The Patent Marketplace — Trends and Perspectives

Advanced Patent Law Institute

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A Growing Problem
More Litigation; More Defendants

NPE Suits Filed

Unique Defendants

Source: RPX Research and PACER
A Growing Problem
Targeted Market Sectors

No Sector Immune

- E-commerce and Software
- Consumer Electronics and PCs
- Networking
- Media Content and Distribution
- Mobile Communications and Devices
- Consumer Products
- Financial Services
- Medical
- Automotive
- Biotech and Pharma
- Semiconductors
- Industrial
- Manufacturing
- Other
- Mechanical Consumer Products
- Logistics
- Energy
A Growing Problem
More – and Overlapping – Patents

Over 3.4 Million Active Patents Today

Active utility patents based on assumption of 17-year lifespan of patents granted
USPTO Yearly Patent Applications and Grants

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The NPE Business Model
Monetizing Patent Assets

► **NPE = Non-practicing Entity**
  - Use patents exclusively for revenue, licensing is primary business
  - Unfair leverage over operating companies; no operations to countersue

► **NPEs acquire patents from multiple sources**
  - Failed start-ups and operating companies
  - Universities and research institutions
  - Healthy companies with excess patents

► **NPEs are the product of outside investment**
  - Extremely lucrative business model; 5-10X returns
  - $8B+ in outside investment
# The NPE Business Model

## Multiple Forms

| Single Portfolio | • Exists only to assert that portfolio  
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<th>• Often tries to purchase more portfolios</th>
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| Large multi-portfolio | • Ongoing acquisitions and assertions  
|                   | • Often placed into shell companies      |
| Former operating companies | • Pre-existing patent portfolio  
|                         | • Often have large portfolios            |
| Pure R&D firms | • No products/sales but develops own patents |
| Individual inventors | • Often contracts with contingency counsel |
| Universities and research Institutions | • Can include non-profit, research and quasi-government entities |
| Non-competing entities (NCE) | • Operating company that acts like an NPE  
|                             | • Asserts patents in areas unrelated to business |
The NPE Business Model
Litigation Costs Increasingly Expensive for Defendants

Settlements and Defense Costs by Year

- 2008: $5.3B
- 2009: $6.0B
- 2010: $7.6B
- 2011: $10.1B
- 2012: $10.9B

Source: RPX Research
Costs above are estimates of what was spent by all defendants in a given year. Settlements have only been allocated into the actual year of settlement.
The NPE Business Model
Highly Inefficient Business Model

Example: An NPE’s Plan to Extract Settlements from 40 Operating Companies

- NPE monetization is inefficient
- Industry transaction costs up to 900%
- Real example: $72M of friction to net the patent owner $8M