

# The brokered patent market in 2013

While the brokered patent market in the United States is going from strength to strength, there is still little analysis of this obscure business. A review of 222 deals offers welcome insight into what is becoming a lucrative market

By **Kent Richardson** and **Erik Oliver**

Last year we wrote an article on the brokered patent market (“Turning the spotlight on the brokered patent market”, *Intellectual Asset Management*, issue 57), because we felt that we had enough data to shed light on this otherwise obscure business. We were delighted to receive positive feedback, as well as requests for more information, so we decided to update our work with new data and further analysis of our existing data.

Brokers regularly contact corporations to try to sell them patent packages. Some of our clients see well over 50 potential deals per month. Not all of these packages fall into the brokered patent market, but we believe that the quantity is significant. Buying objectives and processes for identifying deals of interest, tracking, bidding and closing are critical when a company might see more than 600 deals in a year. Without some basic information about what a normal deal looks like, it is extremely difficult to set the parameters of a buying programme. We have used the data in this article to help our clients set up successful buying programmes – we hope that readers will also find the information useful.

This winter we examine the public but not yet particularly well-understood market for bare patent transactions created primarily by patent brokers and regular

patent sellers. Brokers typically provide a detailed package for every potential deal – we use the specific package as our fundamental tracking unit. Our focus data sample uses packages seen between 1st June 2012 and 31st May 2013, and has 296 packages containing 4,316 US patents and 9,359 total patent assets worldwide. There is no overlap of packages between the 2012–2013 sample and the packages discussed in last year’s article. Where applicable, we have included comparisons to last year’s paper.

Our analysis is based on a sample of the market, not the entire market. We estimate that while running buying programmes, we saw somewhere between 50% and 90% of the available packages, depending on the time and the particular project. Also, because of our clients’ locations, we tended to see more US-focused transactions. We excluded very large deals (over 200 patents) or deals that were not widely distributed, even though brokers may be involved.

Because of rounding, some tables may not add up to 100%.

## Patent brokers

We continue to focus on the brokered patent market because it is open to all buyers, brokers provide an initial filter of the assets, the seller’s pricing expectations have been established and the outcomes can be tracked.

Brokers bring useful skills, including the following:

- A selection of viable sellers, including some certainty that the seller is willing to sell.
- The filtering of patents and identification of important patents and claims.
- Pricing guidance.
- Guidance to the seller on sale terms and timelines.
- Definition of a process for diligence, bidding and sales.

For a list of brokers and contact information, see <http://richardsonoliver.com/brokers/>.

#### Patent broker data

Out of 55 brokers from which we received packages, 25 (Table 1) had at least three packages on the market over the 12-month period studied (12 brokers last year). We saw substantially more brokers with multiple sets of assets on the market. This year, we had a more active outreach programme.

AST, Intellectual Ventures and RPX are some of the repeat sellers of patents, while small and medium-sized enterprises continue to be the vast majority of the sellers in our study.

As in our last article, we did not always find strong correlations where expected. Generally, there were no correlations between brokers and deal price or package size (except at the extreme ends). Again, we saw almost no technology specialisation among the brokers — all of the brokers handled all high-tech areas. The exceptions were those affiliated with larger semiconductor reverse-engineering houses (eg, UBM TechInsights and TAEUS). The rationale for the semiconductor correlation is apparent when one considers the deep semiconductor reverse-engineering experience that these companies have. Also, for semiconductor implementation patents (eg, circuits and process technology), claim charts are particularly difficult to obtain without some level of complex reverse engineering.

As with last year, brokers continue to prefer to sell patents with higher visibility. For example, user-interface patents and social patents tend to present better than semiconductor patents, and brokers select packages accordingly. Other areas that remain uncorrelated include the number of offerings relative to the higher perceived quality of the offerings — some of the better-quality packages came from brokers that put fewer packages on the market. ‘Quality’ here is defined as how well the patents match the target market identified by the broker’s materials compared to our analysis of the market, technology and patents.

Last year, we reported that brokers which provide the highest-quality packages include an evidence of use (EOU) with their packages more than 80% of the time. This year, we drew a link between the provision of an EOU and a substantial increase in both the price per asset and the probability of a sale.

#### Package flow

Generally, we believe that package flow has increased substantially. We estimate the

number of new packages at 52 per month. The most packages that we saw in any one month was 48. However, our buying programmes focus on particular technologies — meaning that we do not see all packages on the market all the time. This 52 per month number conforms with how much of the market we believe we are seeing and also with an informal survey of some of the largest patent buyers; it puts the overall market at 624 packages per year (last year we estimated 276 packages). We think that we underestimated the number of deals in the market last year, and that there are more deals in the market.

Figure 1 illustrates the number of new packages that we received. The February and March spikes relate to the start of new buying programmes.

