



Selling Your Patent(s)

What's Involved?
What to Expect?

What is a Patent?

- The right to exclude, not right to use.
- You Do not Have the Rights to Use your own patented invention.
- As Elements of your invention may infringe other patents.

Keep Out!



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What You're Selling When You're Selling a Patent

- Right to exclude others from practicing your patented invention—without a license from you.
- Right to bring an enforcement action against infringers.
- Right to file continuations based on the original patent.
- Potential right to future licensing royalties.
- Note: you are not selling the right to use the patented invention—as this may infringe another's patent rights.



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Which Patents to Sell?

- Patents you do not wish to enforce yourselves.
- Patents in areas that are no longer core to your business.
 - Old product lines, technologies.
 - Patents inherited in acquisitions.
- Patent portfolios.
 - Related fields.
 - International counterparts.
 - Pending applications.
- Consider a back license.
 - Can continue to make/sell products after selling patent.



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Selling Patents that are Still Pending

- Value highly speculative until patent is approved:
 - If not approved, then worth nothing.
 - If approved with weakened claims, then value can be reduced.
- Two step sale:
 1. Sell option to buy the patent when approved.
 2. Approval triggers acquisition at pre-set price.

"PATENT PENDING"

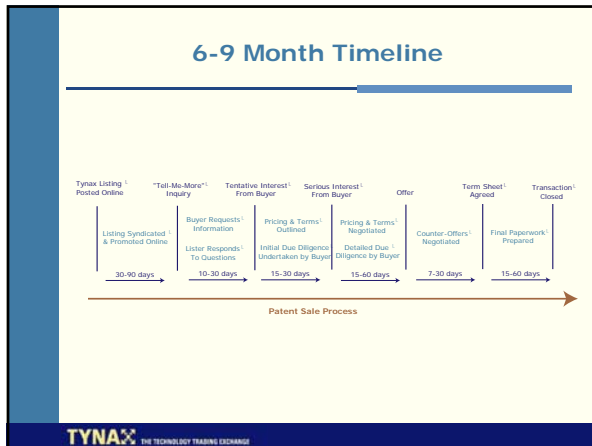
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Selling Without Really Selling

- Selling the patent rights without selling title.
 - Exclusive license.
 - Rights to join patent holder in enforcement action.
 - Indemnification for patent holder—to cover legal fees, etc.
- Suitable where patent title cannot be transferred.
 - Usually as a result of government funding.




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No Response from Buyers You Approach Directly

- "I don't understand why they're not calling me back.. this patent is directly in their line of business!"
- "We don't want to know about your patents—don't give us patent numbers or any information."
- Reason is that the buyer doesn't want to be on notice:
 - Triple damages in infringement suit.
 - Inability to file overlapping patents at USPTO.





Legal Response from Buyers You Approach Directly

- Lawyers attending meetings.
- Letters from lawyers representing buyers.
 - "We are not infringing".
 - "We will bring a lawsuit to prove it".
- Lawyers analyzing the patents, the filing history, the potential infringement situation.
- Lawyers conducting detailed due diligence.
- Lawyers negotiating complex transactions.



Sobering Prices Offered


- Prices that don't seem to reflect the huge potential market your patent addresses.
- Invalid patent is worth nothing.
- Average patent sale is similar to the price of a good car.
- If your patent is special, it may be worth the price of a good house.
- Price driven by competition among buyers, infringement information, and market size.

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Lots of Information Requests


- Patent numbers.
- Pricing guidelines.
- Information on prior-sales efforts.
- Reasons for sale?
- Family of international counterparts?
- Sell as portfolio or individual patents?
- License back required?
- Potential infringers?
- Current licensees?
- Marketing materials?
- Additional IP included in sale?



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Due Diligence Process


- Is the patent valid?
 - Patent office File Wrappers.
 - Correspondence with patent office.
 - Prior art research.
- Do you have clean title?
 - No encumbrances?
 - Licenses.
 - Liens.
 - Reviews of contracts.
 - Inventors.
 - Prior assignees.



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Documents Needed to Sell


- Brokering/representation agreement.
 - Anti-circumvention.
- NDA for Buyers.
- Patent Purchase Agreement.
- USPTO Assignment.




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Selling Patents

- Sale can be conducted in "Stealth Mode".
- Little costs as broker often works on contingency basis.
- License back allows you to continue to market products using the patented invention.
- U.S. patents most valuable.
- Portfolios of related patents most marketable.
- 3-9 month process.
- Can generate profitable revenue from underperforming assets.



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