A game of scale

Companies which see the exponential market capitalisation growth that Acacia Research has enjoyed over the last three-and-a-half years are bound to attract attention. The question that investors are asking is whether the NPE's success is sustainable over the long term

By **Jack Ellis**

Acacia Research is notoriously divisive. Some condemn it as nothing more than a patent troll, which stifles technological progress by threatening innovators with frivolous lawsuits. Others argue that it has allowed inventors and small businesses to stand up to flagrant patent infringements perpetrated by cavalier multinationals.

But whichever side of the fence you stand on, there is one fact that cannot be ignored: Acacia is a runaway success. In just three-and-a-half years, its market cap has shot up from around US$90 million to a staggering US$1.75 billion towards the end of May 2012.

So what accounts for this meteoric rise? Simply put, Acacia is a relative rarity among its non-practising entity (NPE) peers. While other IP pure-plays focused on leveraging their own technology portfolios, Acacia turned itself into a service offering, teaming up with an array of patent owners to help them exploit new ways to monetise their IP assets. As a result, Acacia's business has grown in both diversity and scale.

Always different

Acacia stood out from the crowd ever since its inception in the late 1990s. Whereas many of today's more visible NPEs emerged from the ashes of operating companies, Acacia was incorporated back in 1993 as a venture capital firm and floated on the stock market two years later. The business flourished as it secured significant stakes in a number of high-tech start-ups.

But in 2000, the tech bubble burst. It was suddenly make-or-break time for the Newport Beach venture capitalists. CEO and president Paul Ryan and executive chairman Chip Harris had to fundamentally rethink Acacia's long-term strategy if the business was to survive the post-bubble turmoil.

The pair realised the risks of attempting to compete in the products market in such a volatile climate. Instead, they felt that Acacia could better guarantee high-margin returns by out-licensing the technologies it had invested in. To advance this strategy, Ryan and Harris jettisoned Acacia's stakes in companies that lacked solid IP foundations and reinvested the resulting capital to gain majority or sole ownership over those patent-strong interests that remained.

The partnership model

But the tech crash had left a multitude of other companies in a similar position to Acacia's cherry-picked investments: lacking the financial wherewithal either to practise on their patented inventions or to assert their rights. "That's when the light bulb went on," says Ryan. "We realised there was a huge unmet need in the marketplace for an outsourced patent licensing company, particularly for individual inventors and entities such as universities, research centres and start-ups that did not have the expertise or money to go out and commercialise their innovations."

Previously, if these capital-starved entities had any hope of getting a return on

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their patents, they would usually need to sell them. But Acacia offered the option of partnership instead. "Most patent owners who hold widely infringed patents would rather try to license to everyone else in the industry than sell those patents," explains Jonathan Taub, Acacia's executive vice president responsible for business development. "Another reason they prefer this partnership model is for accounting reasons. If you sell, you get a one-time benefit to your balance sheet. But unless the value is massive, the positive effect of an asset sale will quickly disappear without leading to any significant increase in stock or company valuation." Licensing, on the other hand, can bring in new and potentially long-term revenue streams. In exchange for 50% of net licensing revenues, Acacia offered its expertise and capital to assist patent owners to realise the full commercial potential of their intellectual property.

Strength in diversity

As it gradually built up its holdings, Acacia began to move into new technologies beyond those it had initially focused on following the 2000 tech crash. For Harris, the major turning point in this regard came in 2005, when Acacia completed its purchase of the assets of Global Patent Holdings, an umbrella group of NPEs including TechSearch. "This acquisition vastly diversified Acacia's patent offering," he says, "taking its tally of patent portfolios well into double figures and across a range of different technologies."

For each new portfolio it acquired, Acacia set up a wholly owned subsidiary – a practice that continues to this day. These subsidiaries are controlled by Acacia Research Group, the arm of the company that handles business development and licensing activities (Acacia Research Corporation is the publicly traded investment vehicle that deals with investor relations). As it is the Acacia Research Group subsidiaries that will be directly involved in any litigation, the original patent owners – and other partner companies – are shielded from risk.

