

Managing Intellectual Property

Managing Intellectual Property January 26, 2012 "InterDigital Strategy Highlights Shifting IP Paradigm" By Eileen McDermott

Just months after the mega-deals for Nortel and Motorola patents, Interdigital has failed to find a bidder for its portfolio. Is the patent boom over already?

The wireless technology company this week ended its six month "strategic alternatives review process" in which it sought to sell off a portfolio of nearly 20,000 patents and patent applications.

The portfolio covers inventions used "in every cellular device that ships today", according to a company release.

"Interdigital did the smart thing after seeing the results of the Nortel patent auction, but for whatever reason Google decided on Motorola," said Paul Ryan, CEO of patent acquisition and licensing company Acacia Research.

Once the market had spent a combined \$17 billion on the Nortel and Motorola portfolios, "they were probably exhausted," said Ryan, and not exactly eager to jump at another vast portfolio.

"There was a moment in time where one group needed patents," but such transactions are not likely to become popular, Ryan added. Cross-licensing deals and government scrutiny remain obstacles to companies making such enormous purchases of intellectual property.

If such transactions did catch on, Acacia might eventually be out of business – the company buys up patents and then asserts them in litigation or requires companies to take a license. Most recently, Acacia purchased 3G technology provider Adaptix for \$16 million and has already struck licensing deals with Microsoft and Samsung.

Greater Role for IP Counsel

Either way, this "paradigm shift" in which intellectual property is increasingly being viewed as an asset to be monetized rather than just a defensive litigation tool means that more in-house heads of IP are likely to begin reporting directly to CEOs rather than to general counsel, Ryan said.

He added: "The mindset on IP is shifting to a return on shareholder capital – companies are asking: 'Is this a business issue, or a staff litigation issue?'"

The next portfolio that will be up for grabs is Kodak's store of digital imaging patents. The company filed for Chapter 11 bankruptcy on January 19.

Jeffrey Whittle of Bracewell & Giuliani said potential buyers of that portfolio include "all the main manufacturers" Apple, HTC, Samsung, Research In Motion, Google, Hewlett Packard and Nokia.

Whittle said it would not be surprising for a company to pay \$5 billion dollars or more for all of the Kodak patents – but not all of them are on the market. For now, the offering is in the \$2 billion to \$3 billion range.

Once Kodak gets to bankruptcy court, bids will begin to trickle in, said Ryan.

Interdigital reported it will continue to focus on developing wireless technologies "and the monetization of those assets through vigorous and comprehensive patent licensing and sales efforts."

The company has estimated it will be able to generate "sustainable annual revenue of at least \$800 million in three to five years."