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Licensing without litigation:
unleashing inventors and innovators
Art Nutter, PatentBooks, Inc

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*Building IP value
in the 21st century*

Licensing without litigation: unleashing inventors and innovators

By **Art Nutter**, PatentBooks, Inc

Perhaps the most important aspect of running any business is the ability to deploy and monetise good ideas. A company's higher purpose is more than market share and balance sheets. Sharing ideas and inventions globally accelerates human development by making innovation more accessible – driving prosperity, improving living standards and even saving lives.

Patents were first created in China as a way to facilitate critical innovation and knowledge sharing. Patents were intended to be teaching tools, advancing human development when the patented inventions became widely used – and enriching the patent owners in the process, which would be paid by those who used their ideas. Inventors teach how to duplicate their inventions via a patent and expect compensation when someone uses the patented invention.

Today, the industry is rife with roadblocks to innovation and prosperity for both patent owners and product manufacturers. If patent licensing were easier, uniformly priced and transparent, manufacturers and service providers could bring new offerings to market faster and patent owners could profit from their inventions more easily. More efficient patent licensing would unleash a wave of profit for both parties, unfetter the global economy and restore the promise for which the entire concept of patents was originally conceived.

Consider how factories and businesses obtain the clean water and electricity that they need to operate.

Long ago, society decided that water and electricity were necessities best accumulated

and delivered by specialised third-party companies (ie, utility companies), rather than by individuals. Tap water may originate in any number of possible places. As users, we do not know whether our tap water originated from a well, a reservoir, a stream or a desalination plant. But we do not care – we care only that the water coming out of the tap is clean and usable. Somewhere in the delivery system, a meter measures how much water we use and we pay only for what we use. The water utility company then divides our payments among its sources for water.

Electricity is the same. When we plug into an outlet, high-quality electricity comes from that outlet. We do not know whether that electricity originated from a battery, a coal-fired plant, a solar panel, a wind turbine, a nuclear plant or a hydroelectric plant. We do not care; we just know that there is a meter monitoring our usage and we pay the electric company only for the electricity we use. The electric utility company must pay its sources for generating electricity.

What if product innovators could simply 'plug in' to a source of patented ideas? Rather than worrying about the source and value of each of the thousands of ideas required to bring their final product to market, they access a single, dependable idea source that drives their next product – effectively metering their usage of patented ideas and simplifying their cash flows. This is the vision that inspired the launch of PatentBooks.

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“The most efficient, sane and safe way to be paid fairly for the use of patents and to license the entire volume of patents that may be used in a product is via a single source”

may be used in a product is via a single source, promising patent owners and product innovators a shorter path to profit and giving everyone more time to focus on profitable innovation, benefiting us all. The alternative, for both product innovators and patent owners, is often litigation – a tragically expensive, distracting and risky way to pay for small quantities of the volumes of patents that may be used in a product.

The problem with pools

Patent pools are a widely implemented solution to some of the problems above, offering single-price licences to a group of patents deemed essential to a technical specification standard. The specifications underpinning these technologies were created to reduce friction between competitors to ensure interoperability for all of the system components. Patent pools exist today for DVD, Blu-Ray, RFID, MPEG, SD-3C (memory cards), 4G/LTE and other technologies.

Patent pools were created specifically to support industry standards bodies without violating antitrust regulations. As a result, a number of constraints limit their usefulness for both the publisher and subscriber sides of the licensing equation.

A patent pool is comprised of patents that will be used by manufacturers using the standard. The limitations of all patent pools

include the following:

- A patent pool's dominating attribute is exclusivity. To comply with antitrust regulations, patents considered for inclusion in a patent pool must be deemed essential to the underlying specification by the patent pool administrator. If multiple patents provide different technical solutions to the same aspect of the specification, all of those patents are excluded from the pool. Product manufacturers remain at risk of violating those patents, since none are permitted in the patent pool. Therefore, a patent pool never provides comprehensive coverage to the product manufacturer.
- Pools do not have a standardised mechanism to rate or value patents. All patents in a pool have equal value. This violates the reality that 20% of a given set of patents is usually worth 80% of the value.
- Licence revenue from a patent pool is distributed equally to all patent owners in a 1/n ratio, where n is the total number of patents in the pool.
- Product manufacturers are required to license all patents in the pool, regardless of relative value.
- A few patent pools contain a few hundred patents, but pools normally consist of only 10 to 100 patents. In either case, patent pools do not address the broader litigation risk mitigation goals of the product manufacturer, which is often in the thousands or tens of thousands of potentially applicable patents.

Patent owner problems with patent pools

Although patent pools represent a minor improvement over bilateral licensing, patent owners have significant challenges with patent pools:

- While a patent owner may have one of the best patents in a pool, licensing revenue for that patent is valued the same as for all other patents in the pool. This issue causes consternation and in many cases limits participation. In fact, many patent owners are leaving patent pools because they believe that their patents are better than the other patents in the pool. They believe that they are not receiving fair

value for their patents within the pool and that they may get more value from their patents via other licensing approaches. The result is that the strongest patents are often not included in the pool.

