

Sign of the times: trends in technology IP licensing

While large portfolios or aggregations of valuable patents continue to earn record-breaking royalties, some rights holders are looking at alternative means – such as outright sale or privateering deals to patent aggregators – to extract value from small patent portfolios

By **Terry Ludlow**

Today, patents are being leveraged to support business strategies in many diverse and innovative ways. However, the world of technology patent licensing is opaque and secretive. Licence agreements are often not announced or publicised at all. Even when agreements are acknowledged, there is seldom much detail included. We are left to try to understand the changing licensing environment based on scraps of information and bits of gossip gathered from news reports, blogs and conferences. Still, as the IP business changes, important trends are beginning to emerge. This article identifies some key trends and examines how they are affecting patent strategy decisions, the ability to win settlements and – in particular – how to leverage patents to generate additional IP value.

The growth of mega-licensing

Patent licensing is becoming increasingly challenging. The patent environment in the United States – still the main battleground for technology licensing – is depressing individual patent values through a combination of key judicial decisions and legislative changes (eg, the America Invents Act) or threats of change (various proposed so-called ‘innovation acts’). Patent assertion

is an increasingly expensive proposition that can embroil your company in years of high-risk litigation, often for little benefit. Successful licensing requires extensive preparation – essentially, preparing a litigation without the benefit of discovery – including building claim charts, anticipating validity arguments and carrying out damages modelling before contacting your future licensing partner. Lower damages values and rising costs mean shrinking margins, reducing incentives to monetise patents through litigation. Additionally, patent assertion entities (PAEs) are ramping up their activities and consuming the resources of IP groups that might otherwise be used for cross-licensing or out-licensing technology. The net effect seems to be the encouragement and growth of mega-licensing, for both corporations and PAEs. Mega-licensing requires large strategic portfolios of patents containing clusters of valuable patents that cover key technologies used in high-volume products. The key implication: go big or stay home.

Boardroom pressure on IP strategy

CEOs are asking their senior IP people, “What is the value of our patents?” Often, they fail to receive a satisfactory answer. Often, no one even knows what a satisfactory answer would be. Is it simply a dollar value or should we be explaining the many ways that a patent portfolio supports an IP strategy that drives value for the business? Regardless, shareholder activists, directors and corporate senior management are waking up to some of the value and potential uses of intellectual property in general and patents in particular.

Companies are responding to this C-suite pressure by exploring new ways to demonstrate the value of their patents. Many are working with brokers to sell what

they consider surplus assets. As a result, there is a glut of patents on the market. Others are working with third-party licensing organisations and privateers to participate in the rewards of a longer-term licensing programme. Some are looking to set up licensing programmes – often focused on leveraging orphan patents into parallel markets outside of their own major markets. For example:

- America Online (AOL) sold a portfolio of more than 800 patents to Microsoft in April 2012 under pressure from Starboard Value LP – an investor and holder of ~5.2% of AOL shares at the time. Starboard had suggested before the deal that AOL's patents were worth more than \$1 billion on the market. AOL shares rose by 43% the day that the \$1.1 billion deal with Microsoft was announced. AOL insists that pressure from Starboard was a hindrance. The bottom line: Starboard experienced a large and fast increase in the value of its shares;
- Panasonic – a normally very risk-averse Japanese company – is exploring ways to leverage its patent assets more effectively. Panasonic ranked fourth on the US Patent 100 list published in *IAM* May/June 2014, with over 30,000 US patent families. It also experienced very poor financial results in 2011 and 2012, resulting in business restructuring and senior management change, which affected its IP strategy. Panasonic contributed patents and staff to IP Bridge, a privateer-like company in Japan, founded with government participation in mid-2013. Panasonic has also transferred patents to three more traditional licensing companies – Sisvel (January 2014 – DSL G.994.1 patents), WiLAN (December 2013 ~900 semiconductor patents) and Inventergy (January 2013 ~500 3G and 4G telecommunications patents) – in deals that seem to provide a small upfront purchase payment with a piece of the revenue afterwards in a privateer-like fashion; and
- IBM recently transferred 750 patents to Twitter as part of a licensing deal and litigation settlement. Using surplus patents as an alternative form of currency is becoming a more common practice for reaching settlements with which both sides can live. Often, litigation settlements see patents transferred to a non-practising entity (NPE) to bridge the gap in ask/buy price. In this case, Twitter may see more value in the orphan or surplus IBM patents than IBM does – and a deal was reached.

