

IP Marketplace Still Sizzles

Law.com's In-House Counsel

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Big tech companies haven't stopped patenting their inventions, but more than ever they're also buying others' patents as a weapon in IP litigation.

In-house counsel know that the best defense against a high-stakes intellectual property suit can be the ability to threaten the other side with suits based on your own portfolio. But with more patents on the market than ever, companies are on a shopping spree that a recessionary economy is only likely to fuel.

Public data is scant in the still-young market in which buyers like to keep a low-profile. But patent brokers and lawyers say that tech companies are putting more money into that marketplace than ever.

"I think if you polled companies, you would find that the amount spent on buying patents is increasing more than the amount being spent on prosecution," said Mallun Yen, vice president of worldwide intellectual property at Cisco Systems Inc., who characterized her company's patent purchasing program as "very active."

Corporate buyers are showing up more often at patent auctions, said Andrew Ramer, president of [Chicago-based auctioneer Ocean Tomo](#). "There's been a drastic increase in the percentage of corporate buyers year over year," he said.

There are three reasons why companies buy patents, says Joe Chernesky, president of IP investment bank IPotential, and they have more to do with defense than innovation. The first is to assert back against a patent infringement threat. The second is to take patents that are perceived as threats off the street. And the distant third is to go into a new line of business.

"Patents covering your own technology are not very useful," said Craig Opperman, an IP lawyer at Reed Smith. "You want patents on the other guys' technology -- you want patents that you can stick 'em with."

Juniper Networks Inc. first started buying patents when it got hit with an infringement suit by Toshiba five years ago, said Scott Coonan, director of IP litigation and licensing. Juniper bought patents that covered Toshiba technology, made counterclaims, and was able to come to a "reasonable resolution," he said.

Now the company continues to buy to fill in what Coonan calls "gaps" in its patent portfolio -- but filling those gaps doesn't mean buying shields against lawsuits, but swords to use against hostile opponents.

"Gaps are where competitors and aggressors have known exposure," he said.

Yen said Cisco not only buys patents to round out its portfolio, but also to keep patents out of the hands of non-practicing entities that could use them to sue Cisco. The company makes these purchases itself by itself or through patent pools, she said.

Yen, Coonan and other in-house lawyers emphasized that while they are buying more existing patents than before, their companies still file even more applications for new patents.

The supply of patents on the market has increased as more companies realize that intellectual property is an asset that can be bought and sold.

All of the patent lawyers and brokers interviewed for this article predicted that the recession will only cause more companies or inventors to put their patents up for sale. But with less money available for buying, it could push prices down.

But what hasn't seemed to go down is the number of patent infringement suits, and Ocean Tomo's Ramer said that means that buying at tech companies will continue apace.

"It's definitely going to go up," he said. "They have to do it for defensive reasons."