From an investor's perspective, this diversity of assets is attractive. "Most of the other IP pure-plays are an inch wide and a mile deep," says Jonathon Skeels, an equity analyst at Davenport Consulting who focuses on the IP market. "They are typically concentrated in a single area of technology." When asserting patents, one-tech NPEs will typically be seeking large damages from a small cross-section of operating companies. This leaves them – and their shareholders – exposed to extremely high risk if litigation ensues. Consequently, single-tech NPEs are likely to experience significant stock market volatility whenever they face a date in the courtroom or are subject to speculation regarding major transactions. "I think that volatility is simply a reflection that those companies have basically all their value resident in one vertical patent portfolio," says Ryan. "When that portfolio is in litigation, the whole company is at risk, so investments in those sorts of companies are binary bets." By sinking their capital into a diverse range of assets, Acacia's investors can hedge this risk.

Risky business

However, even this move towards diversification could not fully insulate Acacia and its investors from the perils of litigation. In 2006, one of the firm's subsidiaries filed suit for patent infringement against Microsoft in the Eastern District of Texas. Acacia reportedly sought around US$900 million in damages on the basis of sales of the Microsoft Windows XP operating system. The case was the first of Acacia's to reach jury trial,

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and the result was a blow: its patent was ultimately invalidated.

The stock market reaction was instant: Acacia's shares plunged in value by more than one-third overnight. By the end of 2008, the company's share price hovered just above the US$2 mark – its lowest since the aftermath of the tech crash. "We were expecting that we would do well in that case, and I think our investors expected that too," recalls Dooyong Lee, executive vice president and previously chief operating officer at TechSearch. "But as it turns out, we lost and that had a hit on our valuation." And the timing could not have been worse: at the same time, the incipient global financial crisis was beginning to unravel, compounding the negative effect on Acacia's stock.

But even as these storm clouds gathered, Acacia received proof that it had laid sufficient groundwork to regain the confidence of the investment community. Just as the *Microsoft* decision was handed down, several of its portfolio acquisitions began to generate significant new revenue streams. This steady cash flow meant that the company's ability to see out protracted litigation – and thus its leverage on opponents – was augmented. Defendants – often lacking the deep pockets of a colossus such as Microsoft – increasingly came to realise that their best option was to settle. This was all to the benefit of both the NPE and its partners and shareholders, as more revenue went straight to the bottom line rather than being caught up in legal costs.

Overtures

Whereas once Acacia had to actively seek out its partners, as the business grew in scale it found itself being approached by patent owners keen to find shelter behind its protective shield.

At the same time, a new type of partner began making overtures to the NPE: the operating companies which had hitherto been some of its fiercest critics. "That was a real eureka moment for us," says Harris. "Not only did we close more licensing deals without the threat of litigation – within a few years, operating companies and their financial advisers actually began to approach us, seeking our licensing and monetisation expertise."

A few of these "privateer" hook-ups are public knowledge, including alliances with ACCESS Co, Renesas Electronics, Automotive Technologies International and TeleCommunications Systems. But, generally, it would appear that many operating companies are still apprehensive

The competition - future opportunities for IP pure-play investment

Due to the diversity of its patent assets, Acacia is exposed to a much lower litigation risk than its IP pure-play counterparts that have assets focused in a single or just a handful of technologies. Acacia is effectively able to hedge any difficulties that beset one of its portfolios against successes in a different technological field. This diversification of assets was a function of its partnership model.

"Acacia was one of the first companies to exploit third-party IP rights," says Thomas Ewing, principal consultant at Avancept. "The typical NPE before them was primarily concerned with exploiting its own home-grown IP. Acacia perfected the business of taking and exploiting anyone's IP rights." Part of Acacia's attraction for investors is thus that the binary litigation risk associated with many other IP pure-plays is significantly reduced.

However, there are examples of other IP pure-plays that have based their business models around diversified patent offerings. RPX, which floated on the stock market in May 2011, built its defensive aggregation business on a fee-based membership model. Member companies include several leading names from a variety of industries.

