

Kodak may find opportunity in bankruptcy

The iconic company is using its patents in litigation against Apple and others.

By Craig Anderson

Eastman Kodak Co. may have picked a good time to file for bankruptcy.

The iconic photography company may be able to unlock the value of its collection of 11,000 patents - including 1,000 digital imaging patents - while pursuing lawsuits and licensing arrangements with technology companies jockeying to edge out their rivals.

Legal observers and patent experts say Kodak's lawsuits will continue against technology companies, including Cupertino-based Apple Inc., which is the defendant in ongoing infringement cases pending in the U.S. International Trade Commission and in federal courts. The company filed several new complaints just before its bankruptcy filing earlier this month.

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The bankruptcy filing, done by Sullivan & Cromwell LLP in New York federal court, was necessary because anyone interested in acquiring any of Kodak's patents was likely spooked off by the company's perilous financial condition, experts said.

"If assets are sold by a company, and then the company declares bankruptcy, the sale can be undone by the bankruptcy court," said Ronald S. Laurie, founder and managing director of Inflexion Point Strategy LLC, a Palo Alto-based patent brokerage and adviser on intellectual property mergers and acquisitions.

Ryan said he believed possible buyers of Kodak patents were waiting, as they would "much rather negotiate with a bankruptcy judge" than with the company itself.

Bernard S. Greenfield, a partner at Trepel Greenfield Sullivan & Draa LLP who handles bankruptcy matters, says such concerns are usually overstated. Still, patent buyers would rather have them "free and clear."

"Sophisticated purchasers will tell you they would rather buy [patents] out of bankruptcy," Greenfield said.

The bankruptcy filing raises some intriguing possibilities, given the current smartphone wars and battles to acquire patents by major companies such as Apple and Google Inc. Neither company, fighting over mobile computing device supremacy, would be happy to see the other get the patents.

By buying Kodak's patents, Apple could eliminate several potential litigation threats, especially an ITC complaint against it and Research in Motion Ltd. over claims the companies are infringing Kodak's patent on ways to preview digital images on their phones. Google, on the other hand, could add a weapon to its arsenal against Apple by acquiring that patent and others in pending litigation to support companies that use its Android operating system.

"There's a nuclear war between these giants," said Paul Ryan, chief executive officer of Acacia Research Corp., a Newport Beach-based holding company.

He said a creative judge could take advantage of the strategic tensions between those competitors and other cash-rich technology companies to drive up the asking price for any desired patents.

Earlier this month, Kodak filed new patent infringement complaints in the ITC and federal court against Apple and HTC Corp. over patents on technology for transmitting images.

Michael J. Bettinger, a K&L Gates LLP partner who has supervised Kodak's patent litigation efforts, declined to comment on the effect of the company's bankruptcy filing on its litigation efforts in the ITC and federal court.

Greenfield said the bankruptcy filing would not affect the ongoing litigation, as long as there is enough money to fund lawsuits on patents the company claims are worth billions of dollars.

"Kodak is a company with a book of patents and a case that has to be managed by the right people," he said.