

The intangible investor

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Japanese rise to top in patent sales

As patent sales continue to make headlines, it appears that the largest sellers are motivated by a mix of business need and changing attitudes

More big patent holders are selling larger numbers of patents to improve poor financial performance.

An increasing number of significant high-tech rights holders – some new to patent sales – appear undaunted by the potential impact that their transactions may have on customers, competitors or vendors. A great deal of attention has been paid to the behaviour of businesses which acquire patents. However, the businesses that sell to them, and why, have received relatively little coverage, perhaps because many of these deals occur below the radar. Large patent transactions – some to non-practising entities (NPEs) with a likely back end – are on the rise, with 2015 sales keeping pace with the record year 2014 (for graphs of cumulative totals, by company, see www.ipcloseup.com).

Analysis conducted by Brody Berman Associates in conjunction with research firm Envision IP reveals that for the three-and-a-half year period from 2012 to early August 2015, the leading seller by far was IBM, with 5,356 patents; buyers included Google, Facebook, Alibaba and Twitter. In 2014 alone, IBM sold 2,187 patents, the most in any year over the period by any of the 12 leading tech companies analysed. Surprisingly, the number two, three and four patent sellers in the 2012-2015 period were all Japanese companies: Panasonic/Matsushita, NEC and Sony, with 4,203, 2,131 and 1,578 respectively. This is a dramatic shift for conservative Japanese electronics giants, which rarely litigate patents to generate revenue or enable others to.

All four leading sellers, IBM, Panasonic, NEC and Sony – have experienced poor financial performance in recent years, with revenues declining at IBM by \$12 billion over the period. Panasonic and NEC were down less dramatically, and Sony had billion-dollar losses in 2014 and 2015. Predictably, Cisco, Apple and Qualcomm – all solvent, – sold a total of only 23, 19 and

eight patents each over the three and a half year period. Qualcomm, one of the world's most successful patent licensing companies, does not typically sell IP rights for income; and Cisco and Apple, whatever the quality of their portfolios, are wary of enabling those who might assert against others.

Mysterious buyers

Information about patent buyers is more difficult to obtain. Most are public operating companies; but at least some are private NPEs, such as Intellectual Ventures (IV), which claims to have amassed over 70,000 patents. It has a diverse US patent portfolio, with roughly 6,500 – or 34% – of some 20,000 patents examined having previously been owned by large technology companies, as well as those in the defence, consumer products, automotive and chemical industries. Only about 2% of IV's US patents were originally owned by academic institutions and technology transfer offices. Its portfolio is heavily focused on wireless, internet and semiconductor technologies, and some 40% of the portfolio has claims that read on software and business methods.

IV's portfolio appears to contain no patents originally owned by Apple, Google or Qualcomm, as Envision's findings indicate. Several patents owned by IV investors appear in its portfolio, including those of Nokia, Verizon, Microsoft and Sony. Only 268 of the 19,559 US patents owned by IV were identified as having a litigation history, representing less than 1.5% of the portfolio. Sources of the top 10 IV purchases were Kodak (1,057), American Express (643), Digimarc (446), Nokia (385), NEC (370), AT&T (358), Philips (313), Raytheon (304), Ericsson (273) and Mangachi/Hynix (182) (see IP CloseUp for a list of IV's 35 top purchase sources).

According to Bloomberg, Nokia's licensing revenue increased from €534 million to €578 million from 2012 to 2014 on 11,000 patents, or from 3.5% to 4.5% of its dwindling revenue. From 2010 to 2014 Ericsson's 37,000 patents brought in Skr4.6 billion versus Skr9.9 billion (about \$657 million versus \$1.4 billion), more than doubling to 4.34%. Those better-

performing companies such as InterDigital and Qualcomm with a significantly higher proportion of income from licensing were less active sellers in 2013 and 2014, although in 2012 InterDigital surprised the IP world by selling 1,700 3G LTE and 802.11 patents to Intel for \$375 million.

Businesses that for various reasons do not generate much licensing revenue may resort to sales when they must. Primarily, these sales are to operating companies, but such transactions to licensing companies can distance sellers from messy stick licensing and protracted litigation. The net-net is that patent holders that once were fearful of enabling NPEs are no longer reluctant to consider selling to them or to others that might. This is a major change, especially for Japanese businesses.

Solvent sellers

Not all of the top sellers are financially troubled. IV has used rights that originated with AT&T to license JP Morgan Chase and Suntrust Bank, among others, and has litigated patents acquired from American Express. The monetisation strategies of large patent holders are evolving. Highly profitable companies can be active sellers too. It will be interesting to observe which IP businesses they select to carry out the licensing and enforcement activities that they are unable to perform and whether there will be any serious ramifications.

High-profile portfolio sales by IBM to newly public companies are a reminder that more businesses are willing to pay a premium for a portfolio from a recognised source if it will make them less vulnerable to attack or help to maintain market value. IBM is fast building a reputation as the patent provider of choice among high-profile tech startups. It remains to be seen whether other sellers with diverse portfolios can follow suit. For 2015, Panasonic's sales are thus far outpacing even IBM's.

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