Knowledge-Based Capital and the Patent Marketplace

Professor Colleen Chien

colleenchien@gmail.com
What’s the Value of a Patent Asset?

Vehicle of Technology Transfer (TTO)
What’s the Value of a Patent Asset?

List of WIPO Standards, Recommendations and Guidelines

(Part 3 of the Handbook on Industrial Property Information and Documentation)

All documents listed below are in PDF format. Most of the PDF files are tagged for accessibility.

- Group (a): Standards of a general nature, common to information and documentation
- Group (b): Standards relating to Patent Information and Documentation
- Group (c): Standards relating to Trademark Information and Documentation
- Group (d): Standards relating to Industrial Design Information and Documentation

Standards of a general nature, common to information and documentation

- Standard ST.2: Manner for designating calendar dates (May 1997) [PDF]
- Standard ST.3: Two-letter codes for the representation of states, other entities and organizations (November 2011) [PDF]
- Standard ST.13: Numbering of applications for IPRs (February 2008) [PDF]
- Standard ST.96: Recommendation for the processing of Industrial Property information using XML (May 2012) [PDF]
  - ST.96 Annexes I, II, III and IV

Standards relating to Patent Information and Documentation

Facilitator of Technology Sharing (Standard)
Protection, Deterrence

What’s the Value of a Patent Asset?
Wowza! Google acquires Motorola Mobility in defensive move

**Summary:** Google announced that it will acquire Motorola Mobility for about $12.5 billion in a move to "protect Android from anti-competitive threats from Microsoft, Apple and other companies."

By Jason D. O'Grady for The Apple Core | August 15, 2011 -- 08:00 GMT (01:00 PDT)
What’s the Value of a Patent Asset?

Lodsys v. Rovio  
Exclusionary Value (PAE)
What’s the Value of a Patent Asset?

How Apple Sidesteps Billions in Taxes

RENO, Nev. — Apple, the world’s most profitable technology company, doesn’t design iPhones here. It doesn’t run AppleCare
What’s the Value of a Patent Asset?

2011 Microsoft Intellectual Property Payments
(Puerto Rico)

Microsoft Intellectual Property Pool
(Over 85% Global R&D Done in U.S.)

$1.9 billion
Payment to U.S. For Intellectual Property

Microsoft Puerto Rico

$6.3 billion
Revenues from Sales in the U.S. (Stays in Puerto Rico and not Taxed in U.S.)

Microsoft Americas Sales

Prepared by the U.S. Permanent Subcommittee on Investigations, September 2012

Vehicle of Transfer Pricing
What’s the Value of a Patent Asset?

It depends on the context
Key Questions

What are the contexts?

What are the private and social values of transfers?

What are the implications for policy design?
For governments and the private sector?
What are the contexts of patent transfers?

- **PAE**
- **Brokered Defensive Sale**
- **Pool/Standard**
- **TTO/Tech Transfer**

$/$/equity/uptake
What are the contexts of patent transfers?

**Seller** — Rights — **Buyer**

- **PAE**
- **Brokered Defensive Sale**
- **Pool/Standard**
- **TTO/Tech Transfer**

$/equity/uptake
What are the private and social value of transfers?
What are the contexts of patent transfers?

Seller  Rights  Buyer

PAE

Brokered Defensive Sale

Pool/Standard

TTO/Tech Transfer

$/equity/uptake
Many infringed patents, many possible enforcers

~250K patents cover a smartphone
Many infringed patents, many enforcers, many lawsuits?

Traditionally Not...

Obstacles to Assertion
1. Counterassertion
2. Disruption
3. Cost
4. Reputation

*e.g. Apple v. Motorola spawns*...
Patent Assertion Entity (Troll) = efficient provider of patent enforcement

An entity focused on assertion of patents rather than transfer of technology
- Does not make anything
- Does not sell anything
- Not a startup/University

Vernetix (VHC) is “a tiny company with a handful of patents and little or no ongoing R&D is worth billions of dollars.” – Seekingalpha.com
“VirnetX stock is up 700% in three years”
Many infringed patents, many infringers

What Apple has to worry about when it sues...
1. Counterassertion
2. Disruption
3. Cost
4. Reputation

What Trolls have to worry about when they sue...
1. Counterassertion
2. Disruption
3. Cost
4. Reputation

Apple v. Google
Infinity Search LLC v. Google
Many infringed patents, many infringers

Troll Tactics that Drive down the cost of assertion
- Sue many Ds
- Same patent
- Contingent fee lawyers
- Friendly venues

Economies of Scale

What Trolls have to worry about when they sue...
1. Counterassertion
2. Disruption
3. Cost
4. Reputation

Infinity Search LLC v. Google
Don’t Call them Trolls
What Trolls have to worry about when they sue...

