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## Patent Licensing and Sales for Inventors

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- 1. Who is Perception Partners?**
- 2. Marketing Patents for License or Sale**
- 3. Why License or Buy?**
- 4. Packaging for a Transaction**
- 5. Patent Valuation**
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**Perception Partners is an advisory services firm that provides Service Suites to understand, quantify and maximize the value derived from innovation and intellectual property.**

We enable our clients to increase revenues and profits with facts, using cutting-edge IP and business intelligence **tools**, algorithmic discovery **techniques**, and extensive legal, technical, and business expert **teams**.

We help our clients innovate in new products and services, find new market opportunities, discover acquisition targets and out-license IP portfolios. **We deliver value as a service provider, collaborator or trainer.**



## Patents are unique intangible assets

- Right to exclude for 20 years – a negative right – does not provide freedom to practice
- By definition is unique – no true “comparables”
- Patents are high risk due to arcane and precedential nuances that affect validity and enforceability
- Patents are expensive to obtain and maintain
- Yet, most patents are junk because their rights – not their disclosed technology – are not valuable to anyone else

## More patents being sold and licensed now than ever before

- Higher transaction volumes
- More large companies buying/selling/licensing
- More intermediaries
  - Brokers
  - Auctions
  - Portals
  - Trolls (PLECs)
  - Funds
  - Pools

### **The motivation for buying/licensing varies**

- Fill gaps in a portfolio
- Build new foundation in new segment
- Keep patents away from another
- Defend against competitive threat
- Use for cross-licensing
- Improve organizational valuation
- Generate revenue

### **The well packaged portfolio offer contains**

- Non-confidential illustrations of technology composition, uses, applications
- Market size, growth and segmentation data
- Estimates of impact on revenues, valuation, strategy
- Expert opinions of counsel or practitioners
- Evidence of infringement or claim charts (sometimes)
- Confidentiality agreement
- Price ask or range

## A valuable patent portfolio

- Protects profitable business activities
  - Protects product or service differentiation that commands a price premium
  - Protects cost advantage not available from other resources
  - Is (or will be) associated with attractively stable and/or growing demand in key territories covered by the patents
- Blocks another's access to similarly profitable business activities
  - Portfolio leverage or threat of leverage is required to extract surplus value

## **Multiple approaches – often more than one method used**

- Financial Methods
  - Cost Approach
  - Market Approach
  - Income Approach
- Statistical Approaches
  - Real Options
  - Decision Trees
- Auction Approaches
  - Multiple Offers
  - Bidding Wars

## Patent Quality

- Claim drafting based on specification and estoppel
- Geographic strength
- Detectability and observability
- Workarounds, substitutes
- Likelihood of survival in opposition
- Continuation(s) underway

## External Issues

- Assignment
- Encumbrances
- Terminal disclaimers
- Alignment to standards
- Freedom to operate
- Cost to enforce
- Cost to commercialize

### **Patents in a transaction will inevitably undergo due diligence**

- Intensity varies
  - Higher price, more scrutiny
  - Publicity of situation
  - Identity of buyer and seller
- Make it easy for buyer/licensee
  - Have claim charts prepared if appropriate
  - Demonstrate consideration of substitutes
  - Provide assignment documents
  - Demonstrate clear title (no liens)
  - Provide a valuation
- Good due diligence closes deals faster, more securely

## Getting an offer is only the beginning

- Understand buyer/licensee drivers
  - Publicity vs. confidentiality
  - Aggregation vs. segmentation
  - Have vs. use
  - Strategic vs. speculative
- Familiarity with recent cases, implications
  - KSR v Teleflex – Obviousness
  - Medimmune – Sue even while holding a license
  - Seagate – Reduced pressure on the willful infringer
  - Bilski – Business methods tied to machine or transformed article
- Key terms
  - Price (Royalty rate, base, milestones, equity, guarantees)
  - Reps & Warranties
  - Indemnities

### **Maximizing value requires**

- Understanding of buyer/licensee motivation
- Attractive and thorough offer package
- Informed valuation
- Acknowledgement of limitations
- Survival of due diligence
- Successful negotiation
- Ability to collect

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**Understand, Quantify and Maximize the Value  
from Innovation. *That's the IP Advantage™***

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