Patent quality versus quantity

The debate over patent quantity versus patent quality is swinging towards the quality side. Many companies are instituting invention programmes that incentivise filing more strategic patents, and are also following continuation practices that identify and highlight more useful patent applications and provide an opportunity to craft more relevant claims to increase the number of valuable patents over time in a portfolio. However, for technology companies, having both sufficient quantity and quality in a portfolio is the best strategy.

There must be enough valuable patents and they must be supported by enough additional patents to assure potential licensees that it is impractical to consider invalidating an entire portfolio. Only a small number of patents are valuable – that is, are legally valid, technically important and actually in use in high-revenue products. A general rule of thumb is that between 3% and 5% of patents in a large portfolio are valuable. In most patent portfolios, a few key patents are the deal drivers for licensing, litigation and sales. These patents form the basis for infringement assertions and create the damages base. A portfolio needs additional quantity to increase the fear, uncertainty and doubt factor. The bench strength of the additional patents remains mysterious in order to sow concerns about additional risks. Many licensors have experienced negotiations where a licensee will admit (after the settlement has been signed) to being really interested in a particular patent that is not on its list of key patents driving the deal.

Record numbers of patents are being granted worldwide

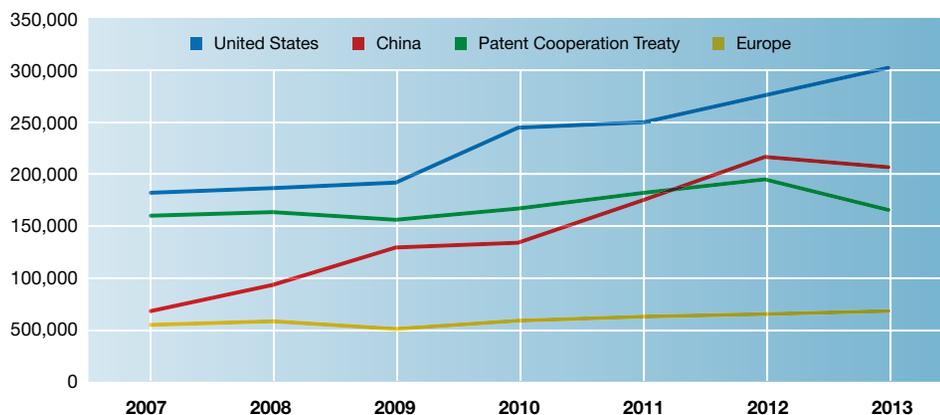
Record numbers of patents are being granted worldwide. All major patent offices are reporting increases year over year in patent grants. More patents are being issued and more issued patents are in force now than ever before, as illustrated in Table 1.

The patent thicket is getting ever more dense, with technology companies dominating the lists of top patent assignees.

Table 1. There are more issued patents in force than ever before

| Country | Total number of patents in force (based on 2012 WIPO statistics) |
|---------------|---|
| United States | 2,239,231 |
| China | 875,385 (invention patents only) |
| Germany | 549,521 (Germany has largest total in European Patent Organisation) |

Figure 1. Annual patent grants at key patent offices 2007-2013



More than 80% of the IAM US Patent 100 largest patent portfolios and more than 80% of the UK IP Office list of 2012 newly granted patent owners are technology companies. In technology products, there is a virtual certainty that you are using someone else's patents, and most probably those of your competitor. In *Apple v Samsung* Samsung's lawyers argued that there are as many as 250,000 patents in a smartphone. It is not possible or practical to design around or even to license all of them. Patent pre-clearance studies are useful mostly to determine who you have exposure to and to indicate who might be a good cross-licensing partner. Many large competitors are not cross-licensed; instead, they rely on the Cold War principle of mutual assured destruction, creating huge arsenals of patents to deter any thoughts of an offensive patent assertion. When a strategic need for a cross-license emerges or when a tactical opportunity to dominate a market and eliminate a competitor is perceived, there is usually no shortage of patent assertion ammunition in the average overly endowed technology company's patent portfolio. The bigger problem is finding the useful and valuable patents buried in a large portfolio. In many cases, corporations are using the patent resale market to find patents that fit a strategic need or enable a short-term tactic. For example, Samsung originally asserted five patents in its second patent litigation with Apple in the Northern District of California. Of these, three were not originally developed at Samsung. The two remaining patents are not originally Samsung assignee patents. Note that Samsung is number one on the IAM US Patent 100 list, with over 45,000 patent families. Samsung's problem

may have been to find the few patents in this huge portfolio that actually read on Apple products.

