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专利风险管理观察报告
Observations on Patent Risk Management

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Outline of Comments

- 我的个人背景
- My background
- 获得所需的专利权是困难的
- Acquiring needed patent rights is difficult
- 为什么会如此困难？
- Why is it so difficult?
- 专利风险管理的新方法
- New approaches to patent risk management

相关背景Relevant Background

- **我的第一家公司曾遭遇其他公司的“攻击”,其攻击武器就是专利**
- **My first company was ‘attacked’ by others with patents**
  - 当时,公司的收入刚过1亿美元,却有3000万美元花费在了专利问题上
  - $30 million in costs when the company was just over $100 million in revenues
  - 专利上的花费使公司消耗殆尽
  - Patent costs drained ‘life blood’ of the company
- **我的第二家公司申请了很多专利因此成为了“攻击方”**
- **My second company filed many patents and became the ‘attacker’**
  - 专利许可费帮助公司筹集了资金，但也因此带来很多冲突
  - Patent license fees helped fund the company, but with much conflict
  - 我决定寻求“更好的出路”
  - I decided there must be a better way

相关背景Relevant Background

- 长话短说，我曾是高智发明软件投资组合的合伙人
- Briefly, I was co-head of the software portfolio at Intellectual Ventures
  - 当时（2006/2007年），高智发明看起来可能会开拓出一个“更好的出路”
  - At the time (2006 / 2007) it seemed that IV might develop ‘a better way’
  - 当我意识到高智发明的创建人和我有着不同观点时，我选择了离开
  - I left when I realized that IV’s founder and I had different views
- 在2008年，我成为PRX公司的创始人之一
- I co-founded RPX corporation in 2008
  - 多家公司分享有关专利方面的普遍风险，有着共同的需求
  - Multiple companies share common patent-related risks, have common needs
  - 通过前述的诉讼，我们与客户建立起信任并努力解决客户的普遍需求
  - By foregoing litigation, we develop trust with our clients and work to address their common needs

获得所需要的专利权是困难的
Acquiring Needed Patent Rights is Difficult

- **购买和许可所需的专利不仅困难且有风险**
- **Buying and licensing needed patents is difficult and can be risky**
  - 对某项专利表现出兴趣会让你成为众矢之的
  - Showing interest in a patent can make you a target
  - 许多专利都与某一种技术有关
  - Many patents can relate to a single technology
  - 复杂的产品、服务和系统依赖于许多种技术
  - Complex products, services and systems rely on many technologies
- **即使是单个专利的交易，其成本都会非常高**
- **Even single patent transactions can be very expensive**
  - 专利所有权很难界定
  - Patent ownership can be difficult to check
  - 即使是通过友好协商的交易，也会产生法律费用
  - Even friendly transactions incur material legal costs
  - 许多谈判会导致高额的诉讼
  - Many negotiations lead to costly litigation

获得所需要的专利权是困难的
Acquiring Needed Patent Rights is Difficult

- **公司对公司交叉许可会耗费几年的谈判时间**
- **Company-to-company cross-licensing can take years to negotiate**
  - 没有“正确答案”
  - No ‘right answer’
  - 每个公司都会认为自己的专利是有用的而其他公司的则无用
  - Each company thinks its patents are good and the other company’s are worthless
  - 导致谈判人员都想为自己的公司在谈判中“获胜”
  - Lead negotiators want to ‘win’ for their companies
  - 通常真正的赢家是双方的律师事务所
  - Winners are usually law firms on both sides

为什么会如此困难
Why is it so Difficult?

- **专利不是一般的资产**
- **Patents are unusual assets**
  - 专利给予“否定权”---不允许专利所有权人做某事，却允许专利所有权人可以阻止其他人做某事
  - Patents confer ‘negative rights’- they don’t allow the owner to do something, they allow the owner to prevent someone else from doing something
  - 每项专利都是不同的，没有完全一样的专利
  - No two patents are identical
  - 理解哪些专利需要相关的评判
  - Understanding which patents matter is a matter of judgment

为什么会如此困难
Why is it so Difficult?

- 专利权可以根据不同的方式被分割成很多部分
- Patent rights can be ‘chopped up’ many different ways
  - 产品类型、时间期限或指定的公司
  - By product type, time period, or named companies
  - 对专利被许可方的客户是否有专利延期
  - With or without extension of license to licensee’s customers

▶ **某项特定专利是否与某种特定产品有关，这一问题通常取决于如何来阐述对专利法的解释**

▶ **Whether a particular patent relates to a particular product is often a matter of interpretation**

- 专家可以有不同意见但是最终的解释还是得通过诉讼的方式获得合理的界定
- Many expert can have opinions but final interpretation only available via litigation

▶ **大公司需要处理成百上千的专利**

▶ **Large companies need to address hundreds or thousands of patents**

- 大量的专利由于缺乏清晰的阐述，容易引起争端
- Large numbers of patents combined with lack of clarity create ideal environment for disputes

专利风险管理的新方法
New Approaches to Patent Risk Management

- **多家公司通过合作的方式联合获得所有参与公司都需要的权益**
- **Multiple companies cooperate to jointly acquire rights needed by all**
  - 是PRX的基础业务之一
  - RPX's base business is one model of this
  - Nortel/Norpax联盟
  - Nortel / Norpax consortium
- **进行大规模的并购**
- **Large-scale acquisition**
  - 谷歌并购摩托罗拉手机业务，包含了12000个专利
  - Google acquisition of Motorola handset business, including 12,000 patents

专利风险管理的新方法
New Approaches to Patent Risk Management

- 购买保险
- **Insurance**
  - 针对不能开发内部知识产权管理能力的小公司
  - For smaller companies without the ability to develop internal IP management capability
- 联合开发、共有相关权益
- **Joint development, joint ownership of related rights**
  - 虽不算新方法，但是更契合近年来知识产权的大环境
  - Not a new approach, but more relevant of late given overall IP environment

一个公司无论是否采用新的方法，制定管理知识产权和专利风险的战略都需要有效、周全的计划

Whether or not a company experiments with new approaches, developing a strategy to manage IP and patent risk requires active and thoughtful planning.

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谢谢
Thank You

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