Intellectual Ventures (IV) owns a vast number of patents – it is purportedly among the top five holders of US patents – covering a wide array of technologies, and is perhaps the only NPE that currently has a truly global reach after it opened an office in Europe and six in Asia. However, it is totally funded by strategic private investors, reportedly including major operating companies such as Microsoft, Apple, Sony and Nokia, and does not trade shares publicly.

In both cases, the interests of the members (for RPX) or private investors (for IV) could curtail the entity's ability to pursue certain activities. "One of the great attributes of Acacia is that the business has no real limitations," says equity analyst Jonathon Skeels. "Investors are looking for vehicles that have a lot of flexibility to be able to adapt to changes and pursue new opportunities that arise."

Acacia has attracted interest thanks to its business model. But competition follows success. If other public stock NPEs emerge with sufficient diversification and scalability to rival Acacia's, the Newport Beach company could face a tough battle for market share and investment. One possible point of entry for competitors is that a partnership with one company in a particular sector may preclude Acacia from pursuing any sort of working relationship with other companies in that same sector. Jonathan Taub, executive vice president of business development, thinks that the flexibility which Acacia can offer lessens the impact of that risk: "Yes, we have to be mindful of conflicts of interest regarding who we are aligned with. But our partnerships take on a variety of flavours. The scope of the relationship may vary from company to company." Though certain companies might be precluded from working with Acacia on one basis, there may be another way in which they can collaborate. That said, this could still leave a niche for a competitor to fill, since Acacia cannot offer everyone exactly what they want.

Patrick Anderson, president at Patent Calls and author of the Gametime IP blog, thinks that Acacia needs to be cognisant of the possibility for competition, although NPEs that lack a model based on monetising third-party IP assets will pose less of a threat. "NPEs like Acacia that follow a partnership or consulting model will remain sustainable as long as they make the right calls on partners," he says. "Single-technology NPEs, on the other hand, will necessarily need to continue investing in inventors or otherwise adapt to remain profitable."

Nonetheless, investment opportunities may multiply in this fast-moving market. "I think many of the other IP pure-plays are very interested in what Acacia is doing with that business model it has created," says Skeels. "Many of the NPEs that have been around for a while are facing two huge risks - patent expiration or major renewals from early licensees." In order to offset that, many are looking to diversify away from their core historical competencies. Perhaps a new innovative IP pure-play model is just around the corner.

Dooyong Lee, executive vice president, Acacia Research Corporation and CEO, Acacia Research Group
***Microsoft* court defeat had an impact on Acacia's valuation**

Jonathan Taub, executive vice president, Acacia Research Group
"The investment community began to tell us that they wanted in"

of disclosing partnerships with NPEs - though Ryan does confirm that Acacia is working with several of the world's major players.

Increasingly, it seems that large companies are realising that they can utilise NPEs to meet their strategic goals and initiatives outside of the courtroom. "If a company is seeking to take control of a new portfolio, there are structural issues that we are uniquely placed to solve," explains Ryan. "For example, if we take ownership of some patents and sell them back only the rights they want, then they aren't overpaying by granting cross-licensing rights to all the other parties."

Another reason for outsourcing to Acacia is the cost of licensing itself. Several operating companies have built their own successful IP licensing programmes internally. But developing in-house monetisation capabilities can soak up a lot of time, effort and money: in terms of human investment, running a licensing campaign can ultimately resemble a small business in itself. Partnership with Acacia can thus free up precious resources that would be better spent elsewhere.

However, Ryan believes that the primary motivation for operating companies to partner with NPEs is still protection from litigation exposure. "A lot of companies think they have an obligation to their shareholders to get a return on their patents," he states. "But if they try to achieve that directly by litigating, they are potentially incurring a lot of cost - and oftentimes, the defendant will sue them back for leverage." By selling the asset or assigning it to an NPE for continuing returns, astronomical legal costs – as well as the negative outcomes of litigation, such as an injunction - can be avoided.