Wall Street discovers patents

Investors are actively looking for ways to get into the IP and patent market, lured by big multiples and large transactions. Investors are funding PAEs directly; they are funding litigations with the judgment as security; they are loaning money with patents taken as security; they are investing in publicly traded IP-driven businesses; and they are investing in peripheral IP-driven businesses. However, investors speak and think differently from IP professionals. Translators – people who know the IP market and also know how to talk in financial terms – are required to help investors to understand the subtleties of patent-driven deals. This is an evolving relationship, as investors slowly discover how to understand patents, how to discern value in a portfolio and how to make the kind of monetary returns they find attractive.

All this investor money is helping to encourage a thriving patent resale market. Known patent buyers are deluged with proposals from brokers and patent owners seeking to sell their patents. The problem: how can you determine quickly which patent portfolios are worth considering and spending time and effort on, and which are not useful or valuable? Knowledgeable buyers are insisting on evidence of use and often demand financial models to illustrate potential value and support the asking price. Tactically, this means that in order to sell a patent portfolio for a high price, you need to prepare as rigorously as for pre-litigation. Valuable patents are selling, usually with a supporting portfolio wrapped around them. It is always a few key patents with supporting documentation that drive high-value deals. Average price per patent metrics do not reflect this accurately. Undocumented and low-value patents do not sell unless they are part of a supporting portfolio.

Corporations have joined the ranks of major sellers of patents. High-profile transactions of large portfolios for tens or hundreds of millions of dollars have been widely reported. Ericsson selling patents to privateer Unwired Planet and Kodak selling patents to Apple and Google are two examples of this. Many other smaller transactions are also taking place. Companies with a good catalogue of their own portfolio know what patents should be retained to execute their IP strategy, and conversely which patents are surplus or not relevant to their strategy. These patents become available for sale or

privateering as an alternative to traditional assertive licensing. Savvy investors are now rewarding companies that successfully execute sales and other patent deals in the stock market and through other investment vehicles. Often, more money is made indirectly through side investments than is made in the direct sale of patents.

Patent licensing – a profit and loss-driven business unit?

More companies are realising that patents can be revenue generators rather than cost centres and are making their IP groups responsible for driving revenue. IBM and Texas Instruments were among the first to break \$1 billion in annual patent royalty revenues. Qualcomm has consistently generated industry-leading patent licensing revenues, currently running at more than \$6.6 billion per year. Microsoft and Ericsson have been reported as having licensing revenue of over \$2 billion per year. Nokia reported \$643 million in patent licensing revenue in 2012 before divesting its handset business to Microsoft.

PAEs are, by definition, driving revenue and profit through patent assertion. Operating companies, even those that complain vociferously about patent trolls, are learning the tactics that PAEs employ and adopting them for their own licensing programmes. Many operating companies have also opted to feed PAEs by supplying them with patents in privateering arrangements that generate profit with little or no risk of cross-licence assertion. In today's licensing environment, most successful licensing programmes are driven by large portfolios of patents with sufficient clusters of valuable patents to drive large settlements. Privateers are fed with hundreds or even thousands of their sponsor's patents when success through monetisation is the goal. For example:

- in December 2008 Micron Technology transferred about 3,400 US patents, plus international equivalents, to Round Rock Research to launch it as a privateer;
- in June 2011 Rockstar was created by Apple, Microsoft, Ericsson, Research In Motion and Sony to monetise about 4,000 former Nortel patents;
- in January 2013 Ericsson sold 2,185 US and international patents (825 patent families) to Unwired Planet. In March 2013 21 of these patent families were sold to Lenovo for \$100 million, with a portion of the revenue flowing back to Ericsson to help pay for the patents; and
- in July 2013 Spherix bought 222 former Harris Corp wireless, antennae and

communications patents, and then later in the month bought additional telecommunications patents from Rockstar and promptly sued Cisco with 11 former Nortel patents.

