



# Patent Purchasing: The Why and How

*Phil Stern – CEO*



A global leader in intellectual property transaction and strategic advisory services

- Founded in 1999, with offices in Boston, London, Tokyo
- *yet2.com*® internet presence is unique resource to facilitate deals –
  - 100,000+ registered users
  - Network of 10,000+ smaller companies (\$10-500m)
- Advisory Board includes: AGFA, Avery Dennison, Bayer, DSM, DuPont, Philips, P&G, Takeda
- Complete ~20 deals annually for clients



## Representative client set



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## Patent transaction team leaders

**Phil Stern** co-founded *yet2.com* in 1999 and is CEO of the company. While his primary responsibilities include operating leadership for the company, he continues to work directly on client engagements, providing thought leadership and leveraging the strength of the *yet2.com* network. Prior to *yet2.com*, he worked 13 years in general management and strategy consulting, having served clients for Bain & Company and McKinsey & Company in a wide variety of industries. Phil holds an A.B. *cum laude* in Mathematics from Princeton University and an MBA from Harvard Business School, where he was a Baker Scholar.

**Brad Kullberg** joined the *yet2.com* team in 2009 following a 30-year career at Polaroid Corporation. He provides IP strategic advisory and buy- and sell-side transaction services at the company. At Polaroid, he was VP/GM Intellectual Property, responsible for patent and brand out- and in-licensing and infringement litigation. Prior to this role, Brad was Divisional VP of Corporate Strategy and Business Development. He holds a BSChE *summa cum laude* from RPI and an MBA from WPI.

## Patent Purchasing – key motivations

- Freedom to operate
  - Already infringing vs. anticipated infringement
- Building a blocking portfolio
  - Broader IP than you're practicing
- Defensive
  - Versus competitors
  - Versus Non-Practicing Entities

In all cases:

Will want to identify patents that could stand the test of litigation

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## Patent Purchasing – the economics

- **Costs:**
  - Cost to identify and evaluate the right patents
  - Transaction costs
  - Purchase price / license costs
- **Benefits:**
  - Avoided litigation costs once a suit is filed
  - Avoided settlement costs
  - Cross-licensing value
  - Sustained competitive advantage