Cash to flash

The arrival of these larger entities into the fold served to sharpen the investment community's appetite for Acacia. Its 50-50 revenue share model was reaping rich rewards for the NPE, which now found itself with money to spare as it brought in bigger revenues and its overall legal spend decreased. "The increasing size and quality of portfolios we were taking control of, and the increasing name recognition of our partner companies, meant that we reached an inflexion point," says Taub. "The investment community began to tell us that they wanted in. After a period, we were able to make two secondary offerings, which allowed us to raise even more cash."

In March 2011, Acacia announced a public equity offering of over 5 million extra shares. This deal was completely underwritten by Barclays Capital, demonstrating the bank's confidence in the value of the company and its business model. It was followed by a private placement of over 6 million shares in February 2012.

These equity offerings yielded hefty cash reserves, allowing Acacia to move beyond its original 50-50 model to provide companies with a range of monetisation options. For example, it can now buy assets outright and satisfy those patent owners looking for a quick-fix lump sum. Crucially, it can also offer hybrid deals, giving patent owners the benefits of upfront payments as well as longer-term licensing revenues.

In January 2012, Acacia raided its mounting war chest for an entirely new type of transaction. It acquired wireless communications concern ADAPTIX for US$160 million, in the first known outright purchase of an operating company by an NPE. "The ADAPTIX portfolio was a very prudent investment for us, for several reasons," explains Ryan. "It was largely unencumbered with existing licences and, importantly for our shareholders, it comprised 15 distinct patent families that could be licensed to three different industries." Additionally, the patents relate to emerging 4G and long-term evolution technologies, which are in the early stages of adoption.

This all makes for a portfolio of particularly low-risk, but potentially high-value patents, with around 10 years of life remaining on them. It is not beyond the realms of possibility that Acacia may have been encouraged in this purchase by operating company partners keen to keep the ADAPTIX assets out of competitors' hands. Both Samsung and Microsoft became licensees of the ADAPTIX portfolio shortly after the acquisition was announced.

The company's original partnership model makes sound economic sense to investors. Patents are assumed for free, so returns for shareholders can be exponential. Outright purchases may come with more risk, but Skeels believes that investors will not be deterred by this new direction. "As companies realise they've got this asset on their balance sheet, the first reaction is probably going to be to sell it – to monetise it as quickly as possible," he says. "That means that there is a huge supply of assets coming onto the market. And at this point Acacia has capital – if they can deploy it and earn significant returns, investors are more than willing to let them go down that route."

Skeels suggests that this can have a positive impact on the partnership business too: "It ought to be synergistic, because ownership of a valuable portfolio like ADAPTIX should give further leverage in their licensing negotiations for their clients. For Acacia, it is all a game of scale. The more touch points and the more infringement exposure they can get on certain large companies, the more likely it is that those companies just decide to settle rather than drag everything through litigation."

Intangible assets = tangible success

Acquiring quality assets such as those of ADAPTIX – and doing so at the right price – is no mean feat. Acacia could not have put a realistic value on those patents, or any of the hundreds of portfolios it now licenses, without its unique command of two invaluable intangibles.

One of these is information. Valuing thousands of portfolios across a dizzying range of technologies over several years has generated a vast bank of patent data which the firm now has at its fingertips. "By doing that exhaustive due diligence in each of these sectors, we've unearthed prior art in the histories of each one of them," says Ryan. "So when the 300th portfolio comes along in a particular technology category, we've already looked at that category hundreds of times." Ready access to such an abundance of reference points means that Acacia is growing ever-faster in reviewing and valuing portfolios.

This information undoubtedly constitutes a highly precious asset. But Matt Vella, executive vice president for licensing, believes that a second intangible is even more crucial to the company's growth in scale and success: the know-how of Acacia's employees. "The data is key to our work," he says, "but actually making it into a successful business is a human endeavour." It is not possible just to put all the variables into a piece of software and wait for an output on the click of a button, Vella explains: "You need to have some sort of feel for what prospective licensees are going to do – and what their reaction is going to be to your licensing approach. That is obviously something that human beings have to process."

