

## Banks sell patents to recover losses at foreclosed companies

BY WILLIAM-ARTHUR HAYNES

Patents portfolios have gained new recognition as a way for financial institutions to recoup some of their losses from foreclosed companies.

Although there are one-off examples where banks were able to monetize patents, it's a relatively new area.

Keith Agisim, associate general counsel for intellectual property at Bank of America Corp., helps form and implement the bank's intellectual strategy. One of his jobs is to sort through patent assets of companies the bank has foreclosed on.

"We view it as a way obviously to help recover on the loans, but also as a way to get technology back in the hands of operating companies so that they can continue to build and innovate to introduce new products into the economy," Agisim said.

Typically, a company's assets serve as the backstop to business loans. When foreclosures happen, banks look to recoup losses by liquidating inventory, capital equipment and real estate.

Historically, banks lending to technology companies have taken intellectual property as collateral because in many cases, with startups especially, patent portfolios might be the company's only salable asset.

"During great times it's a non-issue because companies are able to repay their loans," said **John Hale**, a Palo Alto-based partner in **Cooley Godward Kronish LLP's** credit finance practice.

In the last recession, for instance, taking a patent portfolio as collateral posed a problem because intellectual property for many companies was nothing more than a Web site, Hale said.

"Traditionally, intellectual property was never really monetized," Agisim said. "You didn't pay that much attention to it. But more and more value of companies is tied up in their intangible assets now. That's an emerging area."

According to a report put out by Stan-



VICKI THOMPSON

**IP CURRENCY:** John Hale, credit finance partner at Cooley Godward Kronish LLP, said banks that own intellectual property face a big challenge selling it.

dard & Poor's, the percentage of U.S. companies' intangible versus tangible assets increased from 38 percent to 87 percent in two decades.

"This time around it's a little different than the last recession because there really is substance to a lot of this IP," Hale said.

Carrie Merritt, a spokeswoman for SVB Financial Group, parent company of Silicon Valley Bank, which lends almost exclusively to technology companies, said it's a rare case when they're left holding patent portfolios.

"Our approach is to work closely with the companies and their investors to find the most appropriate solution and in many cases a buyer," Merritt said. "It happens, and every situation is different, but it's unlikely we would end up owning a patent."

Of course the bank's goal is not to end up with a portfolio of intellectual property. The goal is to get repaid.

BofA will auction off the patents of failed

Internet access provider Pilot Network Services Inc. of Alameda next month.

Hale said banks that find themselves with intellectual property face a big challenge "because that's not their business."

Screening and valuing patent portfolios can be a expensive and time-consuming process. Not every patent is created equal. Some have broader applicability while others are specific to a particular company's process.

Today the process is more complicated. In the past, that wasn't the case.

"You can't just go down the street and say, 'Here. I have some IP. Want to buy it?'" Hale said. "You have to find the right people who can use it."

Those with broader applicability are more easily marketed.

"With the new patent marketplace, the banks have an avenue to sell," said Joe Chernesky, president and chief operating officer of San Mateo-based patent brokerage IPotential LLC.