

## Recession Spurs Growth In US Patent Marketplace

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WASHINGTON (Dow Jones)--For the first time in more than a decade, U.S. companies and inventors grappling with the recession filed fewer patent applications this year. But companies struggling with tight budgets also increasingly discovered that patents can be lucratively licensed or sold.

New activity has generated roughly 50% growth in patent sales and a surge in the licensing market worth \$500 billion, according to Ocean Tomo, a Chicago-based merchant bank which tracks the intellectual property market.

"More companies are realizing patents are an asset and not just this legal document," said Paul Ryan, chief executive officer of Acacia Research Corp. (ACTG). "It's kind of an awakening."

Acacia, which outsources patent licenses for companies, has \$60 million annualized revenue and has seen its business triple in the past year and a half, Ryan said.

"Over the last couple of years there has been a real increase in the supply of patents available," said Kevin Barhydt, head of acquisitions for RPX Corp. The San Francisco-based company has purchased \$115 million in patent rights to help businesses defend themselves against litigation.

Failed companies' patents are being auctioned off by liquidators and universities are also selling old patents to save money for the fruits of new academic research, said John Lindgren, CEO of Mosaid Technologies. The Ontario-based company licenses patents in the semiconductors and telecommunications field.

"We have far more opportunities than we would have a few years ago," Lindgren said.

And though the recession may have bumped up patent sales, an economic recovery is unlikely to

reverse the trend.

"People are getting more comfortable with the idea of trading this asset class," Barhydt said.

Selling off patents is a business gamble that companies have traditionally been reluctant to make. No one wants to sell the patent that later protects a blockbuster product.

But patent portfolios can be expensive to maintain. The U.S. Patent and Trademark Office requires large companies to pay a \$980 maintenance fee three and a half years after a patent is issued, then a \$2,480 fee after seven and a half years and finally \$4,110 after 11 and a half years. Global companies also have to pay fees to international patent offices. For a product not pulling its weight, the expense may not be worth it, especially for specialized technology that may involve 100 or more patents.

"Very few of those patents are actually going to be valuable, but nobody has the nerves to drop patents until the money gets really tight," said Charles Eldering, CEO of Technology, Patents & Licensing, a patent management consulting firm. "You can probably find some you should drop, but if you don't do it carefully, you could end up dropping the good ones. That's the risk."

It was a risk worth taking, many companies decided this year. In fiscal year 2009, the patent office recorded a 2.7% drop in maintenance fee payments, a decline that cost it \$15 million. The decline in patent filings, issuance and maintenance fees in total resulted in a \$200 million shortfall for the patent office. As a result, the agency instituted a hiring freeze, halted all technology improvements and stopped paying overtime.

"We are certain that the USPTO can not sustain operations in this manner over an extended period of time," the office said in its annual report released last month.

Patent attorneys said major companies watching the bottom line were more likely to trim their IP portfolios than start-ups that rely on patents to secure funding.

Steve Perlman, CEO of the Palo Alto, Calif., technology start-up OnLive, said his offices actually stepped up their patent filings this year.

"Patents are essential for our survival, so we had no choice," he said.