For Acacia, valuation is inextricably tied in to the licensing process – and the way in which the business is structured reflects that. The company is divided into a business development team and a licensing team, which in turn are supported by an engineering team. A network of external technical experts and patent lawyers with whom Acacia has built up working relationships are also on call to share their insight. A business development executive and a licensing executive are assigned to each portfolio from the very outset and, with the input of technical and legal specialists, will work in tandem throughout its lifecycle to value, acquire, manage and license it.

Ryan explains why this multifaceted strategy is crucial. "You have to look at the valuation of patents from several simultaneous perspectives; otherwise you've got limited scope," he says. Patent attorneys can approach valuation from the legal perspective, to understand the strengths and weaknesses that are likely to

Caught up in the hype?

According to equity analyst Jonathon Skeels, much of the current interest in intellectual property can be put down to a trio of extraordinary events during 2011 which captivated the investment community: the US$159.6 million initial public offering of RPX, the sale of Nortel's patents to the Rockstar consortium for US$4.5 billion and Google's purchase of Motorola Mobility for US$12.5 billion in the aftermath of the Nortel auction. "These have brought IP to the forefront for investors," says Skeels. "They have begun looking at business models like Acacia, which have shown that there is real money to be made by either investing alongside of, or in, assets on their own, with people who have the expertise to be able to value them and eventually sign licensing agreements with them."

However, the three pivotal deals were followed by several disappointments for the IP world. InterDigital, for example, gave up looking for a buyer for its wireless technology patents after several months of searching, and consequently saw its share value plunge. "The initial reaction following Nortel was that any company with wireless infrastructure or related patents - like InterDigital - would be beneficiaries, and that the large companies were simply going to buy up these assets," says Skeels. "I think that led to a lesson being learnt the hard way, not just by investors but by patent owners themselves. The assets may be valuable for one company, but might not fit the needs of another."

Although he believes that Acacia's model is sustainable, Patrick Anderson, president at Patent Calls and author of the Gametime IP blog, feels that investors are still fairly uneducated when it comes to IP. "I think there is a big misunderstanding among investors about what constitutes a sustainable IP pure-play business," he says. "Most licensing programmes have a short lifespan, so building a long-term business requires a system for properly evaluating and pricing new acquisition opportunities – something that the IP world doesn't necessarily have."

Thomas Ewing, principal consultant at Avancept, has written extensively on NPEs and their effect on the marketplace. He agrees with Anderson that investor interest in IP is less than well informed. "The aspect of IP rights that are purely legal do not seem to be well understood by investors," says Ewing. He also thinks that corporate under-appreciation of intellectual property can cause difficulties: "Investors might not understand that the typical IP pitch involves selling a product to a buyer that the buyer doesn't think it really wants or needs."

On the other hand, Acacia's executive vice president for licensing Matt Vella has been impressed with the "knowledge" and awareness that he has seen from investors in IP-based businesses: "Most of those I speak with understand the risk-reward ratios, as well as the particular and often peculiar forces that at times warp the market valuations of patent assets."

In Vella's opinion, what investors ultimately need to understand is that the patent monetisation business is all about statistics. "The system can produce strange outcomes, but astute people can predictably earn a return on investment. But it is an ongoing process and I think we are all learning. Patents as an asset class are dynamic – so we are continually having to revisit our assumptions."

Figure 1 shows the change in price per share in US dollars over time for Acacia Research (ACTG) and three other publicly traded IP pure-plays, all of which trade on NASDAQ. Figure 2 shows the relative stock performance over the same period in terms of percentage change in price per share of the same four companies. Both graphs are calculated from the closing price on the first trading day of each month, adjusted to take account of distributions and corporate actions. Both graphs show the period from 9th January 2003, when Acacia began trading its recapitalised stock (ACTG), to 28th May 2012.