Private packages are not included in our data set. Private packages were sourced from our clients’ business development departments and from private corporate-to-corporate sales. Private packages typically add between about 5% and 30% of the total packages in a month.

#### Key diligence data

For a given buyer, few packages have values that exceed the expected sales price. Efficient buyers set buying criteria to quickly eliminate packages that will not meet the value versus price requirements. Typical buying criteria categories are the focus technology fields and a maximum price, or price per asset. For example, a buyer may say: “We will only review LTE standards-essential patents, priced at no more than US\$3.5 million per family.” We also continue to recommend using the bid due date as a flexible buying criterion. It is rare that a bid due date cannot be pushed out far enough to allow for review.

The following section analyses the application of buying criteria. Last year’s article focused on pricing as the first piece of data used to eliminate packages. However, this year we looked more deeply at our decisions to identify the more common diligence path for a package. We first looked at the technology fit as the primary reason for passing (not recommending a bid) (Table 2).

Why would “Technology area does not fit” be the most common reason to pass? Reasons might include the following:

- We have cast our net widely in order to capture packages outside the focus technology buying area, so some packages will necessarily fall outside the specific client need.
- The technology is the first and quickest criterion to evaluate.

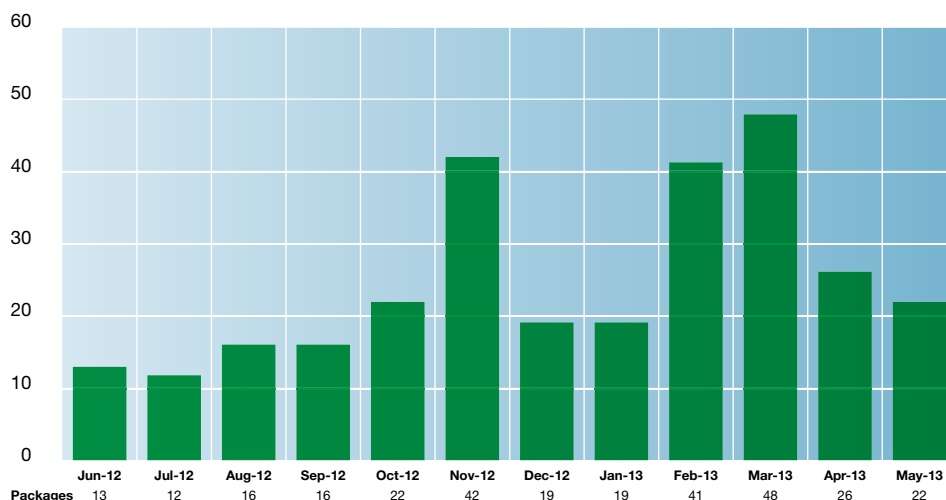
Table 1. **Broker list**

|                                           |
|-------------------------------------------|
| Adapt IP Ventures                         |
| Blue Sage Enterprises                     |
| Capital Legal                             |
| Epicenter IP Group                        |
| Global IP Law Group                       |
| Hilco Streambank                          |
| Hoffman Patent Firm                       |
| ICAP                                      |
| Iceberg                                   |
| Intellectual Profit                       |
| IP Offerings                              |
| ipCapital Licensing Company               |
| IPInvestments Group                       |
| IPVALUE                                   |
| Munich Innovation Group                   |
| N&G Consulting                            |
| NextTechs                                 |
| Patent Monetization Inc                   |
| Patent Profit International               |
| PATEV Associates GmbH                     |
| Quinn Pacific                             |
| Red Chalk Group                           |
| TAEUS                                     |
| Transpacific                              |
| UBM TechInsights (Semiconductor Insights) |

#### Terminology

- **Evidence of use (EOU):** An evidence of use is a mapping of the elements of a claim to a potentially impacted product or service, together with reasoned assumptions, including an identification of any additional information needed to complete the analysis. In contrast, a claim chart includes further supporting details, such as definitions, support in the specification identified for each term, reverse engineering concluded and documented, and/or references to terminology used in the prosecution.
- **Patent assets:** We define a ‘patent asset’ as a single, unexpired pending or issued patent asset somewhere in the world. We have also found that the number of issued US patents is an additional relevant factor for evaluating packages, so we have included both metrics in many cases. Note that pending applications are not included in the US-issued count. Generally, pending applications do not affect the metrics unless there are very few assets. Of course, there are situations where a pending application is the most important patent in the package.

Figure 1. Number of brokerage packages (n = 296)



- When reviewed in detail, the technology is unlikely to be adopted in the market of interest.
- Although the package may be within the technology area, the claims are not.

We still recommend starting with a broader scope of technology for inclusion, sampling packages and refining the scope of technology accordingly. We find that clients can better define their needs this way. Also, a broader scope better protects a client's identity and exact search needs.