Internationalisation

The US market is still the primary licensing battleground, largely because the US patent system is still the strongest and most supportive of patent rights. US patents are still typically the deal drivers for licensing and sale of portfolios. Increasingly, however, China, Germany and other jurisdictions are being used to leverage better patent deals. For your IP strategy, this means that European and Chinese patents are more frequently being considered assets rather than liabilities requiring maintenance fees. The ability to obtain injunctions is an attractive feature of both European and Chinese patents. German litigation offers speed and low cost compared to the United States. The German bifurcated system favours strong infringement cases and defers the validity discussion for a later action – often after an infringement and injunction-driven settlement has been reached. Once the Unified Patent Court opens for business in most of the European Union, a market larger than the United States will be covered by a single patent that is supported by robust and reliable patent law. Fears that this will attract PAEs are well founded; but if US experience is a guide, operating companies will be by far the biggest users of the new system once it is up and running.

In the case of China, there is still uncertainty about obtaining judgments, as well as about the effectiveness of enforcements for injunctions. Multinational operating companies are watching China closely and considering using Chinese litigation. A few good results may open the floodgates at some point. In all cases, courts outside the United States require the bulk of an infringement case to be prepared before litigation is filed, as discovery is limited. So even though the legal costs are much less than US litigation, there are more demands for rigorous preparation in advance of negotiations or litigation.

Legislative and judicial changes

Licensing disagreements that go public as part of litigation are still a small minority of operating company to operating company licensing deals. Litigation is the threat that rarely needs to be exercised. However, it seems to be required more often as the risk of injunctions and fear of large damages awards have been reduced. More than 90%

Table 2. Some key decisions and legislation driving patent value down in the United States since eBay

| Case/legislation | Subject | Effect |
|---|---|--|
| <i>eBay</i> (2006) | Reduced (virtually eliminated) probability of getting an injunction if you win a patent litigation | Lowers penalty for infringing patents and thus reduces patent values – encourages use of International Trade Commission (ITC) as an alternate forum for a US injunction-like exclusion order and also the use of foreign courts (eg, Germany, where injunctions are still possible) |
| <i>Sandisk (from MedImmune)</i> (2007) | Lowered the bar significantly on the grounds for filing a declaratory judgment | Makes it more difficult to license patents |
| <i>KSR v Teleflex</i> (2007) | Lowered the bar for obviousness | Makes it easier to invalidate patents |
| <i>Seagate</i> (2007) | Raised the bar for wilful infringement | Reduces prospect of treble damages |
| <i>Quanta Computer v LG</i> (2008) | Patent exhaustion for downstream products | Limits options for licensing |
| <i>Cornell U v Hewlett Packard</i> (2009) <i>Lucent v Gateway</i> (2009) | Virtual elimination of entire market value (EMV) basis for damages | Reduces royalty base to the value of a sub-component, in most cases reducing the potential damages award. Allows EMV as a royalty base only in cases where the patented technology “creates the basis for customer demand” |
| America Invents Act patent reform law (2011) | <i>Inter partes</i> review becoming “death squads... killing property rights”, according to Chief Judge of the Court of Appeals for the Federal Circuit Randall Rader | Still early, but most likely will have a large negative effect on patent values. Many patents in litigation get sent to the Patent Trial and Appeals Board for review. Most settle in advance of judgment, but about 95% of patent claims reaching decision have been cancelled to date. |
| <i>Uniloc v Microsoft</i> (2011) | Elimination of 25% rule as an admissible rule of thumb to determine damages | Requires comparable licence agreements to determine royalty rates rather than empirical 25% of profits. |
| <i>Laser Dynamics v Quanta Computer</i> (2012) | Continuing apportionment; damages based on smallest saleable patent practising unit | Damages case becomes much more important – damages values drop with shrinking royalty base |
| <i>Motorola v Apple</i> (2012) | Sufficiency of damages expert opinions, as explored by Judge Richard Posner | A seminal example that highlights the risks and uncertainty of damages law for patent cases. |
| <i>Motorola v Microsoft</i> (2013) | Standards-essential patents (SEPs) | Value of SEPs drops. Also the European Commission Competition Directorate General has investigated Microsoft/Nokia (2012), Samsung (2013) and Motorola Mobility (2013) for anti-competitive uses of SEPs. The US Federal Trade Commission has conducted similar investigations |
| <i>Samsung v Apple</i> (2013) | ITC case looking at SEPs | A presidential veto was used for the first time since 1987 to deny an exclusion order based on the ‘anti-competitive’ use of SEPs |
| <i>Alice Corp v CLS Bank</i> (2014) | Software patent eligibility; still under consideration at US Supreme Court | Could reduce (or even eliminate) the value of many software related patents |
| Proposed Federal Rules of Civil Procedure revisions and various versions of the proposed Innovation Act | Requiring more ‘robust’ pleading and complaints – potentially providing more information on infringement allegations at the outset of a trial. See also: <ul style="list-style-type: none"> Judge Robinson’s proposed new rules of procedure for Delaware Track B schedule for Eastern District of Texas | There is a clear trend of continuing to ‘raise the bar’ for patent assertion, which invariably has a negative influence on the value of patents, especially outside the context of a large portfolio. |