Figure 1

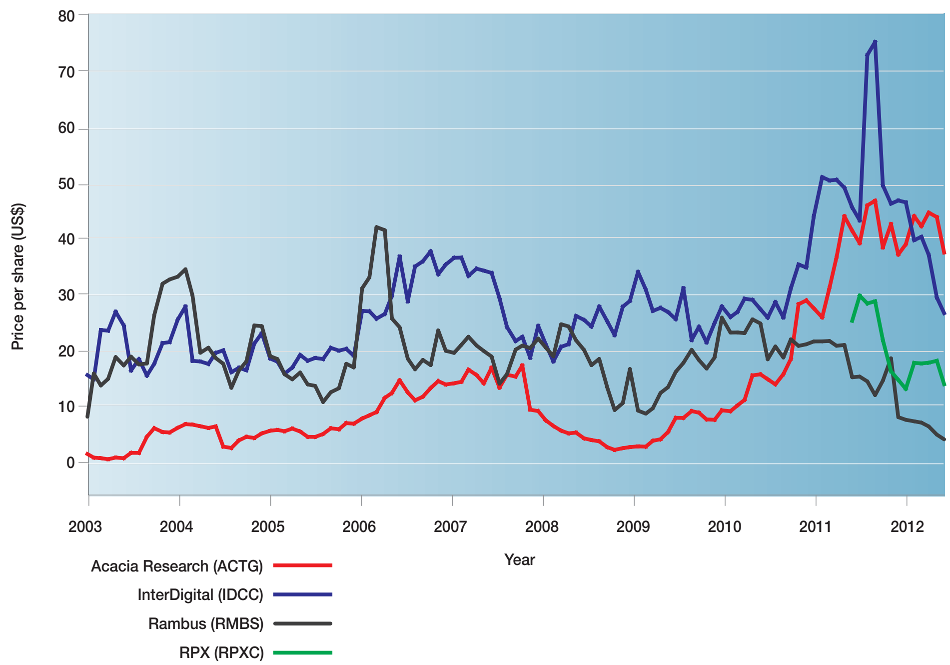
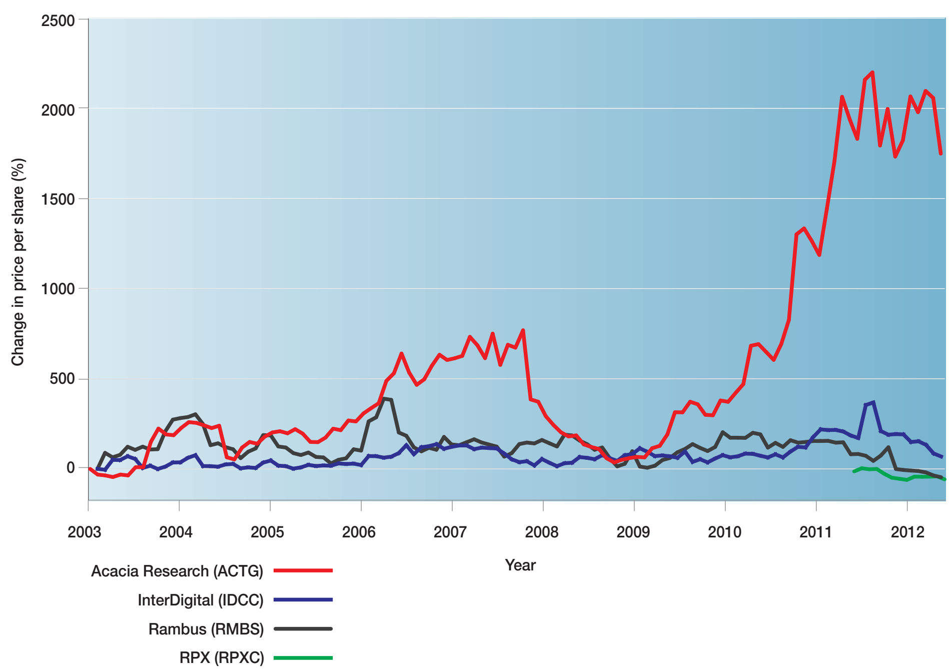


Figure 2



Data source: **Yahoo! Finance/NASDAQ**

Acacia milestones

1993
- Acacia incorporated in California.

1995
- First initial public offering; Acacia stock begins trading over the counter.

1996
- Acacia stock begins trading on the NASDAQ exchange (NASDAQ:ACRI).

1999
- Reincorporated in Delaware.

2000-2005
- Stakes in high-tech businesses with strong patent positions are increased; other investments are sold or spun-off.

