An Update and Considerations to Reduce Risks Posed by NPEs

Chairman and CEO
PatentFreedom
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Define Non-Practicing Entity

- An entity that derives, or plans to derive, the majority of its revenue from the licensing or enforcement of patents, and which is generally invulnerable to patent counter-assertion.

- While NPEs share this basic characteristic, they are not all cut of the same cloth. Their heritage, modes of operation, management, financing, and philosophies vary widely.
The Number of Companies in NPE Lawsuits

Data provided by PatentFreedom
A Growing Problem – The Number of Active Distinct NPEs as Plaintiffs

Data provided by PatentFreedom
NPEs are Most Active Against The Technology Sector…

Parties in Unique NPE Lawsuits by Sector

Note: excludes ~18% of unknown industry

Data provided by PatentFreedom
All High-Tech Sectors are Under Sustained Exposure
But Other Sectors are Increasingly Targeted by NPEs Too

![Graph showing Parties in Unique NPE Lawsuits by Sector](image-url)

Data provided by PatentFreedom
NPE Owned Patents by Technology Area - IPC Codes

100% = 24,710

<table>
<thead>
<tr>
<th>Technology Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous</td>
<td>13%</td>
</tr>
<tr>
<td>Life Sciences / Chemical</td>
<td>16%</td>
</tr>
<tr>
<td>High Tech Industry</td>
<td>72%</td>
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</table>

100% = 1,368

<table>
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<tr>
<th>Technology Area</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous</td>
<td>13%</td>
</tr>
<tr>
<td>Life Sciences / Chemical</td>
<td>2%</td>
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<tr>
<td>High Tech Industry</td>
<td>84%</td>
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Data provided by PatentFreedom
Most Pursued Companies – Top 15

Data provided by PatentFreedom

NPE U.S. Litigations, 2004-2009

Apple
Sony
Dell
Microsoft
Samsung
HP
Motorola
AT&T
Nokia
Panasonic
LG
Verizon
Toshiba
Sprint Nextel
Google
Most Pursued Companies – Next 15

NPE U.S. Litigations, 2004-2009

Data provided by PatentFreedom
Defending Against NPE Patent Enforcement is Costly – Perhaps > $5 billion plus settlements in 2009 alone!

- The average cost of a patent litigation is at least $2 million (AIPLA, 2003), even if a patent is invalid and/or non-infringed.
- The financial exposure can be 10 times or more the cost of such litigation (eLaw Forum)
- For every litigation filed, there may be 3-5 assertions or more, the defense of which can easily cost $200k each

- The direct cost to operating companies of all NPE litigations in 2009 alone is considerable
  - 1,676 defendants x $2m = $3.4bn
  - At 5 additional assertions for each single litigation = $1.7bn
- These estimates do not include license fees and judgments
Settlement Patterns of Individual Defendants in NPE Suits

Computer and Related Hardware Industry Example

Data provided by PatentFreedom
NPE Litigation Activity is Fragmented Among Many Players

U.S. NPE Litigations 2004-2009
100% = 2,328

Top 5 Most Active NPEs
- 24.8% (578)

Next 5
- 12.5% (291)
- 9.6% (224)

Next 10
- Remainder (>260 Distinct Entities)

Data provided by PatentFreedom
An Increasing Trend to Litigate Soon After Acquisition

# of Litigated NPE Patents by Year of Acquisition
by Elapsed Time Between Acquisition and First Litigation

Data provided by PatentFreedom
Solutions to a Growing Problem

- Consider a multi-faceted approach to address the NPE issue:
  - **Intercept** patents being sold on open market before they are purchased by potential adversaries
  - **Encourage** greater transparency in patent sales and holdings
  - **Educate and inform** operating companies about NPE assets and operations
  - **Ensure** financial investors and law firms are aware of the impact of their support of NPEs on your business
  - **Challenge** issued patents owned by NPEs through reexaminations and oppositions
  - **Consider** seeking early licenses on preferential terms, *where appropriate (for strong and likely relevant patents)*
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