EOU issues represent 13% of passes. Failures occur in a number of ways, but the most common is a clear mismatch between what the claim requires and what the seller purports the claim to cover. Usually, the problem arises where a key element is missing, is used inconsistently or is assumed to exist without justification for the assumption. We found it rare that the file wrapper affected the EOU. Firstly, the EOU often failed before the file wrapper was reviewed; and secondly, file wrappers rarely resolve interpretation issues.

“Unresolved prior art” failures occur from already known art or after we have done a prior art search. Here, we believe that we have found art that knocks out the most important claims. Usually, we will raise the issue with the broker and ask whether they would like to see the art. Some brokers do look at the art and provide responses that change our minds; others do not review the art and we pass on the package. Unfortunately, we know of a few packages that sold where knock-out art existed.

“Actual market adoption is too small” falls into a challenging category for the seller. When we look at actual adoption of the claimed technology, we find that the technology is used much less extensively than sellers might hope. Usually, this arises because the technology is not as compelling as the seller thought. On a number of occasions, we have been surprised to find that a clearly interesting invention just does not seem to be adopted widely – the market being satisfied with ‘good enough’.

We examine pricing and bid due date buying criteria below.

Turning to the remaining asset life, many of our clients regularly have a minimum remaining life criterion (eg, minimum remaining life is five years).

### Package technology

The packages that we reviewed fell into diverse technology areas (Figure 2), representing the desires of various clients to address specific problems.

Out of the 296 packages, almost half came from specific search projects. Although the search projects of our clients skew the data, we also see what happens when a buyer does a targeted outreach. If you are looking to buy patents in a particular technology, you will be able to find a healthy market offering them for sale.

### Pricing data – improved pricing targets

For any package, one would think that the first and simplest question to answer is whether the package is within the buyer's budget. The broker's pricing guidance is critical to determining whether any resources should be spent analysing the package. Unfortunately, some brokers simply do not supply a target price or supply one much later than is helpful.

Consider how difficult the absence of pricing information is for the buyer – are the seller's price expectations exceeding market prices? Does the broker have a good sense of the market? Or is the seller just testing the waters? To focus diligence resources, we ask for ballpark price targets

Table 2. Reasons for passing on a package

| Reason for passing                    | % of time |
|---------------------------------------|-----------|
| Technology area does not fit          | 64%       |
| Evidence of use fails to map properly | 13%       |
| Unresolved prior art                  | 7%        |
| Actual market adoption is too small   | 6%        |
| Pricing                               | 4%        |
| Remaining asset life too short        | 4%        |
| Bids due too soon                     | 2%        |

to eliminate packages well outside of market prices. We find that longtime brokers have a good sense of market price. First-time sellers and sellers that look only to the public sales data for large deals for pricing validation represent challenges. For these sellers, we recommend testing price targets before starting diligence. It is not uncommon to see pricing targets drop by more than 50% with some sellers during the course of the sales process.

Pricing guidance continues to be communicated as a broad range – for example: “We think this package will sell in the low seven figures.” That said, we found more brokers willing to put a specific price on the package. We still use pricing buckets that correspond to these broader ranges.

#### Pricing – the numbers

This year, 246 of 296 packages had pricing guidance (87% this year as opposed to 56% last year). Importantly, some of this increase was because we pressed more for pricing information. However, brokers are volunteering pricing guidance much more frequently. Generally, the more frequently that brokers offer packages, the more likely they are to provide pricing guidance. We are seeing a shift in how pricing information is being provided. Previously, phone calls seemed to be the preferred way to communicate price. Now, we see brokers provide pricing information in emails, with some of the most experienced brokers providing it in their sales packages.

To normalise the data, we then removed unusual deals – specifically, we removed the top and bottom 5% priced deals, reducing our sample set to 222. Other factors can skew the pricing (bigger packages can have lower per-asset pricing), but we believe that this method has allowed us to select a good representative sample of the market.

Where pricing was available for these 222 deals (see Figure 3), there was a clear preference (73%) for deals in the US\$500,000 to US\$2 million range. This was also true last year.

To enable comparison with publicly reported deals, we computed an asking price per issued US patent, as well as an asking price per listed patent asset. In doing so, we used the midpoint of the price bucket as the estimated deal price (eg, US\$1.5 million was used for the US\$1 million to US\$2 million range). Two exceptions were made – one for the US\$20 million-plus range, where US\$20 million was used as the price; and the other for the US\$4 million to US\$10 million range, where – like last year – the deal data

Figure 2. Package technology areas (n = 296)