2003
- Acacia stock is recapitalised (NASDAQ: ACTG).

2005
- Record annual revenues of US$20 million.
- Acquires 27 patent portfolios from Global Patent Holdings.

2006
- Record annual revenues of US$35 million.

2007
- Record annual revenues of US$53 million.
- Acquires 31 new patent portfolios.
- Loses first jury trial against Microsoft in Eastern District of Texas.

2008
- Acquires 100th patent portfolio.
- Market cap drops to US$90 million.

2009
- Record annual revenues of US$67 million.
- Acquires 30 new patent portfolios.

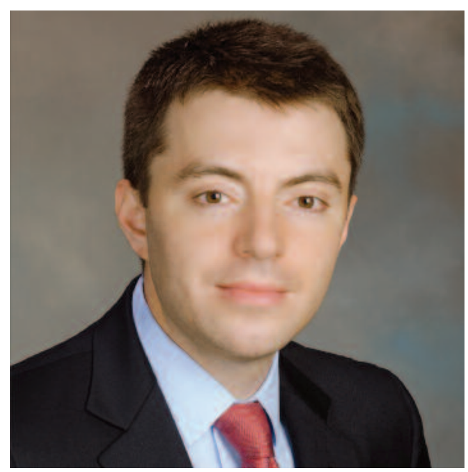
2010
- Record annual revenues of US$132 million.
- Enters into patent licensing alliance with Renesas Electronics, holder of 40,000 patents.
- Licenses Palm smartphone technology to Microsoft with no litigation.

2011
- Record annual revenues of US$185 million.
- Completes 1,000th licensing agreement.
- Acquires 200th patent portfolio.
- Patent licensing headquarters relocated to Texas.
- US$175 million equity raise.

2012
- Market cap at circa US$1.75 billion as of 28th May.
- Record Q1 revenues of US$99 million.
- Acquires ADAPTIX and its pioneering 4G wireless portfolio for US$160 million; licenses ADAPTIX patents to Microsoft and Samsung with no litigation.
- Acquires 300 automotive patents from Automotive Technologies International.
- Enters into patent licensing alliance with TeleCommunications Systems.
- US$225 million equity raise.

Matt Vella, executive vice president, Acacia Research Group

"Patents as an asset class are dynamic – so we are continually having to revisit our assumptions"



Jonathon Skeels, vice president and senior equity research analyst, Davenport & Co

"One of the great attributes of Acacia is that the business has no real limitations"

emerge during litigation. Engineering teams can discern in technological terms the precise nature and degree of infringement; they can also try to anticipate the design-around possibilities which could have an impact on value and cap any royalty. After years in the business, Acacia's licensing and business development operations have developed a familiarity with the negotiation and litigation behaviours of prospective licensees. They have a sophisticated understanding of which companies in particular sectors are likely to take early licences and which will persist in litigation up to a certain point in the process. They also have a keen insight into the negotiation strategies, price points and IP policies of prospective licensees. "There is an art to rolling out a licensing programme on a risk-adjusted basis," says Ryan. "I think our know-how in that regard is probably our most valuable asset. Nobody could replicate that knowledge base of how best to execute a licensing programme with the least amount of risk and earliest revenue returns."

Executives who have a personal relationship with their counterparts at negotiating partners, and who understand what those companies are looking for, are well placed to expedite the licensing process. The quicker a deal is done, the less chance there is for the portfolio's value to be adversely affected by speculation on litigation or design-arounds. "It's just the human nature of repeatedly dealing with the people at the prospective licensee

Paul Ryan (left) and **Chip Harris** (right)
The men who took Acacia from a market cap of US$90 million to one of US$1.75 billion in the space of three-and-a-half years

companies," Ryan elaborates. "After a period of time, they get used to you, they trust you; and after you've done your seventh, eighth, ninth licence with them, people get more confident and negotiations go more smoothly."

In Ryan's opinion, the know-how that Acacia boasts is unique. "Other companies with enough money, time and willpower can eventually duplicate our data and our team's due diligence standards," he says. "But nobody can easily duplicate 10 years' worth of major licensing experience to many of the world's major companies."

