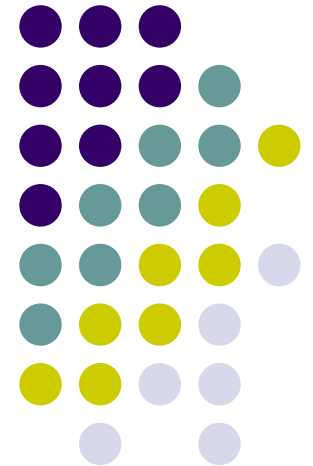
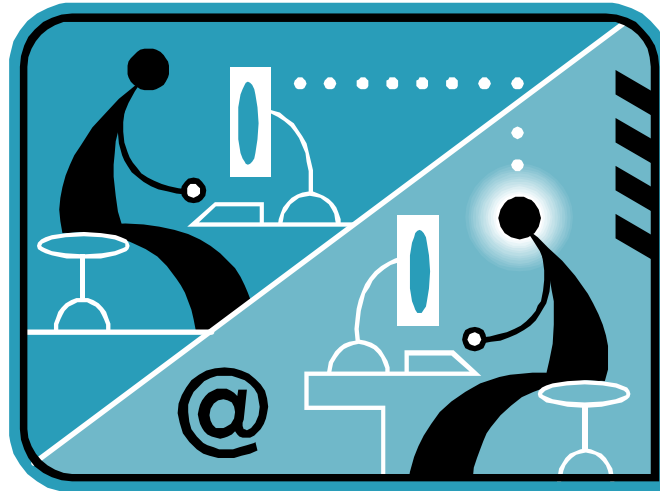
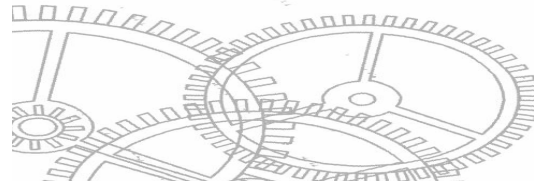


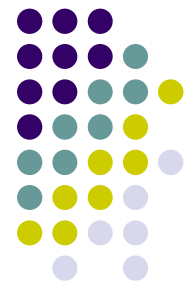
Hidden Value In Intellectual Property



Ari Manoach
January 2006

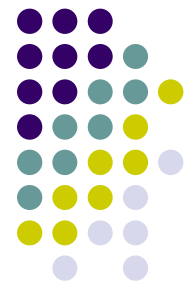
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Contents

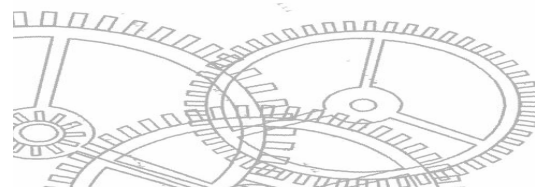
- What is IP?
- Specific IP assets – software source code, patents
- Value in IP
- What are special financial situations?
- Five step model - How to “fire sell” IP?
- Liquidation situations
- Recent trends in IP litigation
- Recent trends in patent portfolio sales
- Dormant IP value in active companies
- IP Valuation
- The human factor
- Q&A

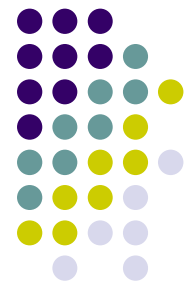


Intellectual Property Assets

- Registered – patents, trademarks, URL's;
- Non-registered – trade secrets, customers' lists, software source-code, production files, know-how, designs, algorithms, reputation, claims for infringement etc.
- IP assets at “special financial situations”.
- Other intangible assets (tax shelter, customer base)

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Hidden value in software source-code

- New developments versus field-proven technology
- Importance of documentation
- Ability to “slice” and conduct several licensing deals
- Potential acquirers / licensees: OEM customers, distributors, competitors

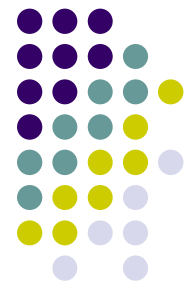




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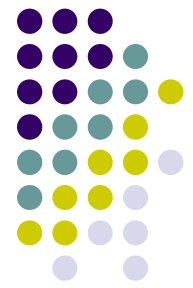
Special Financial Situations