of patent litigations settle before trial. Of those that go to trial, only a small percentage go to a decision. When the goal is to get to a negotiated settlement, litigation is a means to an end. In corporate cross-licensing, exemplar patents are sent to litigation as a negotiating lever. Licensors must effectively demonstrate the value of the larger portfolio in negotiations by showing numerous

substantive claim charts describing broad use of their technology in their prospective licensee’s products. The bench strength of the portfolio directs tactics and leads to broad global cross-licences.

Inter partes review is a new (created by the America Invents Act) post-grant procedure which has proven popular with corporations seeking to invalidate patents

asserted against them in litigation and also to invalidate patents that pose a potential future threat. The majority of *inter partes* review cases are filed against patents that are already in litigation before district court (less than 85%). A clear majority (approximately 60%) are also being filed by operating companies against other operating companies. This is just slightly higher than the number of litigations by operating companies against other operating companies (reports range from between around 50% and 60%, depending on the definition of PAE used).

Values for single patents or small groups of patents have been driven downwards in the United States since *eBay* in 2006. Table 2 lists some of the decisions since *eBay* that have had significant impacts on technology licensing.

Standards-essential patents

Once upon a time, standards-essential patents (SEPs) were the gold standard in patents. Assertion was easy: "If you are using this technical standard, then you must be using my patent because the European Telecommunications Standards Institute (ETSI) (or some other standards setting body) says it is essential." Recent judicial decisions have rewritten that story. The fair reasonable and non-discriminatory (FRAND or RAND) commitment that companies made to the standard-setting bodies was considered benign by most companies. Indeed, they would try to get as many patents as possible classed as SEP to maximise their perceived value, both in independent licensing programmes and potentially in patent pools. Traditionally, patent pools were considered effective means of generating significant returns. According to its annual report Technicolor collected more than €100 million from the MPEG-LA patent pool in 2013.

SEPs became ubiquitous. For example, more than 3,000 patents have been declared essential to the LTE telecommunications standard administered by ETSI. However, many of these cannot be SEPs because they have design arounds or are not directly referenced in the standard (eg, they are not essential). For example, in the first *Apple v Samsung* trial in the Northern District of California in 2013, a Samsung SEP was found to be valid. Apple agreed that it was practising the standard and yet the jury found no infringement.

FRAND obligations are now being enforced by courts. In *Motorola v Microsoft* the courts determined that Motorola's royalty demand of 2.25% (between

approximately \$6 and \$9) per Xbox was excessive and not in line with its FRAND commitment. Instead, the court decided on \$0.04 per Xbox as a royalty. The case is currently under appeal to the Court of Appeals of the Federal Circuit. Then Samsung's win in an International Trade Commission case evaporated when a presidential veto was used in 2013 for the first time since 1987. FRAND commitments thus have become encumbrances in licensing and SEPs are no longer the most desirable crown jewels of the portfolio.