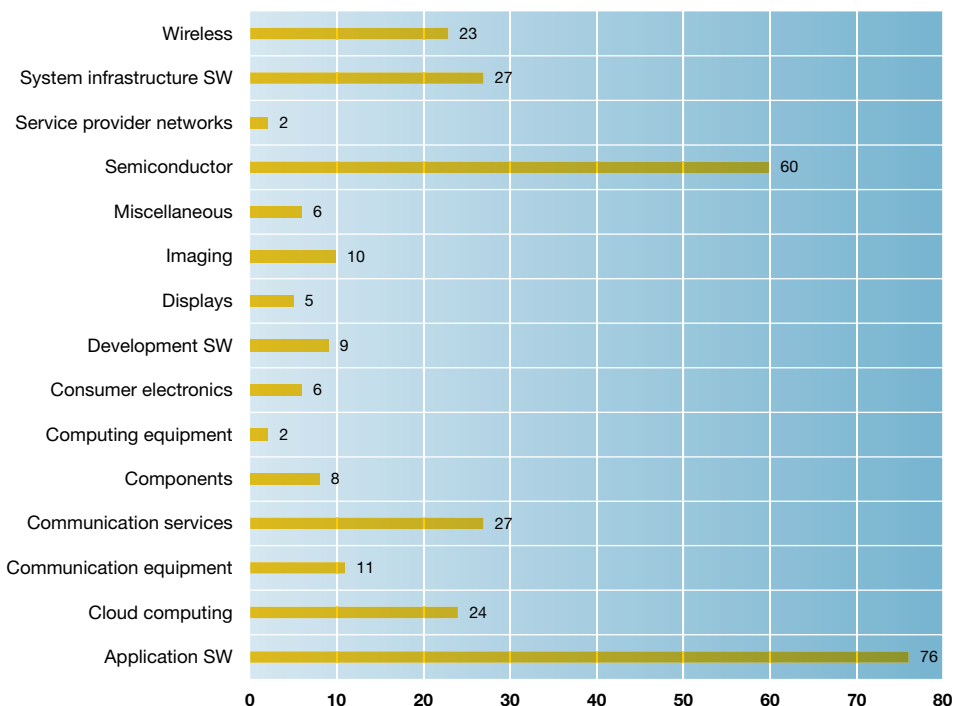
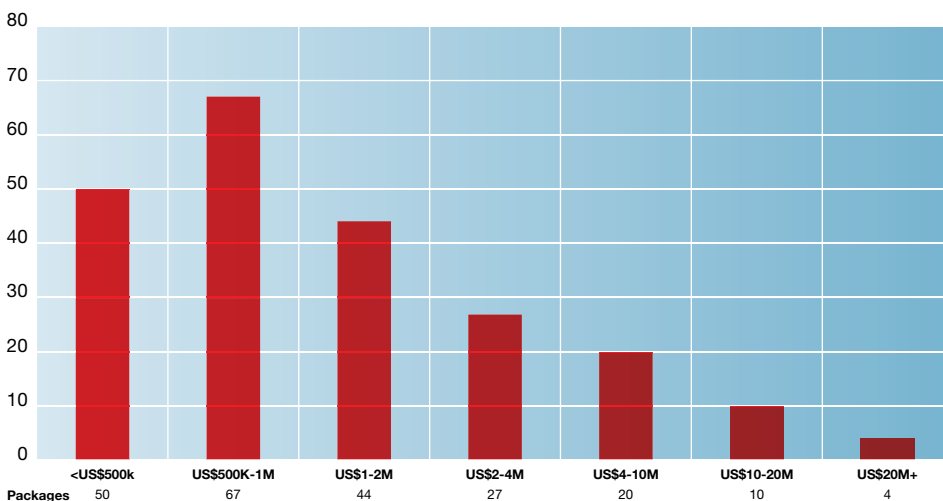


Figure 3. Package pricing for packages with broker provided pricing guidance (n = 222)



indicated that US\$5.7 million, rather than US\$7 million, provided a better indication of average pricing guidance.

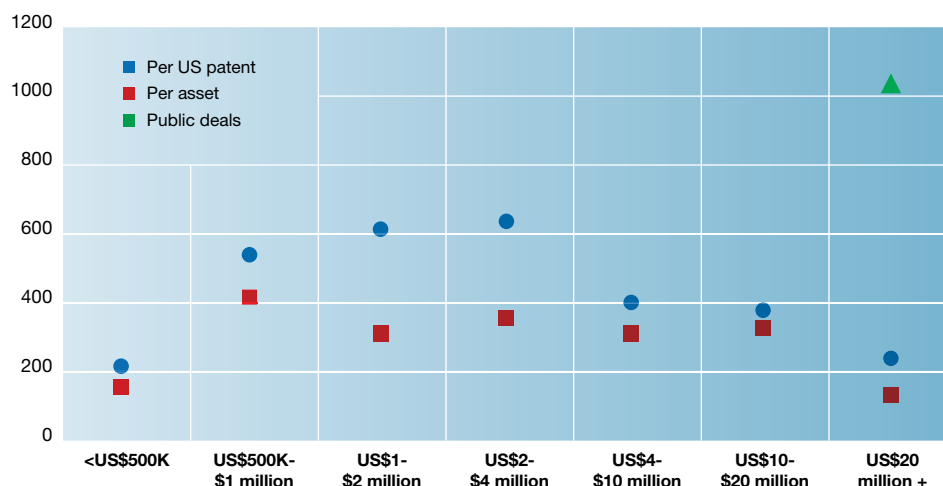
We did not include a minimum price in the data, as split packages appear to distort the minimum price. Looking across all deal sizes, we computed an average asking price per listed asset of US\$305,000 (as opposed to US\$344,000 last year), with an average asking price per issued US patent