- Liquidation, reorganization, receivership
- Unique situations due to capital structure of high-tech companies
- Problem to raise cash at downward business cycles
- Problem to finance a broad patent portfolio
- Other financial distress situations

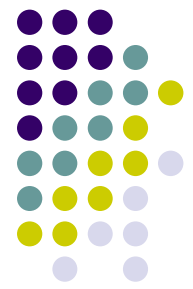
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Patents

- The USPTO
 - 49% of US patents are held by non-Americans
 - California accounts for 23% of the patents held by Americans
- A patent as a sword, a portfolio as a shield
- Cost of obtaining and retaining a patent portfolio
- Patent applications, PCT's

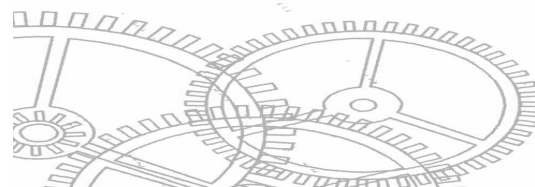


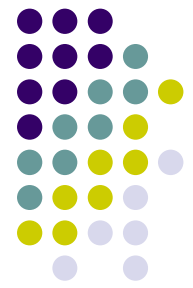
Timing considerations

- High tech assets lose their value over time.
- Cost of retention of customers, technology and patents.
- Damage to a distressed company's reputation
- “Fire sale” – pros and cons
- Rapid decision making is crucial (even at legal or corporate bureaucracies)



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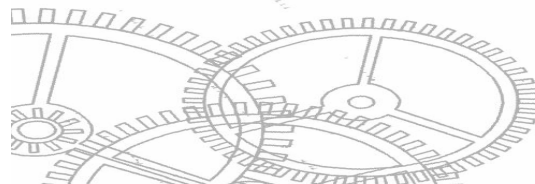


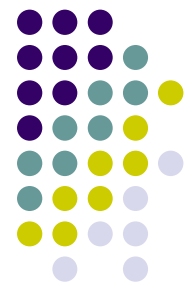


The importance of achieving value for IP in special financial situations

- Investors
- Banks – IP assets as a main collateral
- “Distressed M&A” – may be valuable also for minor shareholders and management

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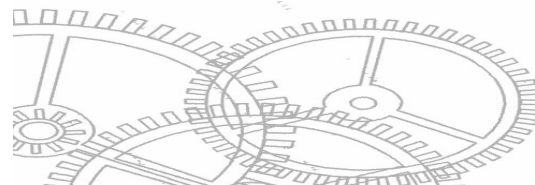


