

Empowering Intellectual Property

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The Problem

Intellectual property ("IP") is an untapped frontier in value creation. The problem is the basic tendency regarding IP, including patents, as the single, proprietary, closely guarded holding of the patent developer. That tendency is fundamental to the patent system – indeed, to all property rights, because at the root, we are talking about patent ownership.

In practice, this proprietary, exclusive approach creates a host of inefficiencies. It establishes a basic disconnect: On the one hand, there is the patent holder, and on the other hand, usually outside the entity, there are the resources needed to develop and commercialize the patent. Only a handful of patent developers have the resources they need, under their own roof, to bring a patent process or product all the way through the development cycle and to market. For the majority, that's not the case, which may lead to a destructive choice –

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either cede control of the entity in order to secure capital for patent development and commercialization, or control the entity with diminished prospects for value from patent realization. The result is that technologies remain undervalued or unrealized.

There has to be a better way – and, in fact, there is. Keep in mind that patent development is just one form of IP development. In other arenas – the entertainment and media industries, for example – entities that depend on IP realize that hoarding it only gets them so far. At a certain point, the door to collaboration has to open. Collaboration delivers the brainpower to develop IP to a higher level, and the funds to bring it to market. Look at the credits on any movie: The fruits of collaboration are evident – multiple talents working on story and screenplay, multiple entities working on production and distribution.

But we don't need to look so far afield to see the benefits of collaboration. Large segments of the software industry understand the value of collaboration, and, as a result, have embraced the open-source movement. Open-source software developers open their code to the community, which can find and resolve bugs and defects, improve the code base, and rapidly create new applications that add value to the underlying product. Under the open-source umbrella, there are a range of approaches: Collaborative relationships between software developers and user communities that accelerate the pace of testing; collaborative relationships between commercial software development entities; and the most purely open-

source approach, in which the complete code is opened to the outside world so that anyone who wants to can contribute to the development effort.

Encouraging An Active Approach

The fact is that the vast majority of IP is underutilized. While many IP owners seek outlets for their ideas or products, few are able to find the strategic partner they seek. While current opportunities to realize value include licensing or sale through patent brokers and auctions, the processes tend to be passive. Passive approaches, where one holds out IP to see if there are any takers, often leave IP owners feeling vulnerable. An active approach maximizes opportunities to the IP developer since a greater number of potential partners will be identified and approached. This may result in the application of a technology in a market for which it was developed or the additional development of technology for alternative uses. With an active approach, the holder of IP stands to capture value based on what is possible given additional and alternative uses of the IP. In a passive approach, the value extracted from such transactions most likely reflects the income stream that the IP is generating currently.

The Solution

An IP Exchange that encourages active exchange and development of IP is needed. Such an exchange is market driven between parties. The value of IP will be increased to all users. Aggregate market value will be based on the IP available to all participants in the Exchange, further enabling the strategic monetization of

patent portfolios and other forms of IP.

A better environment – and a better development platform – for new technologies and processes is needed. A better environment benefits all participants in the IP process, as well as end users and society as a whole. For instance:

Entities must be able to realize the hidden value inherent in their patent portfolios without having to give up control of the entity or the technology in order to do so. Each entity must also be able to retain the protection and exclusivity it feels it needs. Incremental value is realized for patents that the entity wants to develop, but can't.

The development of technologies is accelerated because more talent from more entities is brought to bear on each patent. More patents are realized faster, more products are created as a result of that realization, and the benefit goes directly to end users and to the economy and society.

Outside investment further accelerates the development process, and investors benefit from each realized patent. Investors and society benefit from the additional development and application of current technologies in alternative markets. There are additional benefits from the development of new technologies that would not exist without such collaboration.

The active development and exchange of IP will lead to the creation of alternative applications of existing technology and the creation of new technologies and markets, creating benefits that extend to every corner of the marketplace.

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