The US Federal Trade Commission, the European Union and China have all investigated SEPs and SEP FRAND licensing terms under their antitrust laws. Microsoft, Nokia, Samsung, Motorola Mobility and Qualcomm have all had their licensing practices for SEPs examined by various bureaucrats enforcing antitrust policies.

Instead, feature-essential patents have become a focus of attention. These patents cover features in a product that have become *de facto* standards. They are not specified or required by the standard, but they are required by the consumer who buys the product. They are unencumbered by FRAND commitments and arguably form the basis for a consumer's choice of a particular product over a rival product.

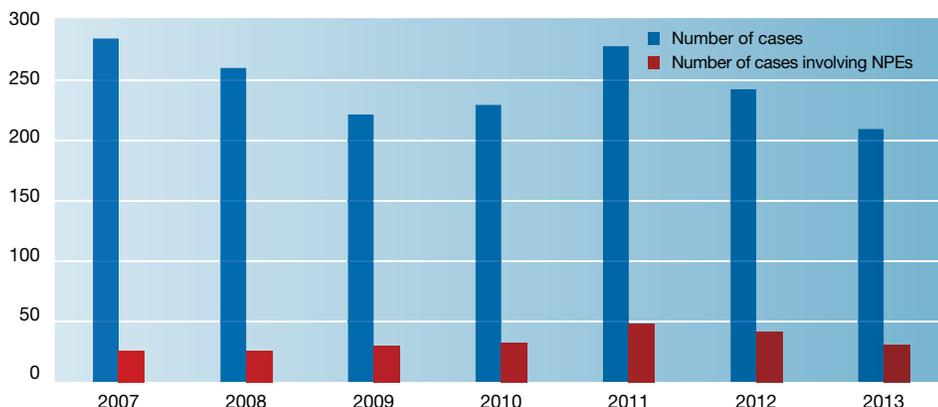
Damages case – more important than ever

Valid and infringed is no longer sufficient. For a patent to be valuable, it must enable or contribute to a key feature of an infringing product that sells in high volume and generates large profits. The damages case must be considered from the outset. What percentage of my licensing partner's revenue does my patent portfolio cover? What portion of its business is really a risk to my portfolio?

Strategic patent portfolios – size matters

In the 1980s, I worked with a company which had a portfolio of fewer than 300 patents, with between 10 and 20 that could be asserted. It was able to mount a strong offensive licensing campaign and collect hundreds of millions of dollars. Today, a portfolio needs to be large enough to achieve critical mass and be hard to attack as a whole. Asserting a single patent or even a small portfolio of patents is almost suicidal. Most companies will routinely ignore small assertions made via demand letter – any reasonable-sized technology company gets multiple demand letters each week. Since *Sandisk*, there is very little substance in most demand letters; and without substance, you will not get the

Figure 2. Declaratory judgment cases



attention of the in-house licensing team. However, when substance (specifically, claim charts) is added, you expose yourself to the possibility of a declaratory judgment or an *inter partes* review filing.

However, looking at the statistics for declaratory judgment filings, we can see that the fear is larger than the reality. The number of declaratory judgment actions has not changed significantly since 2007, when *Sandisk* was issued. About 7% of declaratory judgment actions in 2007 were filed against NPEs. We defined ‘NPEs’ for this study using the patent freedom statistics, which use the definition most broadly. In the seven years since *Sandisk*, the average rate was 15%, with peak years in 2011 and 2012 at 17%. The cost and resource commitment of a declaratory judgment filing is the same as for filing litigation. Declaratory judgments will be used only in cases where a very serious risk is perceived. Usually, this is when operating companies are in discussions with operating companies.

Owners of small portfolios with only a few substantive patents will often skip directly to filing litigation. While this certainly commands attention, in many companies the matter then passes from the licensing group to the litigation group and a confrontational mindset is assumed. When only a few patents are being asserted, both in the litigation and in the overall portfolio, the ingrained response decision is to fight the assertion. With the tools available today, scorched-earth litigation is lengthy and expensive. On the other hand, a larger portfolio with good documentation demands attention from a wider group within the potential licensee. While it is still probable that you can eliminate some or all of the patents in *inter partes* reviews or in litigation, the remainder of the portfolio

is a present and future danger to your business that cannot be dealt with entirely in patent validity arguments.