Liquidation – tips for the road

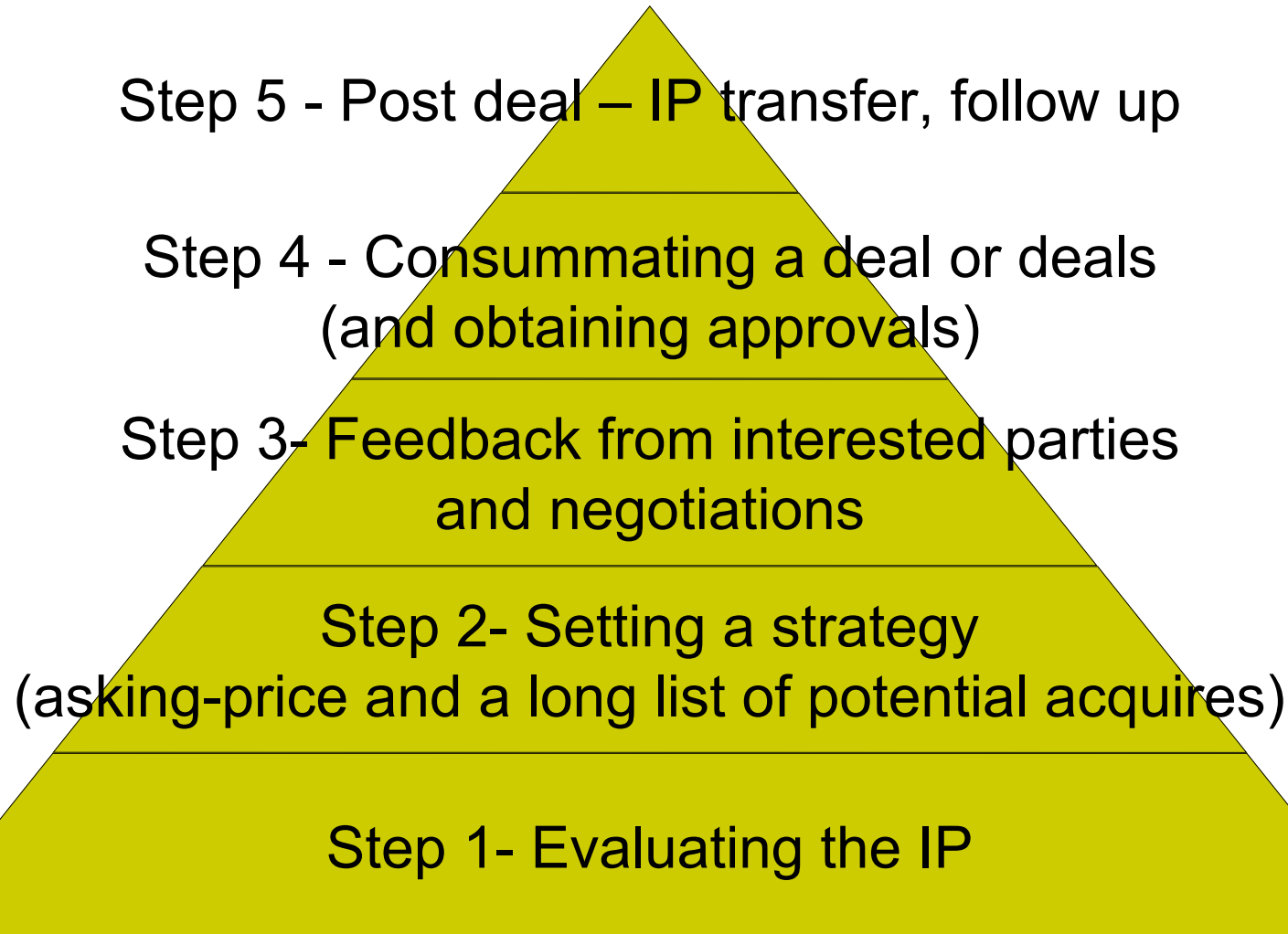
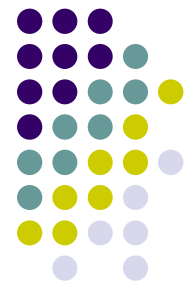
- Retention of:
 - Customers
 - Know-how
 - Reputation
- Approval process
- Risk of IP theft
- Rule of thumb for successful IP sale

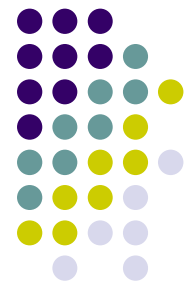


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Five step model- IP “fire sale”



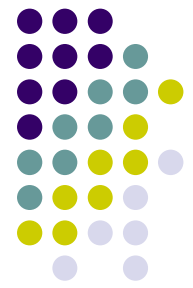


Dormant IP value in active companies

- Ability to license non-core IP
- Ability to sell – and receive a back license – even for IP which is used by the company
- May be applicable also for non-tech companies
- US corporate income from patents licensing exceeds \$100B.