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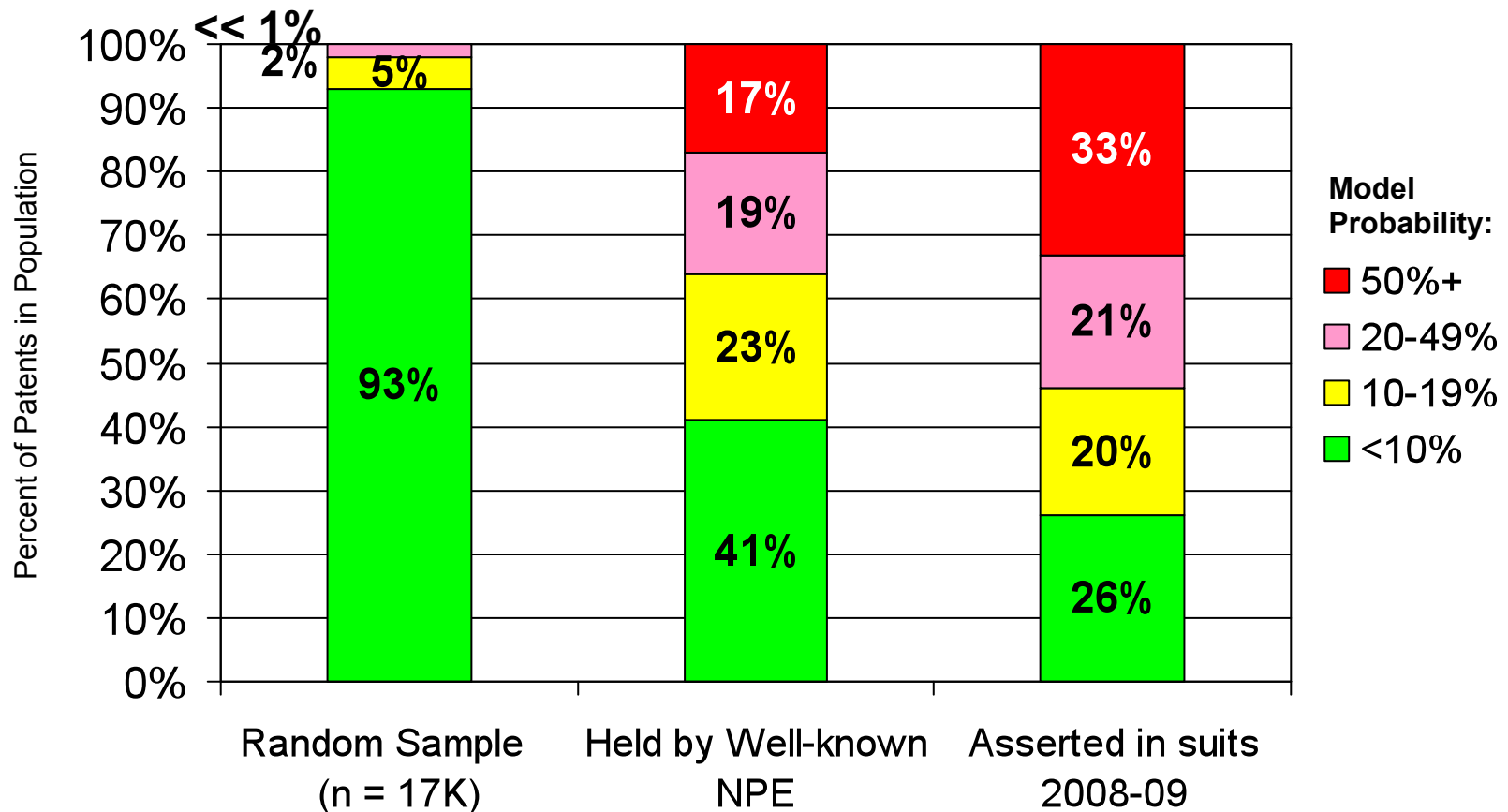
Preemptive buying (or in-licensing) prevents future assertion and associated costs

- How to identify likely candidates?
- Which patents are likely to be sold?
- What resources are needed for searching and monitoring?
- How to reduce risks of approaching patent owner?
  - Alerting patent owner to value (“sleeping baby”)
  - Alerting patent owner to your interest

## Identifying patents that are likely to be litigated

- *“Likelihood of assertion”* and *“patent quality”* are not synonymous
- *yet2.com* has studied characteristics of patents asserted by and purchased by NPEs, including:
  - Citation analysis
  - Number of claims and claim length
  - Family size
  - Priority date
  - Classification
- Attributes can be modeled
- *yet2.com* has developed a proprietary evaluation model and search process designed to identify patents with characteristics consistent with litigated patents

*yet2.com* model identified 74% of “Asserted” patents as likely to be litigated (vs. 7% of a normal population)



## Economics of preemptive buying are compelling

- Buying a single patent can negate significant future cost
- Typical purchase prices for single patents are \$50K-\$250K when infringement claims are not the deal context
- Defending patent infringement suits is costly
  - Legal costs through discovery average \$3.7 M in 2009
  - Defending through trial averages \$6.2 M (Source: AIPLA)
  - Losing is even more costly
  - NPE's often sue 15+ defendants and seek early settlement from several for \$1-2 M

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## Anonymous buying lowers risk

- Patent owner may be reluctant/unwilling to engage with some competitors or other parties
  - Approach by broker can be viewed as less risky/threatening
- Lower transaction price may be possible
  - If buyer would be viewed as potential infringer
  - If buyer would be viewed as having deep pockets
- If no deal gets done, buyer's identity is protected
  - Reduces risk of assertion by patent owner
  - Buyer will have more information that can be helpful in assessing alternate strategies

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## Recent anonymous buying project successes

- Large company seeking patent from inventor
  - Desired patent for cross-licensing value
  - Negotiated final Patent Purchase Agreement
  - Seller signed first with buyer anonymous
- Large company seeking patent from competitor
  - Freedom to operate for recently acquired business
  - Negotiated final Patent Purchase Agreement
  - Seller signed first with buyer listed as one-of-ten-possible-buyers
- Small company seeking patent from inventor
  - Future freedom to operate need
  - Title and authority were unclear
  - Negotiated favorable licensing terms (rather than sale), established NDA prior to client identification

