent buyers to streamline and improve the quality of patent buying opportunities. Put simply, patent buyers trust their patent brokers to "separate the wheat from the chaff" to make it easier for them to identify and act on good patent buying opportunities. A patent broker trusted by a patent buyer can thus present the latter with a buying opportunity that the buyer would not have given a second glance to if the same patent had been offered to them outside of the broker-buyer relationship.

There is a substantial cost to hiring a patent broker, however--typically about 25 % of the typical sale price. Patent brokers also require exclusivity. Thus, when a patent owner selects a particular patent broker to represent him in the patent sale, he must trust that the broker will find the best deal. I nonetheless believe that the knowledge and expertise available with a good patent broker can allow a patent owner to obtain a final purchase price for his patent that more than justifies the broker fee.

In particular, the best patent brokers maintain a large network of potential purchasers of patents, including patent aggregators, NPE's and, in some cases, corporations that have expressed an interest in buying patent rights. I believe such broad networks serve a critical function in improving the efficiency of the patent monetization market by possibly raising the final purchase price of patents. When a patent is offered through a quality patent broker, he will ensure that each party participating in the process also knows whom else is being offered the patent.

Such transparency could also result in an increase in the final purchase price when one potential purchaser seeks to ensure that another potential purchaser not acquire that same patent. For example, a corporation might increase its offer to prevent an NPE from obtaining that patent for the purpose of bringing suit against the corporation. This scenario means that those most interested in acquiring the patent will bring their best offer to the table, a fact which should improve the final price paid for a patent.

A further benefit of selling a patent through a good patent broker is that they will typically conduct market analysis of the patent rights to set a rationally-based entry level price. Specifically, the patent broker will set the price based upon what comparable patents have been sold for in the past. These figures normally are not public, so a patent broker with several sales under his belt will likely set a more accurate initial sale price by virtue of the fact that he is privy to information that allows him to do so. Notably, even an experienced patent broker might incorrectly estimate the likely floor price, but when the patent is offered to many likely buyers, the market will typically act to reset the price to one more acceptable to potential buyers.

Beware of Finders Who Say They are Brokers

A significant problem with many people who hold themselves out as patent brokers is that some are not "brokers" at all. Rather, they are "finders" for patent aggregators or other buyers of patents such as NPE's (but likely not corporations). Like regular patent brokers, these finders maintain relationships with likely patent buyers. When accepting a patent for sale to a potential buyer, the finder likely already knows whether a patent will be purchased by its contact. In this scenario, the finder actually does little to earn his 25% fee other than maintain a relationship with the ultimate purchaser of the patent.

Moreover, many of these brokers actually "double dip" because they obtain a fee from the purchaser for bringing the patent to them, as opposed to another potential buyer. The finder thus might hold divided loyalties: should they try to maximize the price obtained for his client's patent when they might never see an opportunity from that seller again, or should they keep the price reasonable so they don't ruin their relationship with their patent buyer to whom they might bring several patent buying opportunities to each year?

Clearly, this scenario is rife with questionable ethics, but the reality of the current patent monetization market is that no licensing is required for someone to call himself a "patent broker," and the rule is definitely "buyer beware." As things stand in today's unregulated patent broker market, the best way to find a quality patent broker is to seek referrals from someone who understands the market and/or who has successfully sold patents through a broker in the past to ensure that someone calling himself a "patent broker" actually serves to broker a patent sale as opposed to handing it over to an old friend who is now a patent buyer.

Patent Auctions: Selling in the Open to the Highest Bidder

The final common vehicle for selling patent rights is the public auction setting. Today, the [most prevalent patent auction is conducted by Ocean Tomo](#), which currently holds 2 auctions each year. Ocean Tomo is very selective about what patents it takes into each auction, a fact that limits the ability of many patent owners to participate in this model. Ocean Tomo obtains a fee from the seller and the buyer, and it is my understanding that the net fee amounts to approximately 25 % paid to the auction house.

While I have not personally been involved in a patent auction, I have heard mixed things from people who have participated as both buyers and sellers in these auctions. My sense is that an auction allows one to sell his patent in a transparent setting where the price is set by competitive bidding. This can be good when a patent is desired by multiple parties who are influenceable by the "heat" of a public auction process to increase their bids to result in a higher price for the seller.

In my view, one downside of the open auction process is that all participants know the price being offered, a fact that can lead to a lower final sale price if a patent does not garner excitement from the participants. In contrast, in a private auction--such as that effectively set up when a quality patent broker sells a patent into a large network of potential buyers--the lack of transparency can result in a higher final price because the participants know who has been offered the patent but not the amount offered. A further possible downside to a public auction is that one can only sell his patent to someone who shows up at the auction. With a broker-conducted private auction, however, someone who may not actively be seeking to buy a patent at that time will be presented with the opportunity to buy the patent. Thus, the number of potential buyers can be expanded with the use of a patent broker.

It's as Clear as Mud Now, Right?

As noted at the outset of this article, the patent monetization market is only just now emerging as a viable way to obtain value from un- or under-utilized patent assets. In view of this, most patent owners just starting into will be confused about how to proceed in a manner that maximizes the price obtained from one's patent. If one owns patent rights and seeks to

sell them today, it is my recommendation that he learn as much as possible about the process. And, as with many business situations, checking references and seeking recommendations from those with experience as patent sellers and counselors to patent owners will be critical to success in patent monetization. Personally, I am looking forward to the day when more openness exists in the marketplace so that patent owners can better gauge the quality and qualifications of those participants in the process. I think we are getting there, and I will provide more information on this in a subsequent article.