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Kodak's Patent Allure Fades

Value Tarnished After Invalidation Ruling; Portfolio Lacks Stalking-Horse Bid

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[Eastman Kodak](#) Co.'s effort to draw interest in the sale of its digital patent portfolio is flagging, people familiar with the matter said, complicating the 132-year-old photography pioneer's chances of emerging from bankruptcy court.



Getty Images

A sign is lit at the Kodak booth at the 2012 International Consumer Electronics Show at the Las Vegas Convention Center in January.

The people said the company hasn't been able to attract what's known as a stalking-horse bidder, one who agrees ahead of time to purchase the assets for a certain price, a tactic that can push prices higher. As a result, those people said, Kodak is preparing to hold a "naked" auction for the patents, one in which no suitor makes an opening bid before the auction begins.

The patent sale is an essential step in the turnaround of the company, which bungled efforts to reduce its reliance on film sales and is continuing a risky transformation to compete against bigger rivals such as [Hewlett-Packard](#) Co. in the market for printers.

Creditors believe the company's 1,100 patents hold most of its value. The Rochester, N.Y., company has said an independent review of its patents put their worth up to \$2.6 billion.

A recent adverse legal ruling has tarnished their prospects. A strong sale would let Kodak pay off its debts and leave it with cash to fund its new businesses. In the worst case for Kodak's 17,100 employees, a failure to monetize the patents could force the company to liquidate.

"Kodak's management and advisers have been working diligently on our plan for emergence," a spokesman said. "We have also made substantial progress in the business itself."

Unsecured Kodak bonds that come due in 2018 are trading at 13 cents on the dollar, compared with between 35 and 40 cents on the dollar before the Chapter 11 filing, a trader said.

Kodak must file procedures for the patent auction by June 30, a condition imposed by its lenders. The patents cover technology for previewing photos on a digital camera and sharing them online. Those are important functions for makers of smartphones and tablets, helping Kodak raise \$1.9 billion via patent settlements between 2008 and 2010.

Patents relevant to mobile devices have become hot property in the past two years amid a litigation free-for-all by companies hoping to gain an edge in the fiercely competitive market. Last year, Nortel Networks raised an unexpectedly high \$4.5 billion selling patents to a consortium of companies including [Apple Inc.](#), BlackBerry maker [Research In Motion Ltd.](#) and [Microsoft Corp.](#) [Google Inc.](#) responded later last summer with a deal to buy Motorola Mobility Holdings Inc. and its wealth of intellectual property for \$12.5 billion.

Kodak hasn't been drawing the same level of interest from suitors.

The company has sounded out Apple, [Samsung Electronics Co.](#) and [LG Electronics Inc.](#), as well as firms that buy up patents purely to litigate, said people familiar with the matter. Samsung and Apple declined to comment; LG Electronics didn't reply to a request for comment.

Companies auctioning assets during bankruptcy proceedings usually secure a stalking horse bidder to set a value for the assets and generate enthusiasm for the coming auction.

In return, they often get a "breakup fee" if another suitor outbids them. They are especially important in patent sales, where they create a sense of urgency to respond to a potential competitor who could use the patents against rivals, said

James Malackowski, chief executive of Ocean Tomo LLC, a Chicago-based intellectual property brokerage and advisory firm. A stalking horse bid "almost universally" drives up the price of a portfolio, he said. Mr. Malackowski isn't involved in the Kodak auction.

The potential value of Kodak's patents was hurt last month. A judge at the U.S. International Trade Commission found the image-preview patent that Kodak had pressed for two years in suits against iPhone maker Apple and BlackBerry maker RIM was invalid. Kodak said at the time it would appeal the judge's ruling to the six-member commission in Washington, D.C.

That particular patent had been considered the crown jewel of one of the two portfolios up for sale. Kodak either won suits or secured settlements 32 times when it brought claims, mainly against smartphone makers, involving digital imaging.

It also has launched a new round of claims against makers of tablets like the iPad. The ruling at the trade commission, however, has left bidders unsure of the patent's value, people involved in the sale said.

Companies also may be wary of being the first to bid on the patents, because it could make them a target of litigation, said a person familiar with the matter.

Kodak put the patents on the block in August, but potential buyers grew concerned they could be clawed back by creditors if the struggling company was to file for bankruptcy protection. In addition, some patent experts were skeptical of the value left in Kodak's patents because they don't involve core wireless technology and had already been so heavily licensed.

Kodak plans to sell the patents in two bundles: technologies for taking digital photos, and patents covering editing, storage and sharing, a person familiar with the matter said.

A successful sale is "not a precondition for exiting bankruptcy protection," the person said. adding if Kodak were to receive bids lower than it deems fair, it would look again at licensing and other ways to make money from the portfolio.

Kodak, however, put its patents up for sale in the first place because the once-healthy stream of settlements from the litigation had dried up, depriving the company of much-needed cash to finance its new ventures.

If Kodak does get a good price for its patents, it still faces the hurdle of convincing existing creditors that its strategy of shifting into the printing business is viable. Some board members fear that will be a difficult task, one person familiar with the matter said.

Kodak holds about a 2% share of the printer market, according to market research firm Gartner.

It has continued to suffer losses since filing for Chapter 11. In the first quarter, it posted a \$366 million loss as sales fell 27% to \$965 million.

—Patrick McGee contributed to this article.

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