Table 3. Sold packages: broker asking price requested and impact of EOUs

|         | Top and bottom 5% of data points from each set removed |                  | EOU top/bottom 5% removed |                 |
|---------|--------------------------------------------------------|------------------|---------------------------|-----------------|
|         | US\$ per US patent                                     | US\$ per asset   | US\$ per US patent        | US\$ per asset  |
| Average | US\$467,230                                            | US\$305,180      | US\$594,240               | US\$421.33      |
| Max     | US\$1.5 million                                        | US\$1.14 million | US\$3 million             | US\$1.5 million |
| StdDev  | US\$389,190                                            | US\$264,240      | US\$502.65                | US\$337,450     |
| NumData | 214                                                    | 222              | 71                        | 71              |

US\$303,000 per listed US patent. We believe that a 35% discount is reasonable based on the deals that we have seen close, as well as the prices paid when we surveyed buyers. Last year, we used a 25% discount, but we believe that 35% more accurately represents the appropriate discount. Our data indicates that the larger packages have a lower price per asset (approaching bulk pricing of US\$50,000 per asset). However, we believe that US\$303,000 per US issued patent is useful for deals with fewer than 10 US patents (representing 75% of the packages).

Figure 4. Per asset price (US\$K) in relation to broker asking price (n=222)



### EOUs impact on prices

This year, we also analysed whether the package included a claim chart or EOU. Approximately 33% of the packages had EOUs.

EOUs are expensive and take time to produce. However, they also allow brokers to demand a 27% premium per US patent. Assuming that an EOU can cost between US\$10,000 and US\$40,000, the EOU usually pays for itself in the premium alone. The impact on sales is even more pronounced and is discussed below.

Considering whether an EOU is included in the package, pricing generally aligns with one of three groups:

- No EOU or the EOU being for an insignificant market results in below-market pricing guidance (for package size).
- An EOU on a significant market, but untested results in market pricing.
- An EOU which either has been tested (ie, litigated or licensed) or targets an exceptional market (eg, LTE essential) results in above-market pricing.

### Diligence and bid timing

Buyers need to know when they are expected to have their diligence complete and bids ready. Few packages are eliminated from consideration because of short bid due dates (2%), because buyers regularly ask for – and receive – extensions.

Our data shows that packages are sent out with an average of 70 days prior to the bid due date (51 days last year). However, we think that bid due dates are very flexible. We are seeing some brokers go with completely open-ended selling dates. In more than a handful of cases, bidding extended well past the one-year mark (see the sales analysis below). This creates a disincentive to bid early.

Most packages are received via an email that provides a summary of the offering. Many brokers include a link to a website where additional data can be downloaded,

of US\$467,000 (as opposed to US\$577,000 last year) (see Table 3).

We attempted some testing for packages that sold and there did not appear to be a substantially different asking price. However, because packages take a long time to sell (see below), this data is difficult to analyse.

Although the pricing seems to be more consistent this year, the standard deviation to be problematic. The first standard deviation is 81% of the asking price per US patent. Although better than in the past, there is clearly a lot of pricing variation.

Importantly, the pricing guidance continues to be much lower than what the publicly reported deals might suggest. The graph shows how badly the public data distorts the average asking price per patent. For public deals in 2010-2013, the average price per sold asset was US\$1.029 million per asset (in 2010-2012 it was US\$970,000 per asset) (see Figure 4).

A note of caution: these prices are based on the broker's pricing guidance, not on actual closed transactions. If we apply a discount of 35% to the asking prices, we have US\$198,000 per listed asset and

Table 4. Receipt to package disposition

| Days from receipt of package to disposition (includes purchase) | Percentage of packages |
|-----------------------------------------------------------------|------------------------|
| <= 7                                                            | 9%                     |
| 8 to 30                                                         | 69%                    |
| 31 to 60                                                        | 17%                    |
| > 60                                                            | 5%                     |

such as PDF copies of the file histories and/or EOU's. The most commonly missing item in packages is an easy-to-use spreadsheet listing all of the patent assets. It continues to surprise us that packages arrive without this. The better brokers provide the list in a normalised form that is suitable for direct copy-and-paste input into patent analysis tools, such as IPVision, Thomson Innovation and Innography.