Frequently, small portfolios get asserted in a litigation and are subjected to a rigorous validity check through the courts or at the Patent Trial and Appeal Board in an *inter partes* review or other post-grant review procedure. Those that survive validity and receive a favourable Markman ruling may reach a successful settlement. However, a growing number of companies have decided as a policy not to settle with patent trolls – a term that sometimes includes anyone who sues with a small portfolio and no cross-licence exposure. Newegg, for example, publicises its desire never to settle patent assertions, regardless of the validity of the patent or the infringement claim. Chief legal officer Lee Cheng has said: “At Newegg, we have consciously decided to not settle with patent trolls, because settlement only feeds the beast.”

Implications for IP strategy

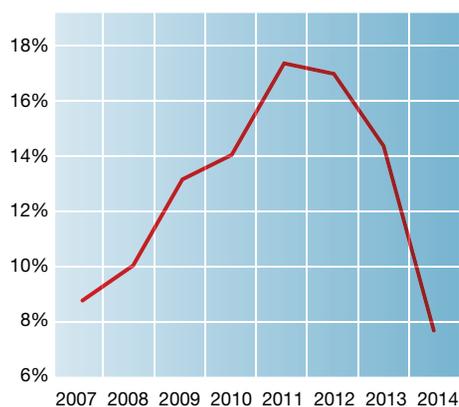
Large strategic portfolios generate large revenues. Costs are not linear. Small portfolios have much lower margins and the break-even point has risen in recent years. The work required to support a small portfolio or a single patent has also grown. When a portfolio has exceeded its critical mass – that is, when it is too big to successfully invalidate all the patents through *inter partes* reviews or court challenges – the options for extracting value from the portfolio multiply.

Intellectual property and patents play a role in mergers and acquisitions, strategic sales and business partnerships. To be effective in today’s more patent-sceptical market, patent owners must be prepared to demonstrate the tangible value of their patents. When patents are most directly able to contribute to a company business strategy through monetisation, today’s patent portfolio owners have the opportunity to monetise their patents in a wide range of methods, including:

- establishing an internal licensing programme;
- outsourcing to a third-party licensing organisation (privateering);
- selling patents; and
- leveraging patent pools.

The number and range of high-value patents in a portfolio are the key drivers in the range and choice of options. A sufficiently large cluster of patents in a narrow technology area, highlighted by exemplary patents of proven value in

Figure 3. Percentage of declaratory judgments on NPE patents



commercial products, is ideal for leveraging value in today's licensing environment.

IP strategy has emerged as a key component driving business strategies in an increasing number of companies. The proliferation of patents and of patent owners which are interested in leveraging their patents has been a catalyst generating a more competitive and difficult licensing environment.

The technology patent licensing environment has undeniably become more complex and difficult. Specifically, a combination of legislative and judicial factors has reduced the value of individual patents. Big operating companies have become much more willing to check the validity of individual patents or small portfolios by waiting until they are in litigation. Despite these pressures, large portfolios or aggregations of valuable patents that exceed critical mass are being successfully licensed for very large royalties or other important benefits to their owners. While there are still examples of small yet highly successful

Action plan

A

Success in licensing requires you, as the patent owner, to really do your homework.

You need to:

- demonstrate the clear value of your patents by showing their use in competitive products and linking that use to your competitor's revenue; and
- build a more valuable portfolio with a broad range of technologies that contribute to numerous aspects of a product, rather than only one or two.

Preparation is the key to success. Patent licensing campaigns require:

- detailed preparation of claim charts and

supporting economic damages modelling;

- preparation for licensing that needs to be as comprehensive as preparation for litigation;
- clear and convincing evidence that leads to a conclusion that a licence is both required and inevitable – this will help to convince your licensing partner to spend a large portion of a shrinking or non-existent licensing budget on your portfolio; and
- demonstration of a continuing business risk by clearly documenting infringement allegations well beyond the typical one to five patents asserted in a first litigation.

licensing programmes, patent owners are being forced to look at alternative means – such as outright sale or privateering deals to patent aggregators – to extract value from small patent portfolios. **iam**