



THE PATENT FILES

Above and beyond a simple cash grab?



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Paul Cannata discusses IBM's possible monetisation strategy following its recent patent transaction with Google

For a patent system so rooted in transparency by way of "disclosure equals exclusive right to make and sell an invention", there is a lot of talk and speculation these days when patents change hands. And so there should be. What is the motive? What did they get for them? Who is really benefiting? One such spectacle that has received some attention is IBM's recent patent transactions with Google, which have been widely speculated upon, but have for the most part, focused on Google's motivation. Although it is simply speculation, let us look at some motivation from IBM's perspective, above and beyond a simple cash grab.

So, is it interesting that IBM was not a part of any bid for Nortel? Maybe not of particular interest to its business, but surely would be a nice addition to its already booming licensing model, especially since the Nortel assets were widely seen as unencumbered. It is interesting to note that Google purchased 1000+ patents from IBM less than 15 days after the Nortel auction concluded. The transaction was surely in the works prior to this, and although Google was being pegged as a company in desperate need of patents, IBM would have been wise to hold off until the gavel came down where it did at \$4.5 billion. But that all plays into the hands that it is all about cash. Perhaps in the end, cash is king; but even if that is the case, maybe IBM is taking up a new trend in patent monetisation.

As the patent aggregation firms and defensive pools continue to thrive through either tremendous buying power, and/or the availability of larger and larger patent portfolios, IBM may have started to view

themselves as essentially one of the largest patent pools in the world. By analysing what they have and who needs what, they can be quite the chameleon in the patent world. Although they are not a direct player in the smartphone market, they probably have some significant patent assets in that area. As most know, IBM patents everything it thinks of, so it would therefore seem logical to take advantage of the growing patent wars in the smartphone market. Although the patents sold

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to Google probably have some encumbrances, the right to assert them would only come by way of a sale, and Google's due diligence on the portfolios would have included knowing who has licence contracts in place. So it must have been advantageous to Google, or else they would have just taken a licence.

IBM may have very well concluded that a sale of the patents is best, perhaps with a share of the backend should there be any that comes from litigation. This would dovetail nicely with the fact that IBM has staked a lot on open source platforms, and maybe since they might have tried to license the patents with others (not all that successfully), why not give it to the new kid on the block, in hopes that they can better "monetise" the assets by generating licences/revenue from the litigation that has already begun in the smartphone market.

I believe this deal is more about taking sides, and what strategic options are beginning to unfold for IBM. It would be well served to assert its patent strength in a variety of different ways. In doing so it may ensure a more transparent outlook of where things are heading. Rather than aggressively license its portfolio, potentially making more enemies than friends along the way, maybe there could be a concerted effort to play the role of the invisible hand. A strategy that could well be implemented when you are the number one patent holder.

In a recent article by IP analyst and blogger Florian Mueller, it was suggested that IBM might be interested in Android as a platform for its own mobile client applications. By selling patents to Google, and thus broadening the relationship for strategic value, IBM might not feel as though it is directly competing with the search engine giant. This could be

very plausible, knowing that Google needs to ramp up its patent acquisition and potentially come back to IBM for even more. But with the approval of the Motorola Mobility deal, Google is about to level the playing field with its direct competitors, so is IBM all that important to them in the future? Whether either of them thinks so or not, I believe IBM might be trying to build a different, maybe better, relationship with Google than it has in the past, with others caught in the cross hairs of its licensing model. It is no secret that Google is branching out and growing up, and for a price. IBM could shoulder some of the growing pains and open some doors for them, but then again these are just my assumptions and thoughts. The move to sell could have simply been an assertive licensing deal turn patent sale...I guess in the end cash is still king.

Paul Cannata is managing director of patent brokerage services at Patent Monetization Inc, a full service international patent brokerage firm working primarily with clients who are looking to monetise core and non-core patent and IP assets in the technology and cleantech sectors.