The review period from when we first receive a package until we close the review of that package – including negotiating and signing a patent purchase agreement – averages 24 days (21 days last year). As before, the average time presents a misleading picture. Drilling down further, four groupings of review time become apparent in Table 4.

In under one month, 78% of packages are closed out from further review. These are packages that do not meet the buying criteria. One can see the impact of clear buying criteria: with 64% of the packages not meeting the technology fit requirement, these packages are eliminated quickly.

#### Number of assets per package

The market's focus on smaller packages continues. This year, 75% (78% last year) of all packages had 10 or fewer US patents. The average package size was 14 US patents (eight last year) or 19 total patent assets (14 last year). We used a median of two US and five total assets. However, we found that a few bigger packages, with more than 100 assets, skewed the averages.

It is also helpful to consider the total number of patent assets in a typical package (all packages analysed), as shown in Table 5.

As before, most packages have a handful of US patents – often only a single patent family. Our data suggests that higher-priced packages generally have multiple families with a greater number of foreign counterparts and often with pending continuations.

We continue to believe that once a package has more than 10 US issued patents, the sellers benefit by segmenting the package and identifying focus assets in each segment. We find that smaller segments help buyers to focus their diligence resources. Without segmentation, packages larger than 10 US patents or with a wide array of families may be removed from consideration early in the diligence process.

#### Bidding and buying

Switching to a new sample set of 287 packages, all received pre-2013, we analysed package sales. The 287 packages included

Table 5. Sales package size

| Number of assets | Percentage of packages (counting US issued only) | Percentage of packages (counting all assets) |
|------------------|--------------------------------------------------|----------------------------------------------|
| No US issued     | 3%                                               | 0%                                           |
| 1                | 34%                                              | 21%                                          |
| 2 to 5           | 30%                                              | 32%                                          |
| 6 to 10          | 8%                                               | 14%                                          |
| 11 to 25         | 10%                                              | 11%                                          |
| 26 to 50         | 7%                                               | 7%                                           |
| 51 to 100        | 3%                                               | 6%                                           |
| 101 to 200       | 4%                                               | 9%                                           |

packages that were analysed in our paper last year. However, we have improved our sales analysis methodology and changed how we track sales, so revisiting these older packages is helpful.

The percentage sales in the first nine months of package receipt was 16% (16% last year, 20% after adjustment; see below). We use a window of nine months from the date of package receipt to look for a recorded assignment that indicated a sale of the patents.

The adjustment from 16% to 20% in last year's sales relates to partial package sales. We built tools to automate assignment checks for all US patents in a package. This year, we checked all issued US patents in all of the packages and found partial sales. When we reviewed the 96 packages from last year's sample, we found that an additional 4% of the packages sold as partial packages.

We define a package as being sold when we find at least one patent from the package reassigned to an entity other than that selling the package.

#### What happens if sales take much longer?

Nine months from date of receipt seems like a reasonable period for a package

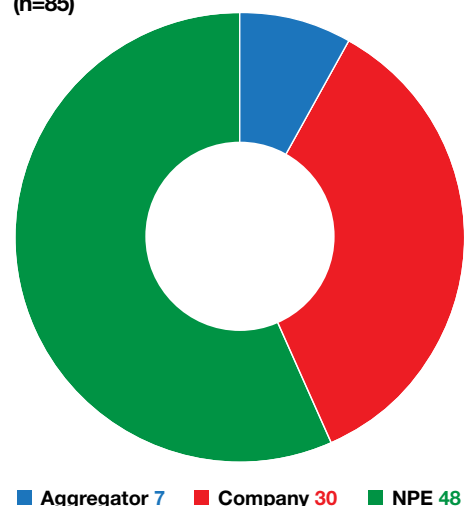
Table 6. Sales date compared with bid due date

| Months                   | Percentage sold packages where sale occurred within this number of months of receipt of package | Percentage sold packages where sale occurred within this number of months of bid due date of package |
|--------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
| Sold before due date     | 0%                                                                                              | 4%                                                                                                   |
| In bid due date month    | 0%                                                                                              | 4%                                                                                                   |
| Bid due date unavailable | 0%                                                                                              | 36%                                                                                                  |
| 1 to 3                   | 15%                                                                                             | 14%                                                                                                  |
| 4 to 6                   | 18%                                                                                             | 11%                                                                                                  |
| 7 to 12                  | 36%                                                                                             | 24%                                                                                                  |
| 13 to 24                 | 18%                                                                                             | 4%                                                                                                   |
| > 24                     | 13%                                                                                             | 5%                                                                                                   |

Table 7. Long-term sales view (2009 packages)

| % sold as of | Cumulative % of 2009 packages sold |
|--------------|------------------------------------|
| 31/12/2009   | 3.57%                              |
| 31/12/2010   | 21.43%                             |
| 31/12/2011   | 42.86%                             |
| 31/12/2012   | 48.21%                             |
| 30/6/2013    | 51.79%                             |

Figure 5. Pre-2013 sample: purchases by type (n=85)



to sell. Diligence, bidding and closing should easily be completed within this time. However, our broader assignment checking suggests otherwise. Looking at sales of packages from 2009 on, we see a very different picture. For this analysis, we continue with the pre-2013 sample.