Cross border IP sale



Opportunities:

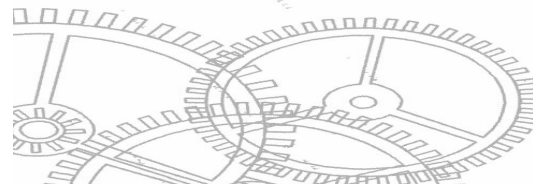
- Better value
- Real competition
- Logistically easy



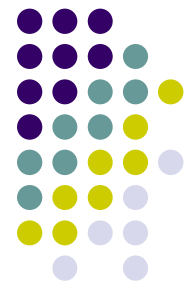
Challenges:

- Government limitations
- Different legal settings
- Customer-base as a local asset

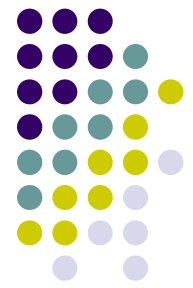
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An opportunity in patent litigation

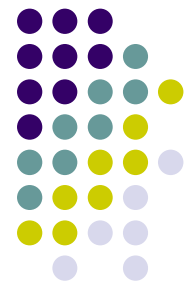


- Hottest areas: Telecom, IT, Internet
- Resources required - \$1-2M
- Patent trolls
- What do large defendants do?
 - Legal claims:
 1. Non-infringement
 2. Attack the patents – invalidity
 3. Unenforceability
 4. Inadequate conduct
 - “Workarounds”
 - Offense
 - Patents stacking – some openly, some discretely.
- Willful infringement – triple penalty liability



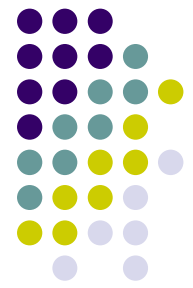
Big name defendants





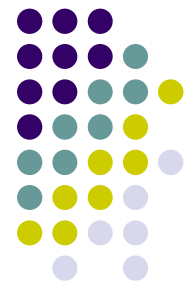
IP litigation - multi-million examples

- NTP vs. RIM – a debated \$450M settlement.
- Visto vs. Microsoft
- InterDigital vs. Nokia – a royalties' judgment for \$250M.
- Freedom Wireless – pre paid cellular technology
- MercExchange vs. eBay – a \$30M payment + debate over injunction
- 3M vs. Avery Dennison – clash of the titans
- Eolas vs. Microsoft - \$521M (under appeal)
- Intel – \$8B law suit
- Mysterious JGR acquisition of Commerce One patents at bankruptcy court (\$15M)



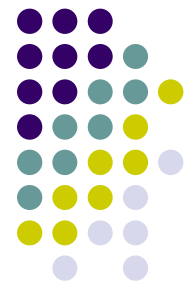
Freedom Wireless

- Consists of 4 employees; holds 6 patents
- Sues cellphone operators for 1998 pre-paid system patent infringement
- Lost first round by paying \$90k in legal expenses to GTE
- 1996 licensing revenue of \$11M.
- Closure in 1999.
- Won a \$128M suit against BCGI



MercExchange vs. eBay

- A former CIA agent invented a patent for online auctioning using credit cards
- A 2003 law suit resulted in \$30M compensation for past damages
- Current suit for injunction
- Threatens 35% of eBay's business ("buy it now" feature)
- Other e-marketplaces step up to pay royalties



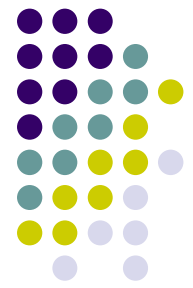
IP Valuation at special financial situations

- The three common models (and their general and concrete limitations):
 - Comparable deals approach – highly subjective due to difficulty to compare IP portfolios.
 - NPV approach (for example, for licensing deals) – locks in a single risk rate.
 - Real option approach – suitable for investment situations.
- Patents rules of thumb valuations
- Infringement cases formulae – sales times licensing rate
- Different value for different people
- A business judgment rule – liability of company executives, officers of the Court or banks
- Distressed M&A valuation

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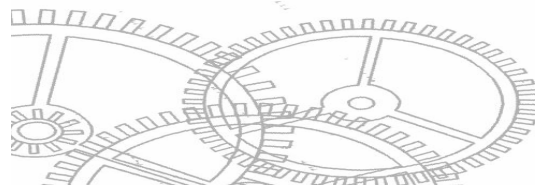


The Human Factor in IP sale



- Know-how is at key people's heads
- Management cooperation required
- Unique inter-personal problems at companies in distress
- Network

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Thank You !

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