Patent Liquidity
Opportunities and Challenges in Today’s Complex IP Markets

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The Old Days

- Large incumbent companies controlled dominant IP portfolios
- IP strategies focus on a small set of competitors, partners
- MAD & cross licenses to reduce risk
- Occasional company-to-company litigation to help shape market position
NPE Litigation Emerges

- Small inventors unable to license IP to big companies
  - no real market, hard to make deals
  - corporations had financial power, often unwilling to pay
- Some inventors sued to obtain compensation
- A few high-profile inventors paved way for monetization
Plaintiff’s Bar Seizes Opportunity

- Rocket docket fuels trend
- “One stop shop” for patent assertions emerge
  - Acacia (1993), Spangenberg, Niro & Scavone
- Growth of NPEs, company-to-company litigation seems to slow
- NPE litigation success creates market demand for patents
Industry Reacts; Litigation Grows; Demand Grows

- Operating IP companies (e.g., Tessera, InterDigital) fuel the trend
  - early success in systematic IP licensing
  - need new patents to grow revenue
  - increase market demand for patents
- Operating tech companies begin defensive buying
  - market demand for patents increases
- Patent aggregators (IV, RPX, AST) emerge
  - formed primarily as risk management vehicles
  - aggregate patents to mitigate risk of litigation based on “loose” patents
  - market demand for patents increases
Companies React; Markets and Litigation Expand

• Companies face increased pressure to monetize their assets
  – offset defensive litigation costs
  – recession-driven monetization

• More corporate patent sales emerge
  – sale now viable alternative to direct licensing
  – more patents supply aggregators, NPEs

• Patent aggregators evolve (IV, RPX, AST)
  – only so much money can be made from risk management
  – free rider problem
  – “catch and release”
  – sales to NPEs

• Market and litigation opportunities expand
Company-to-Company Litigation Returns

MOBILE PATENT SUITS

Companies involved in patent lawsuits include Amazon, Apple, Barnes & Noble, Ericsson, Foxconn, Google, HTC, Huawei, Inventec, Kodak, Microsoft, Motorola, Nokia, Oracle, LG, Qualcomm, RIM, Samsung, Sony, and ZTE. The diagram illustrates the litigation between these companies and the resolution of cases involving Google’s Android OS, with a note that Kodak's separate suit against Apple will be decided on Aug 30.
How Does My Portfolio Stack Up?

• Combination of mobile wars and increasing patent market liquidity driving many tech companies to examine their own portfolios

• Key questions
  – what do I have?
  – what do I need?
  – how much is enough?
  – where I have gaps, what assets should I buy?
  – where I have strength, what should I do?
Patent Purchasing

• Purchasing through brokers
  – Pros
    • assets are available
    • use cases often well developed
  – Cons
    • limited selection
    • brokers can be double-edged swords
    • many assets on open market are low quality
    • “litigation value” often drives up price

• Purchasing directly from sellers
  – Pros
    • opportunity to find “gems” and high quality assets
    • target technology areas that have highest strategic value
  – Cons
    • may take additional effort to shake assets loose
**Patent Purchasing**

- **Types of sellers**
  - active sellers
    - established and sophisticated licensing/sale programs
      - HP, IBM, AT&T
    - set valuation
    - employ brokers and also direct sales
    - grant back and encumbrance issues, restrictions on assertions
    - quick deal flow possible
  - potential sellers
    - understand need to maximize shareholder value on IP investment
    - willing to consider offer packages
    - fewer encumbrances and restrictions on assertions
    - more lengthy deal flow
    - possibility to find hidden “gems”
  - unwilling sellers
    - many Korean and Japanese companies do not want their patents to become embroiled in US litigation dynamics
Should I Sell Patents?

• Patent sales can be an effective way to demonstrate the value of your company’s IP program and fund future innovation

• Considerations
  – which patents should I sell?
    • core v. non-core
  – what are they worth?
  – who needs to approve?
  – what rights should I retain?
  – do I care who buys my patents?
  – do I care what they do with them?
Conclusion

- The IP world is changing rapidly
- Companies need to be more thoughtful than ever before about the composition and potential deployment of their patent portfolios
- Today’s liquid patent market provides companies with opportunities to recalibrate and right-size their patent portfolios
Thank you!