Eighty-five of the 287 packages have an assignment indicating a sale. This is a 30% sales rate. So, if the seller is willing to wait – and we recommend that the seller does – it can improve its chances of selling the package from 16% to 30%.

Looking at the sales date compared to the bid due date, we see that 69% of the 85 packages sold within 12 months of receipt of the package. The following year, 18% of the sales took place, with 13% the year after. Only a few packages (4%) sold before the bid due date, suggesting that early bids are rarely received or compelling. Also, 36% sold with no bid due date provided by the seller. This suggests that an open-ended process may be an effective sales practice (see Table 6).

The importance of patience in selling your portfolio is even more pronounced when we look at very old packages. For packages in the pre-2013 sample that first went on the market in 2009, we see that if you waited long enough, just over 50% had sold as of mid-2013 (see Table 7). We will continue to look at long-term trends.

For the 85 packages that sold, the timing from the bid due date to the date on which the assignment was recorded averaged 270 days (180 last year). Looking at all of the steps, the process took 345 days on average (173 last year) – specifically, from the distribution of a package, as measured by our receipt, to assignment recordation.

#### Who bought the patents?

For the 85 sold packages, we see non-practising entities (NPEs) continuing to buy the majority of assets at 56%, corporations at 35% and defensive aggregators at 8% (see Table 12).

The following are the definitions used to categorise purchasers:

- ‘Company’ is a known operating company (eg, publicly traded).
- ‘Aggregator’ or ‘defensive aggregator’ is a known defensive aggregator such as AST, RPX, OIN or Unified Patents.
- NPEs are all other purchasers.

#### Impact of EOU on closing

As we noted above, the impact of an EOU on the price of the asset is pronounced (27% increase in asking price). In our previous paper, we hypothesised that an EOU improved the chances of selling. We have now specifically analysed our sales data and know that there is a 52% better chance of selling your patent when an EOU is included. This improved chance of selling – along with the increase in asking price – clearly demonstrates that providing EOUs is an effective practice.

In the pre-2013 sample used for the assignment analysis, 88 of 287 packages (31%) had broker-provided EOUs. Of those 88 packages with EOUs, 34 (38%) sold. Contrast this with 51 sales in the remaining 199 packages, or a 25% chance of sale (Figure 5).

Brokers and sellers should spend time developing an EOU for select patents. Even when buyers do not rely directly on the EOU, it helps to clarify where the seller believes that the value in the package is focused.

#### Lots of NPE litigation?

Last year, we reported that few of the purchased patents were litigated (two out of 15) after the sale. This year, looking at all of the patents in all of the sold packages (pre-2013 sample) gave a similar result. Of the 85 sold packages, only seven had patents with litigations after the sale. NPEs litigated at a higher rate – five out of seven litigations. However, the NPEs litigate a much larger number of times using patents from the same package. NPEs tended to start a median of three litigations per package. The mean was much higher because one NPE initiated 19 separate litigations.

The two corporate litigations were both counter-assertions: Facebook defending against Yahoo! and Salesforce defending against Microsoft. Based on the assignment records, it appears that in both cases the defendants in the initial litigation went to the patent market to buy patents. Interestingly, Salesforce bought the patents after Open Invention Network had bought them. We continue to find the brokered patent market an effective tool for finding patents to use in counter-assertion.

Table 8. Brokered patent market (&lt;200 assets)

|                                 |                     |
|---------------------------------|---------------------|
| Number of packages per year     | 624                 |
| Sales rate                      | 30%                 |
| Sold packages/year              | 187                 |
| Price per US issued patent      | US\$303,000         |
| Number US issued per package    | 5                   |
| Average sales price per package | US\$1.515 million   |
| Total market                    | US\$283.305 million |
| Total commission                | US\$56.6618 million |

Also of interest is that 13 (15%) of the 85 sold packages had had patents litigated before the sales. However, none of these 13 appears to have been sold because of the litigation – in other words, the buyer was not the target of the lawsuit. Only 15% previously litigated may at first appear low, but when one considers that between only 1% and 2% of patents are ever litigated, we see that litigation history is an important factor in sales.

### How big is the 2013 market?

Again, we extrapolated our data on pricing, sales and packages to determine the size of this market. We size the market for deals with fewer than 200 assets in the package, sold by brokers, to the open market. We estimate US\$283 million (US\$153 million last year) in annual sales, with broker fees of about US\$57 million (US\$34 million last year). The biggest differences from last year are as follows:

- There is twice the number of packages.
- The sales window has been extended from nine months to 36 months.

