
**Strategic
Patent
Acquisition
(SPA)**

THINKFIRE
FUELING INNOVATION WORLDWIDE

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— *Agenda* —

- ***The “Patent Problem” (and Opportunity)***
- **A Solution: Strategic Patent Acquisition**
 - Developing a powerful response to patent attacks
 - Planning to ensure future freedom of action
 - Developing a strategic patent position to support market activities and corporate objectives
 - Monetizing patent assets

A variety of intellectual property threats are roiling technology operating companies

— The “Patent Problem” —

Problem	Description	Example
Operating Company Licensors	Technology operating companies seeking royalty income	
Non-Operating Company Licensors	Universities, Labs, Individual inventors, and IP licensing companies	
Distressed IP Owners	Troubled or failed operating companies with patent assets	
Competitors	Conventional competitors, and unconventional competitors (e.g. open source)	

Certain operating companies purposefully target large, successful, growing companies with nascent patent portfolios as sources of patent licensing revenue

— *Predatory Operating Company Licensors* —

- R&D powerhouses



- Patent licensing enabled business models

PHILIPS



Forgent™

Case Study:

- Pitney Bowes held printing technology patents
 - Pitney Bowes filed a patent infringement suit against HP in 1995.
- ↓
- In June 2001, HP agreed to settle the dispute with several considerations for Pitney Bowes:
 - **\$400 million cash payment**
 - Technology licensing agreement
 - Possible business and commercial relationship

Establish sufficient counter-assertion capabilities targeting potential adversaries' key vulnerabilities

Conventional competitors, startups, and open source projects present market threats

— Competitors —

- Conventional competitors



- Open source movements



FSF FREE SOFTWARE
FOUNDATION

Case Study:



- Founded in 1979, in 1983 SCO released the 1st UNIX distribution for Intel-based PCs resulting in commercial success and a 1993 IPO.
- Commercial LINUX from Red Hat and others arrived in 1994, presenting a new very low cost competitor for SCO.
- As SCO's performance declined in competition with Red Hat (and other LINUX), NASDAQ threatened delisting in 2005.

Establish sufficient assertion/ counter-assertion capabilities targeting potential adversaries' key vulnerabilities

Non-operating companies present a unique challenge due to their lack of counter-exposure, and therefore require target licensees to adopt different counter measures

— Predatory Non-Operating Company Licensors —

- Patent holding companies



- Universities and research organizations



- Small firms and individual inventors with contingency law firms



Case Study: NTP

- NTP developed patents related to wireless email devices, software and services in the early 1990's.
- In November 2001, NTP filed a lawsuit for patent infringement against RIM.
- In March 2005, NTP obtained a verdict granting it a one-time **cash payment of \$450 M** (or \$2.40/ RIMM share).

Proactively identify risks and obtain cost-effective freedom of action BEFORE “trolls” can act. Greater patent brokering transparency will help.

Failed and failing startups and larger operating companies provide a specific type of IP problem for more successful companies

— Distressed IP Owners —

- Distressed larger operating companies



- Distressed smaller operating companies and startups



Case Study: **intertrust**[®]

- Founded in 1990, Intertrust was a pioneer in DRM and trusted computing technology and developed a strong corresponding patent portfolio.
- In April 2001, Intertrust filed a lawsuit for patent infringement against Microsoft.
- In July 2003, now jointly owned by Sony and Philips, Intertrust won a settlement from Microsoft including a **cash payment of \$440 m.**

**Proactively identify risks and patents and
obtain cost-effective freedom of action
BEFORE distressed firms become predators**

— **Agenda** —

A Solution: Strategic Patent Acquisition

- Developing a powerful response to patent attacks
- Planning to ensure future freedom of action
- Developing a strategic patent position to support market activities and corporate objectives
- Monetizing patent assets

Strategic Patent Acquisition programs address all manifestations of the “patent problem” and provides an arsenal to achieve vital corporate objectives

— Solving the “Patent Problem” —

Patent Problem	Solution
<p>Operating Companies</p>	<p>Establish sufficient <i>counter-assertion capabilities</i> targeting potential adversaries’ key vulnerabilities</p>
<p>Market Threats</p>	<p>Establish <i>assertion/ counter-assertion capabilities</i> targeting potential adversaries key vulnerabilities</p>
<p>Non-Operating Companies</p>	<p>Proactively identify key risks and <i>obtain cost-effective freedom of action BEFORE “trolling” occurs</i></p>
<p>Distressed IP Owners</p>	<p>Proactively identify key risks and <i>obtain cost-effective freedom of action BEFORE distressed firms become predators or “trolling” occurs</i></p>

Successful Strategic Patent Acquisition begins with proper strategy

— Strategy —

Review Corporate Strategy

- Review technology strategy
- Review market strategy (e.g. geographic markets targeted)
- Review operations strategy (e.g. supply chain, partners, etc.)