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## *yet2.com*'s defensive patent buying services

- Annual subscription service – searching/finding/monitoring
  - Targeted search for patent acquisition candidates
    - Select specific technology area(s)
    - *yet2.com* performs search and evaluation of collected population
    - Resultant target list reviewed with client
    - *yet2.com* monitors status of owners of target patents
      - Announcements of distress or bankruptcy
      - Merger, acquisition, divestiture, business exit
    - *yet2.com* initiates innocuous contact with patent owners to gather information about their strategy
    - Client decides when/if to initiate contact
  - Target list updated annually based on new search/evaluation
- Ad hoc transaction service - anonymous buying of target patents
  - Purchase directly by client
  - Purchase by *yet2.com*, license to client

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## Patent Purchasing – key takeaways

- Don't assume the best patents are held by you and your competitors
  - University IP
  - Failed start-ups
  - International Companies
- No reason to buy low quality patents
- A strong patent portfolio pays dividends across the business system
- Anonymity provides an effective way to engage the market

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# BACK-UP SLIDES

## NPE litigation has been concentrated in telcom, high-tech, consumer electronics sectors

| Product Category   | Defendant count<br>by sector |
|--|------------------------------|
| <b>Semiconductor</b>   | 690                          |
| <b>Software Applications Market</b>                            | 403                          |
| <b>Communications Equipment</b>                                | 330                          |
| <b>Communication Services</b>                                  | 236                          |
| <b>Computing</b>   | 201                          |
| <b>System Infrastructure Software Market</b>                   | 196                          |
| <b>Imaging</b>   | 164                          |
| <b>Software Applications Development and Deployment Market</b> | 139                          |
| <b>Wireless</b>  | 135                          |
| <b>Consumer Electronics</b>                                    | 97                           |
| <b>Components</b>  | 81                           |
| Miscellaneous  | 29                           |
| Industrial Manufacturing                                       | 14                           |
| Consumer Goods   | 12                           |
| Medical Devices, Pharma & BioTech                              | 11                           |
| Energy & Environment   | 3                            |
| Chemicals  | 1                            |

Source: <https://www.patentfreedom.com/research-pc.html>

Data collected for US complaints filed 2004-2008

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## NPE defendants have no good options available

- No cross-licensing opportunity
- Defending suits diverts resources and attention
  - Expensive even when plaintiff loses
- Settlement can be costly and send wrong signals to other NPEs
- Re-examination can result in stronger patent
- Design-around is potentially expensive and can impact other development programs

# NPV/ROI of preemptively buying a single patent

- Assumptions:
  - Patent purchase price of \$150K now (+\$27K transaction fees)
  - Defense costs of \$1.5 M in Years 2 through 5 if asserted
  - 12% discount rate
- NPV is **\$859K** if only 25% likelihood of assertion (**78% ROI**)
- NPV is **\$250K** if only 10% likelihood of assertion (**42% ROI**)
- Does not include infringement settlement or judgment
  - Could be many millions in additional cost
- Does not include cross-licensing value of patent
  - Could be significant strategic and financial value
- Over several years, projected savings very large

# Anonymous patent acquisition methodology



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## Seller will always request buyer's identity

- Goal is for seller to sign final agreements first
- Various methods to move process forward while maintaining anonymity
  - Work to gain trust of seller
  - Describe buyer in general terms
  - Confirm buyer is operating company rather than NPE
  - Provide list of companies which includes buyer
- Process can stall prior to close
  - Buyer assesses risk of identifying himself
  - Get term sheet in place first
  - Get NDA with 'standstill' provision in place

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## *yet2.com's* value proposition is unique

- Client anonymity is maintained
- Proprietary searching and evaluation process
- Initial investment minimal until you see tangible evidence of payback
- Client makes purchase decisions
- Client can discontinue or re-focus as desired
- Other approaches require large capital commitment and 'members' relinquish control