

Purchasing patents for change

Companies are purchasing patent portfolios to obtain cross-licences.

BERT VAN DIJK

AMSTERDAM – In the coming years, the trade in patents will grow significantly in the technology sector. This is the expectation of Severin de Wit of Simmons & Simmons, who started an IP merchant banking group called Ipeg. Ipeg advises technology companies on the purchase and sale of patent portfolios. "The time available to market new products is becoming increasingly shorter. This means that companies are trying to keep the cost price as low as possible to protect their margins. The only costs that are rising are those for licences and patents that have to be purchased to market the product," says de Wit.

Purchasing patents is important as there is an increasing collaboration in the development of new products in the technology sector. According to de Wit, "You will need a strong patent portfolio for a good negotiating position. Intellectual property and, in particular, patents have become a separate investment category in addition to shares, obligations, cash or real estate." Meanwhile more than 80% of the value of all S&P 500 companies is invested in intangible assets, including patents. In the early 1980s this was only 30%.

Patents are increasingly used for offensive purposes. Only last month, Microsoft received the largest fine ever imposed for patent infringement. The software company was ordered to pay well over USD 1.5 billion to Alcatel-Lucent for patent infringement. This is not a one off case. Last year, Blackberry maker RIM settled a patent dispute with NTP for USD 612 million. Closer to home at ASML in Veldhoven they also know that a good IP policy is of strategic importance. In 2004, the company settled a long drawn-out patent dispute with Nikon for almost USD 90 million. De Wit was one of ASML's lawyers.

These cases show how important a good patent policy has become. According to de Wit only a few companies are really working on this. "Philips is dealing with it in a professional manner, but then again Philips has a rich history in R&D. Companies that do not have a long R&D history can nevertheless play a significant role in the high-tech sector," says de Wit. "For example, one of my clients is a Chinese chip manufacturer that wants to market its chips, but is unable to do so because he needs a licence from another party. That party, however, is unwilling to provide the licence. That is why I am now looking for a patent portfolio the Chinese company can use against the other company.

According to de Wit there is a large demand for this type of advice in Europe and Asia. His initiative is supported by Simmons & Simmons, which firm will continue its collaboration with de Wit. DSM and ASML have nominated de Wit for the FT Innovative Lawyers Award, an award organised by the Financial Times.

It is not only companies that can benefit from an active patent policy. De Wit notes: "The Dutch universities are sitting on an untapped goldmine of hidden value. However, they fail to market these technologies successfully as there is still a taboo attached to commercial thinking. People frown when you bring it up. Last week, I attended a large conference on the "valorisation" of intellectual property in Cannes. A number of universities also attended the conference. However, rather than talking with the sector they only talked with each other. This will get them nowhere and that is a great pity."

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Lawyer focuses on patent trading

AMSTERDAM - Severin de Wit, former partner of the law firm of Simmons & Simmons and now a consultant to the firm, started an "IP merchant banking group" which focuses on the purchase and sale of patent portfolios on the instruction of pharmaceutical and technology companies. According to de Wit, Ipeg, as the company is called, is the first of its kind in Europe.

"The market for patent trading is characterised by a lack of transparency. There is no public market place, like a stock exchange, where the value of patents can be determined. The purchase and sale of patents becomes ever more important because there is an increasing collaboration in the technology sector. A valuable patent portfolio improves your negotiating position."

De Wit realises that many lawyers are active in this field. "But they mainly regard matters from a legal point of view and what is more they are paid by the hour. This means that time consuming projects such as the search for interesting patent portfolios are rather expensive. The "traditional" merchant bankers have more financial expertise, but do not have the necessary legal knowledge. We combine these two skills." De Wit receives a percentage of the proceeds of the transaction, just like traditional merchant banks, rather than an hourly fee, as lawyers do.

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