1. Counterassertion
2. Disruption
3. Cost
4. Reputation

Infinity Search LLC v. Google

Troll Tactics that Drive down the cost of assertion
- Sue many Ds
- Same patent
- Contingent fee lawyers
- Friendly venues

Economies of Scale
What are the contexts of patent assets?

_Seller_ \rights\leftrightarrow \text{Rights} \leftrightarrow \text{Buyer}_

- **PAE**
- **Brokered Defensive Sale**
- **Pool/Standard**
- **TTO/Tech Transfer**

$/equity/uptake$
Social v. private costs: Not all transfers are created equal

*Seller* → *Rights* → *Buyer*

- **25% of direct cost +**
  - PAE: 86%  
  - **= 100%**
  - (Bessen & Meurer 2012)

- **85% of direct cost +**
  - Brokered Defensive Sale: 15%
  - **= 100%**
  - (Chien 2012)

- **Pool/Standard**

- **TTO/Tech Transfer**

есс/сколько/принятие
Not all transfers are created equal

Seller -> Rights -> Buyer

PAE

Brokered Defensive Sale

Pool/Standard (Technology)

TTO/Tech Transfer (Technology, Know-How, People)

$/equity/uptake

Context
Policy Design: How do we encourage socially desirable transfers? Should we?

Seller → Rights → Buyer

- **PAE**
- Brokered Defensive Sale
- Pool/Standard (Technology)
- TTO/Tech Transfer (Technology, Know-How, People)

$/equity/uptake

Context
Policy Design: How do we encourage socially desirable transfers? Should we?
Example traits: Intrinsic traits

United States Patent
Zadesky et al.

TOUCH PAD HANDHELD DEVICE

Inventors: Stephen Paul Zadesky, San Carlos, CA (US); Tang Yew Tan, San Francisco, CA (US)

Assignee: Apple Computer, Inc., Cupertino, CA (US)

Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 117 days.

Appl. No.: 10/188,182
Filed: Jul. 1, 2002

Prior Publication Data

Related U.S. Application Data
Provisional application No. 60/359,551, filed on Feb. 25, 2002, provisional application No. 60/346,237, filed on Oct. 22, 2001.
Example traits: Acquired traits (Chien 2011)

Intrinsic Traits

Acquired Traits

1 %
Traits internal and external to the patent system

(The Promise of Big Data)

What’s being searched
What technology terms are trending
Patent attorney trends
Public disclosures

(Call me if you are interested!)
Traits internal and external to the patent system

Predicting Patent Litigation

Colleen V. Chien
Santa Clara University - School of Law
August 17, 2011

Santa Clara Univ. Legal Studies Research Paper No. 17-11

...
Policy design: should/how do we encourage socially desirable transfers?
The Ability to Search among patents and readily find:
- In-force patents (maintenance fee and invalidation)
- The owner of a patent
- Intrinsic and acquired traits
- Relevant patents

→ A solution to the sorting problem, that leverages existing and encourages further disclosure of context information
How to Do This – Leveraging Existing Data

Consolidate multiple patent information databases

Make patents searchable by:
- whether in-force (here and abroad), various owners of record, types of conveyances, family information (foreign/continuations), etc., litigated or not, who’s litigating patents in this area

Classify patents according to industry definitions
How to Do This – Creation of New Data

Marking Registry
  Virtual Marking provisions of the AIA
  Reinvigorate the marking requirement

Administrative changes/carrots to encourage disclosure of context data

Licensing Registry
  PCT applicants can request that the Int’l Bureau make information available on its PATENTSCOPE website
Carrots/Administrative Tweaks for Context Disclosure/Dissemination?
Markets for other IP assets (NSF 2012)
Policy Design

Who should do what?

What transfers can/should the patent system facilitate?
- Patent rights
- Knowledge
- Technology