

Comps Data for Patent Transactions

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The Patent Transaction Market Is Not Transparent

- **There is no way to verify annual transaction volume**
- **There is massive information asymmetry**
- **Intellectual Ventures, the largest patent buyer in the market, is the only entity that has a comprehensive view of the market ----- and they are not sharing the information**

Patent Transactions Are (Slowly) Becoming More Efficient

- **Operating companies are trying to create “Best Practices”**
- **New buyers are emerging (e.g. RPX, AST, OIN)**
- **Standardization is happening**
- **Both Buyers and Sellers are demanding more from Brokers -- and sharing the information**

Patent Transactions At A Glance

- A standard buy-side process has 2 components:
 - ▶ A proactive process
 - ▶ A reactive process
- The Buying context determines in large part the order of activities among the diligence gates
- Encumbrances have the highest probability of negatively impacting a potential transaction followed by price and prosecution
- Buyers are spending the most resources in searching & sorting for relevant patents and also on deep dive Legal analysis (prosecution, validity, claims analysis, etc)
- While the activities that are part of the diligence process are fairly standardized, the sophistication and implementation of those activities varies widely among companies

The Transaction Process is Fairly Standardized

- **The Generic Process has 3 decision gates plus a Stage 0 expectation setting with the Seller:**
 - ▶ **Stage 0**
 - ▶ **Gate 1: Triage**
 - ▶ **Gate 2: Deep Dive**
 - ▶ **Gate 3: Business Case**

Gate 1 - Triage

- **Review against Buy list (if have one)**
- **Look at Seller/Broker reputation & professionalism and determine if worth continuing the process**
- **Conduct a preliminary screen of patent claims vs. products**
- **Review price for reasonableness (is it outrageous or in the ballpark)**
- **Make a Go/No-go decision**

Gate 2 - Information Deep Dive

- **Legal** - review prosecution history, prior art, validity, encumbrances, individual claims, coverage
 - ▶ **Questions to be answered:** What is the claim? Is it assertable? Are there any file wrapper issues? Are there any prior art issues? How much risk does this pose to me? How much risk does it pose to my competitors? How much opportunity does this provide me? What are the encumbrances? Are any patent applications open for continuation? Clear title?
- **Technical** - review claims and (own) products that may be impacted (if any). May require involvement of the appropriate BU (if have any)
 - ▶ **Questions to be answered:** what is the underlying technology? What does the described technology do? What could the technology be used for? How does it relate to current products (if have any). How easy is it to design around? How would one prove infringement?
- **Business** - review market analysis, market volume, growth, revenues, is this a new market or additive to an existing one? How do the encumbrances impact me (if at all)?
- **Make a Go/No-go decision**

Gate 3 - Create the Business Case

- **Begin to put the internal business case together**
 - ▶ **Create preliminary “value” range based upon Buyers context and the results of the previous stages using:**
 - ▶ **Valuation and evaluation models (inputs include strength of claims, prior art, claims coverage, market analysis, encumbrances)**
 - ▶ **Assessment against previous patent transactions (internal & external)**
 - ▶ **Real-time bidding analysis**
- **Take forward for final approval**

Transaction Myths Busted!

- **Less (information) is more**
 - ▶ Lack of necessary information will get your transaction tossed to the end of the line so **PROVIDE ALL THE INFO REQUESTED**
- **There are no comparables so pick a high price**
 - ▶ Information transparency has arrived. Comparables exist and Buyers are using them. (contact suzanne@gathering2.com from more information)
- **Force a tight decision timeline to create multiple offers**
 - ▶ A short decision timeframe means more corporate buyers are likely to exit the process. Understand your buyers process and decision timeline

Transaction Myths Busted

- **Never reveal encumbrances**
 - ▶ See point #1. Would you buy a house without an inspection? Enough said.
- **Take lots of liberties with the truth**
 - ▶ Deals get done based upon relationships and credibility. Questions about either will slow or crater a deal.
- **500+ patents in a transaction will net a higher price.**
 - ▶ Maybe ... but more likely the Buyer will pick the top ten and discount the rest (and the price).

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