- Patent owners must prove that their solution is essential to the standard in order to have their patents included in the pool. This tends to limit participation. Many patents used in products cannot be included in a patent pool because the inventions themselves are not covered by a specification.

Manufacturers' problems with patent pools

Patent pools fail to address the needs of the product manufacturers, as they do not give full access to a comprehensive package of patents. Patent pool licensees are challenged by some of the same problems as bilateral licensing:

- Licensing the 10 to 100 patents in a pool does not go nearly far enough to mitigate litigation risk across the entire spectrum of thousands of potentially relevant patents.
- Due to the antitrust requirement for exclusivity, the most important patents are often excluded from the pool.

Patent owners reduce costs and increase income predictably and without distraction

Today, a patent owner that asks a user of its patented technologies to pay for its use is routinely dismissed, ignored or rejected. This patent owner is part of a large and unhappy group, being one of hundreds or thousands of people that own patents which may be used in a commercially significant product. Patent owners and users find it difficult to ascertain the value of any individual patent in a commercially significant product. All parties suffer from the lack of a transparent and standardised system for assessing aggregate, much less individual, patent value. The failure to reach agreement often results in litigation to force payment. The cost of litigation as a means to get paid for the use of patents is extreme, especially relative to the total value of the entire transaction. Litigation costs of 50% to 90% of the entire transaction are common. In patent litigation, the only parties that always benefit are the lawyers.

Comprehensive patent licensing would create a virtuous ecosystem that helps everyone, guaranteeing that patent owners receive payments without litigation or distraction. Rigorous and fair evaluation of all patents would give credibility to a transparent, tiered system that ensured mutual understanding of patent value and regular payments for patent owners. Transparent and credible patent evaluation criteria conducted by technical, legal and economic subject-matter experts could apply a common standard for evaluating each patent, regardless of origin or technology. A tiered system could then manage uniform payments based on the strength of the evaluation.

The high compensation and public recognition of the technological leadership of the owners of top-tier patents help these owners with additional investment and recruiting for the top minds in a given product area. Predictable, litigation-free revenue begins to flow, enabling the patent owner to concentrate on business, rather than burning time and money policing the use of intellectual property and spending resources trying to collect for its use.

Product innovators buy freedom to operate, open new markets and add new features freely

Most innovators want to make great products that incorporate great inventions, meeting market demands and building value in their brands. Great ideas and inventions occur all over the world. Today, our ability to communicate across cultures, time zones, nationalities and languages allows the best ideas to be understood anywhere in the world. Since a patent contains a complete recipe for duplicating an invention, searching national patent archives is one of the most efficient ways of discovering elegant and thoughtful technological solutions.

By plugging in to a patent source, product innovators have an easy expense line in their cost structure, allowing the business to use any of the thousands of patented inventions. This expense line is predictable and manageable, enabling the manufacturer to explore and open up new markets more quickly without the threat of patent

infringement litigation. Manufacturers gain peace of mind, secure in the knowledge that they are not overpaying for licences that they do not use, because payments are based on production volumes.

The biggest benefit that innovators experience is the freedom to concentrate on their core business and improve products, processes and systems without worrying about being sued for patent infringement. Patent infringement litigation is extremely unpredictable, can surprise and disrupt a company and may distract a company significantly from its core business. Patent litigation can and does ruin companies.

Contributing profiles



Arthur Nutter
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Arthur Nutter is the founder and CEO of PatentBooks, Inc, and a leading expert in managing and monetising Intellectual property. Based in Colorado Springs, Colorado, PatentBooks is a market-driven solution that radically simplifies patent licensing, promising patent holders a transparent, fair way to profit from their inventions and product makers a simpler path to creating new products and opening new markets – while keeping both sides out of the courtroom.

Mr Nutter also founded TAEUS International Corporation in 1992 as the world's first engineering company dedicated exclusively to intellectual property.

Mr Nutter holds a BSME from the University of Akron (Ohio) and an MBA from the University of Phoenix.

Think of all the untold millions of dollars being tied up in courtrooms around the world today as patent owners and product innovators fight thousands of battles tooth and nail to resolve patent licensing and IP disputes. Compound this with the stress and distraction (and often bad press and brand damage) for companies which could otherwise focus on making things that improve people's lives while easily and fairly paying the legion of inventors who enable new features, improvements and major leaps forward. For decades, this landscape has been considered business as usual. At PatentBooks, we consider it a tragedy.

Imagine instead the true genius of the consumer marketplace unlocked for the good of all patent owners, product manufacturers, and the billions across the globe ready for the next dazzling innovation. This is more than good business – it is good for all of humanity.

Patents were conceived to help people with great ideas to get recognition and compensation for their ingenuity, while enabling and teaching the tinkerers, thinkers and innovators who use that ingenuity. That promise has been corrupted. We need to restore the innovative potential of patents by revolutionising patent licensing, making use of and compensation for the best ideas easy, predictable, equitable and logical, rather than combative, convoluted, unfair and unproductive. This would accelerate global innovation by reducing the path between an idea and profits, creating a new era to the benefit of all. **iam**


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