To derive the market size, we first estimated the number of new packages brought to the market in a year (52 a month). We then used the 36-month sales rate (30% sell), recognising that the number could be as high as 50%. We discounted the sales price from the asking price (65% of the asking price). We believe that the actual sales price is one of the more difficult areas to estimate because so few transactions are reported. We adjusted the number of US issued patents per package to take into account the large number of small packages and the pricing differences of big packages versus small packages. We believe that the price and number of assets could be

50% below or above this number. Using the adjusted number of issued US patents per package brings us to a total market of US\$283 million per year.

Using an average commission rate of 20% (22% last year), the revenue from this market for brokers is US\$91 million per year (see Table 8).

We back-tested the market size by estimating the average loaded labour rate per broker (US\$300,000 a year). This gives 189 brokers. Assuming that four brokers work in each brokerage shop, this results in 47 brokerages (our data shows 55). Each brokerage would bring about 13 packages to the market per year; however, our data shows that a few brokers bring many deals to the market, with the majority bringing a few deals.

### Opportunities

Our conclusions do not differ significantly from our previous paper. With more than 50 new packages coming to market each month, the opportunity to find something to fit your needs exists. Nearly 70% of the packages have a target price below US\$2 million, allowing companies to purchase assets to address specific problems at a relatively low cost.

Even extending the window to 36 months to look for sales, we still see a low percentage selling. The broker business can be tough. Corporate buyers continue to be seen as significant buyers, but NPEs make up the majority of buying. Litigation post-sale seems lower than one might expect, given the NPE purchasing.

We continue to evaluate, bid on and buy patents for our clients, and will continue to track the data and refine our database. This being our second year of reporting on our data, we have had the opportunity to ask more penetrating questions (eg, what

| Summary of data                                                                           |                 |
|-------------------------------------------------------------------------------------------|-----------------|
| Packages studied June 2012 to May 2013                                                    | 296             |
| Number of issued US patents                                                               | 4316            |
| Total assets                                                                              | 9359            |
| Packages old enough to have sold Q1-Q3 2012                                               | 112             |
| Percentage sold in first nine months                                                      | 16%             |
| Asking price per US issued patent                                                         | US\$467,000     |
| Asking price per listed patent asset                                                      | US\$305,000     |
| Average number of US issued patents per package (excluding packages with over 200 assets) | 14              |
| Median number of US issued patents per package (excluding packages with over 200 assets)  | 2               |
| Percentage of packages with 10 or fewer issued US patents                                 | 67%             |
| Average days from receipt to disposition by ROL Group                                     | 24              |
| Annual sales                                                                              | US\$283 million |
| Receipt of package to assignment record                                                   | 345 days        |
| Number of people employed as brokers (est)                                                | 189             |

## Action plan



### When buying patents:

- State the business case for buying – what problem are you solving?
- Model a return for your buying programme.
- Your buying operations need to reflect that over 90% of the patents will not fit your needs – eliminating those patents from consideration early will greatly reduce your costs.

### Programme parameters include:

- Timeline.
- Budget.
- Buying team authority and responsibilities.
- Buying criteria.
- Listing of acceptable sources of patent packages.
- Special requirements such as a whitelist of unlicensed companies.

Fail-fast triage process for eliminating undesirable packages quickly:

- Extract criteria from the business case to identify interesting markets and technologies, and define the diligence needs.
- This is a multi-part analysis of markets, technical knowledge and legal analysis where a failure in any one area eliminates the package from further review.
- Track basic information about your programme so that you can learn from your past.

### Bidding and buying:

- Your valuation model determines a maximum bid price.
- Assume that diligence will take longer than planned.

Consider adding a consulting agreement with the inventors if they are available.

happened to all the patents we saw, not just one representative patent). As soon as the data started answering these questions, new detailed and in-depth questions presented themselves. We look forward to continuing to answer these. *iam*

**Kent Richardson and Erik Oliver** are partners in the Richardson Oliver Law Group  
[kent@richardsonoliver.com](mailto:kent@richardsonoliver.com)  
[erik@richardsonoliver.com](mailto:erik@richardsonoliver.com)

*The authors gratefully acknowledge Lex Machina's assistance in the litigation portion of this analysis. [www.lexmachina.com](http://www.lexmachina.com)*

**DRAKOPOULOS**  
LAW FIRM

CHISINAU  
BUCHAREST  
SARAJEVO  
BELGRADE  
PRISTINA  
SOFIA  
PODGORICA  
TIRANA  
SKOPJE  
ATHENS  
NICOSIA

**11 Countries**  
**1 Instruction**  
**1 Invoice**

Reliable Legal Support  
Across SEE

[www.drakopoulos-law.com](http://www.drakopoulos-law.com)