Developing this dual asset base of data and know-how has been a tough, but ultimately rewarding process, as Ryan explains: "We've got there by actually doing this work and learning this business, and by making a lot of mistakes along the way and progressing the learning curve. There are 101 ways to go wrong, and we have done all of them at one time or another!" But each of those mistakes – underestimating negotiation tactics, taking unnecessary risks, selecting unfavourable jurisdictions and losing high-stakes litigation – has taught Acacia invaluable lessons. "As a result of those experiences, we can counsel our IP partners on the realities, risks and likely timings of monetisation, and we have a pretty good track record on that," says Ryan.

What's more is that these two vital intangibles feed into each other. "We are sort of like the Google algorithm - the more it gets used, the more effective it is,"

"Our company's ability to value IP improves as we value and monetise more and more IP. So we've got this company intellectual asset, which is essentially the sum total of all of our interactions with prospective licensees and the outcomes of those interactions; what we have to do is preserve that knowledge and become better and better at exploiting it."

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But if know-how is so crucial to Acacia's ongoing success and sustainability, is this at the same time a chink in the firm's armour? Should a key executive leave, investor confidence could be dented - particularly if a departing employee defected to a rival or set up shop on their own. "This is probably the biggest risk in management's view," agrees Skeels. "However, Acacia now has a brand, a track record, scale and access to a rich history of licensing knowledge that none of its employees would have on their own if they left." And Acacia has been diligently expanding its talent pool by adding new executives from major companies all the while, which should mitigate the impact of any individual departures.

Action plan

For investors:

- IP pure-plays with a diverse set of patent portfolios ranging across various areas of technology and industry will be best placed to offset litigation risk.
- Business models that can demonstrate an extensive track record of valuing portfolios and licensing to major companies are more likely to have both the data points and the human expertise to sustain a successful patent monetisation model.
- IP pure-plays that can offer a range of partnership and sale options can attract a broader range of clients, further expanding both scale and asset diversity.

For licensors:

- Know your prospective licensees – try to develop an understanding of the company policies, licensing strategies, litigation and negotiation price points of prospective partners.

Reform and raising the stakes

A more pressing issue for Acacia right now is the recent patent law reforms in the United States. Combined with a number of judicial decisions, the America Invents Act has contrived to make life trickier for NPEs by raising standards for patentability and revising the litigation system. Ryan admits that the act's anti-joinder provisions do present a practical concern, but he is confident that this will not pose too much of an obstacle to the business going forward. "We're in a position now where we can filter through and end up with very high-quality patent assets," he says. "If you've got those, then you will eventually steer round any difficulties, regardless of the nuances of how the litigation system works."

Skeels agrees that Acacia's prime position on the market need not be endangered by the patent reforms. "I think that four or five years ago, it would have had a very significant impact on their business, but not really today" he says. "Those costs may well go up for all NPEs, including Acacia. But at this point in time, they've got the scalability, the skill level and the capital to absorb any negative effects."

Of course, the legal reforms do not (and cannot) target one specific class of business; and in fact, they may yet play into Acacia's hands. "The changes to the legal system haven't just made it harder to be an NPE, they've made it harder for every patent owner to realise monetisation," says Harris. "So as an unintended consequence of the reform, IP owners are increasingly turning to us because we have the data, the knowledge and the experience to help them navigate this increasingly complicated field."

Skeels concurs with Harris' assessment. "If anything, I'd say that America Invents probably impacts more on the smaller NPEs that don't have any scale, so it might lead to a situation where Acacia could gain share. It just may make more sense for some NPEs to partner with Acacia as opposed to attempting to continue on their own."

The road may have been rocky, but Acacia's long-term strategy of diversification and heightened scalability has paid handsome dividends. Thanks to these unique selling points, it has established itself as a force to be reckoned with in the expanding IP marketplace. As Harris puts it: "We're not going to win every beauty contest — but we are going to win more than our fair share. And there are 10 times as many beauty contests today as there were a few years ago." *iam*

Jack Ellis Reporter, *IAM* magazine