Investigate Potential Patent Risks and Opportunities

- Determine threat and opportunity categories
- Determine specific threat and opportunity entities (e.g. companies, organizations)
- Develop threat and opportunity scenarios (e.g. business cases)

Evaluate Adversary Vulnerabilities

- Determine key vulnerability areas where IP Currency can provide leverage
- Determine key vulnerability overlap across anticipated adversaries

With a solid strategy in hand, we can select an appropriate implementation approach

— Strategic Patent Acquisition Options —

Systematic Search	Targeted Brokering	Opportunistic Evaluation
<ul style="list-style-type: none">• Set clear objectives, budget, and plan ahead• Design the search• Select target patents to acquire• Negotiate deals	<ul style="list-style-type: none">• Set clear objectives, budget, and plan ahead• Select target sellers• Select target patents to acquire• Negotiate deals	<ul style="list-style-type: none">• Set clear objectives, budget, and plan ahead• Build deal flow• Evaluate each deal• Participate in auctions/sales as appropriate

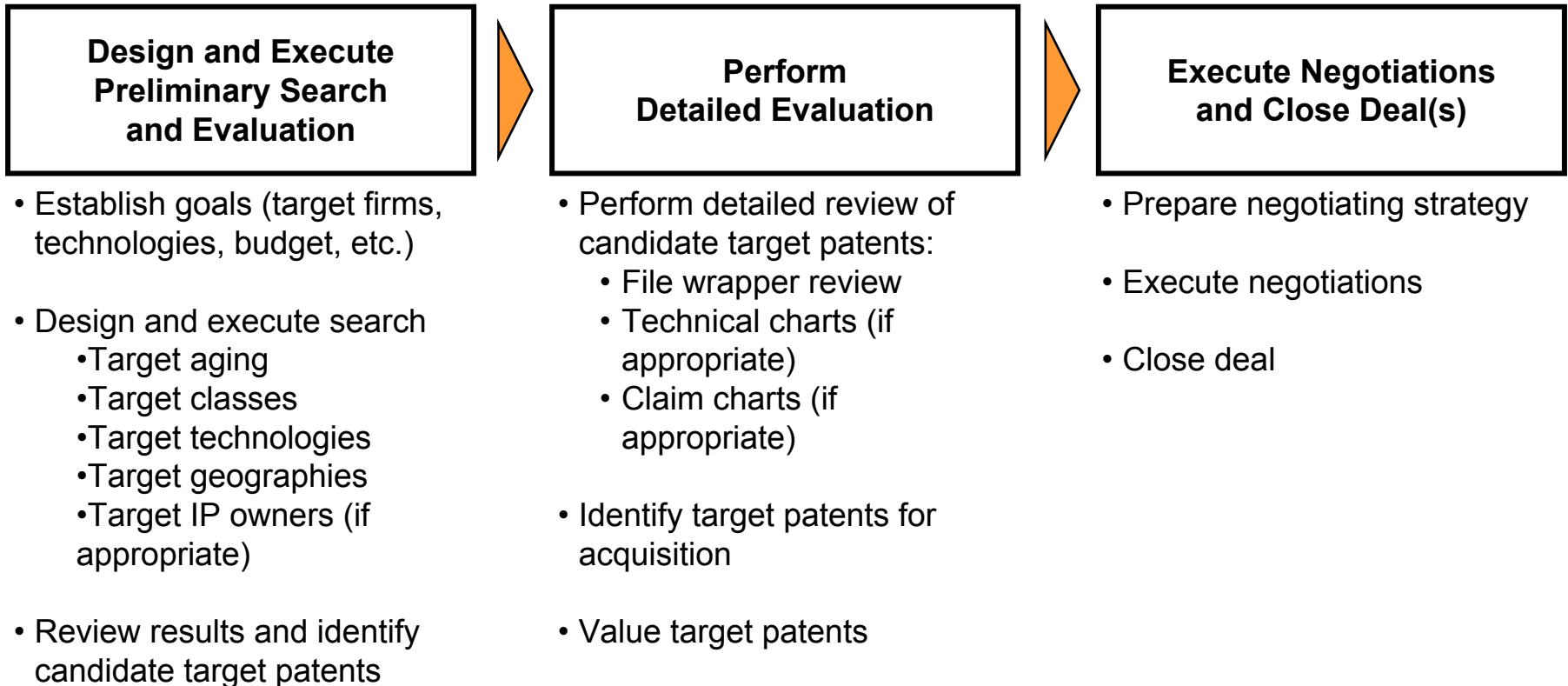
Benefits	-Designed to achieve targets	-Accelerates search	-Fast, simple transactions
Issues	-Requires substantial timeframe -Requires substantial budget	-Constrains target patent set	-Most deals are bad -Requires deal flow investment



Often a combination of these options can help to meet timeline and budget constraints

The systematic search employees a linear process to achieve its goals

— Systematic Search Process —



Several factors contribute heavily to determining project feasibility and success

— Key Feasibility & Success Factors —

- Understanding of internal corporate and technology strategy
- Understanding of likely and potential adversary(s)
- Understanding of target technology areas
- Adequate project and acquisition budget
- Sufficient timeframe
- Knowledge of off-limits IP owners (encumbered, unfriendly, etc.)



Once we have a clear knowledge of a client's objectives and constraints, we can work together to customize a proposal for each client's unique situation

Strategic Patent Acquisition has a number of potential benefits, but to make a strong business case one must focus on its most concrete applications

— Making A Business Case for Strategic Patent Acquisition —

Quantifiable Business Cases

- ROI based upon assertion against specific adversaries
- ROI based upon counter-assertion against specific anticipated adversaries
- ROI based upon injunction or deterrent to market entry for specified competitor(s)
- ROI based on strategic use of acquired assets to:
 - Win new clients
 - Drive down supply costs
 - Open new markets

Unquantifiable Business Cases

- Reduced assertions against clients due to increased scarcity of infringed patents
- ROI based upon assertion or counter-assertion against unspecified potential adversaries

— **Contact** —

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