



Asset Sales Committee

ABI Committee News

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[Get the Maximum Price for Patents](#)

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If patents have significant value to operating companies, then why do patents sold through bankruptcy or by the creditors of distressed companies generally fetch so little, or for anything at all? The answer lies in the inherent market demand for patents as stand-alone assets and the efficiency of that market to match willing buyers to willing sellers. The good news for creditors holding patents is two-fold: (1) the demand for patents has dramatically increased over the past five years, and (2) there has been an emergence of transaction experts (patent brokers and the like) providing liquidity with access to buyers and the right information to close the deal at the right price.

As any investor in a tech company understands, the Intellectual Property (IP) developed by the company is one of the most precious assets of that company. When these companies become insolvent, the insolvency bar knows how to monetize trademarks and copyrighted works such as music, books and video content. However, the value of patents, potentially the most valuable of IP assets, is often lost to creditors, as most insolvency professionals lack awareness of and/or know how to navigate in the emerging market for patents.

As recently as five years ago, there was very little interest in the purchasing of technology patents. Today, however, there is a burgeoning and growing market for these assets fueled by active buying from both large companies that are motivated for defensive and strategic purposes, and other financial investors such as hedge funds and special-purpose entities seeking greater financial returns. Despite the increase in patent-buying, the market is still extremely inefficient, with many of these potential buyers reluctant to advertise their interest in order to maintain confidentiality. Compounding these issues is the lack of an established and well-recognized marketplace for the trading of patents.

During the same period, we were approached by a large number of companies seeking to obtain value for their patents in order to generate cash to return to their creditors and investors. All but a few of these companies had good-quality patents that had a significant market value, and several companies had fundamental patents on one or more technologies that had been broadly adopted by the market. In fact, some of the most valuable patent portfolios we have seen have come from companies going through dissolution. As it turns out, this is not all that surprising in retrospect; real innovators with meaningful inventions are by definition first to market and often are too early.

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When an investment is being wrapped up, creditors go to extraordinary lengths to sell off the obvious tangible assets including the laptops, furniture and even the whiteboards. However, they typically overlook the unique value of the company-the patent portfolio-and give it away for free or at fire-sale prices. This usually happens because the underlying value of the patents is not understood, and there is uncertainty in knowing who may be interested in acquiring the patents. Even when creditors do seek some return on the patents through a sales process, they may not understand or take appropriate actions to maximize their return.

In contrast, informed patent owners have a clear and simple objective-to get the best price possible for their patents in a timely manner. To achieve this objective, these creditors are increasingly seeking help from a new class of IP transaction firms that specialize in obtaining full market value for their patents. These firms provide investors with a detailed understanding of the value of their IP portfolio (*e.g.*, patent claims) in the context of their business and technology investment. Most importantly, these firms have access to interested buyers and critical know-how to provide the necessary information to help complete the patent sale transaction, typically at a price beyond the expectations of the owner-ultimately establishing IP assets as some of the most valuable remaining assets in a company.

To get the best result from the sale of patents, creditors need to quickly get into a multiple-bidder situation. Unlike most assets where insolvency professionals can target a well-defined set of buyers or markets to yield good results, patents present unique challenges. We have found the following three factors to be key in getting the best results with selling patents:

1. *Access to buyers*-Most patent buyers do not advertise their interest. To attract a bid, you must know who is interested in buying patents in the relevant area. It is often very difficult to determine what kinds of patents a potential buyer may want from external observation. Companies rarely buy patents related to their own products-they often feel that their own patent-development efforts will yield the results they want. For example, the cell phone manufacturers have not, in our experience, been the high bidders for patents related to cell phone technology.
2. *Information*-Few potential patent purchasers have the interest or capacity to review all or even a substantial amount of the opportunities presented to them. A successful patent sale requires that the seller provide buyers with information sufficient to allow them to confirm rather than determine patent value on their own. Further, some information critical to patent value, such as existence of licenses, chain of title, etc., is simply not available from any source other than the seller.
3. *Process*-The process must enable buyers to (a) get the information they need, (b) conduct their due diligence and (c) give them enough time to do the work they need to do to justify the price. The due diligence necessary for a \$100,000 bid is about \$5,000, while the due diligence for a \$1 million bid is \$50,000-\$100,000. Few, if any, patent purchasers will spend that kind of money on multiple lots of patents in a public auction.

In one recent situation, we were approached by the management of LongBoard Inc., a pre-IPO Silicon Valley company founded in 2000 that developed and patented some of the most basic building blocks of Voice over IP (VOIP) technology. In early 2008, the company found itself in an unfortunate financing situation after having exhausted its equity and an additional \$5 million in bridge financing. After a year-long unsuccessful attempt with an investment banker to seek sale of the company, the responsibility fell back to the original investor. One of the potential buyers did, however, submit an offer to buy the company's patent portfolio for \$1.5 million. Initially, the board leaned in favor of taking that offer, not knowing how to identify other potential bidders or get them interested. Ultimately, the board was able to obtain \$5.375 million from the sale of various parts of the portfolio to different buyers-about 2.5 times the original "good offer."

The bottom line is that creditors of distressed companies holding patents have a viable new path to

liquidity to consider long before bankruptcy. In many cases, the true value in the company is well preserved in the patent portfolio, but beyond the expertise of insolvency professionals. By including IP transaction experts, creditors can now realize greater recovery of investment capital.