

## What is a Patent Worth?

The recent verdict in the Apple-Samsung patent lawsuit has once again propelled the value of patents into media headlines. Apple sued Samsung for infringing upon seven of its patents. In August 2012, the jury found that Samsung had violated six of the seven Apple patents and decided that Samsung had to pay more than \$1 billion in damages to Apple. This verdict evokes the question what is a patent actually worth?

According to the U.S. Patent and Trademark Office, a patent is defined as “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States.<sup>1</sup> A patent is only a temporary right that prevents others from infringing upon the specific item. The life of the patent is typically 20 years from the date the patent application was filed. There are three different categories of patents - utility, design, and plant patents. Utility patents cover the invention of new processes, machines, matter, or improving upon a process or items. A design patent is granted for the unique design of a particular item, while a patent which covers the discovery, creation, or reproduction of a unique plant is the third type of patent.

Companies who hold patents use them in a variety of ways. These include making use of the patent internally, licensing the rights to others, blocking market competitors, cross-licensing, or as a defensive move by taking the patent off the market.<sup>2</sup>

The right to a patent does not necessarily grant the holder immediate economic or financial value. The value of the patent depends upon the demand and incremental revenue or cash flow that the patent holder enjoys because of the grant. Important components to consider in the valuation of patents include the remaining life of the patent, the number and qualifications of the inventors, the demand in the marketplace, the likelihood of a successful legal defense of the patent, and the efficiencies the patent provides to existing technologies, processes, products, or services.<sup>3</sup>

The value of patents can be determined by the using the cost, market, or income approaches to valuation. The cost or replication approach often is not the most

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<sup>1</sup> U.S. Patent and Trademark Office, [http://www.uspto.gov/patents/resources/general\\_info\\_concerning\\_patents.jsp#heading-2](http://www.uspto.gov/patents/resources/general_info_concerning_patents.jsp#heading-2).

<sup>2</sup> Torres, Fernando, “Fundamental Principles of Patent Value,” IP Management & Valuation, January 2012.

<sup>3</sup> Wanetick, David, “10 Factors that Impact a Patent’s Value”, axialmarket, March 24, 2011.

useful method to capture the value of a patent as it does not account for any future benefit that might be afforded to the patented technology, design, or process. However, with accurate cost data available, it may provide the basis for a minimum value in the absence of other quantifiable economic data.

The market approach can be a useful method but often times presents challenges because of the lack of data or difficulty in determining the comparability of similar patents to use in the analysis. By virtue of their uniqueness, patents may have only general similarities to one another. In addition, patents are often sold as part of a larger portfolio that may contain hundreds of patents, some of which may have little or no value to the acquirer. For example, the following table shows recent patent portfolios that have been sold:

Announce Date	Buyer	Seller	Price (\$000s)	Number of Patents	Price per Patent (\$000s)
July-11	Microsoft, RIM, Apple <sup>1</sup>	Nortel	\$4,500,000	6,000	\$750.0
July-11	Google	IBM	n/a	1,030	n/a
December-11	CPTN Holdings	Novell	450,000	882	510.2
April-12	Microsoft	AOL	1,000,000	925	1,081.1
May-12	NVIDIA/IV	IP Wireless	500,000	n/a	n/a
June-12	Facebook <sup>2</sup>	Microsoft	550,000	615	894.3
July-12	Google	Proxim	n/a	58	n/a
August-12	Google	Mangosoft	3,200	9	355.6
August-12	Vringo	Nokia	n/a	500	n/a
August-12	Google <sup>3</sup>	Motorola	9,500,000	17,000	558.8

Source: Industry trade press, SEC 10Q company filings.

<sup>1</sup> The Department of Justice made acquisition contingent upon certain requirements.

<sup>2</sup> Facebook was granted access to other AOL patents that Microsoft was acquiring.

<sup>3</sup> The purchase price of \$12.4 billion included the acquisition of \$2.9 billion in cash from Motorola.

The income approach is often the best approach to determine the value of a patent. The method can be in the form of a discounted cash flow approach, an incremental revenue analysis, the royalty relief method, or other multiperiod excess earnings approaches. Given the uncertainty of product lifecycles, future economic demands, and alternative competitive technologies, it is important to carefully consider all the legal, technological, operational, and economic attributes of the patent. Valuation of the patent requires close coordination of the selected methods with the patent-holders technical, product development, sales, and finance staff.

The valuation of patents and other related IP are often required for accounting, tax, litigation, acquisition, and estate planning purposes. Bond & Pecaro professionals

have over 25 years of experience in intangible asset valuation and the expertise to value complex intellectual property such as patents.

*For more information on the valuation of patents, intellectual property, or other complex intangible assets, please feel free to contact any of the principals of Bond & Pecaro at 202-775-8870.*