Redefining "Valuable Patents":
Analysis of the Key Value Factors of U.S. Patents Asserted in Infringement Litigation

Jonathan Ashtor
Associate, Skadden Arps Slate Meagher & Flom LLP
New York, NY

This research seeks to identify and understand the key factors that make patents "valuable". To start, we must redefine the term "valuable patents" from what has been widely accepted by prior scholarship. Most leading studies use the binary fact of whether a patent has been asserted in litigation as a proxy for value, but this fails to account for the reality that most cases are decided against the patent-holder, not to mention the vast majority that settle for mutually negotiated sums. Moreover, among the few cases that do result in an infringement verdict, there is huge variation among award amounts. Accordingly, rather than rely on assertion as a proxy, this study directly analyzes the specific amounts of infringement awards in order to develop a more accurate understanding of "valuable patents". Importantly, infringement awards provide only one perspective on patent value, and other measures are important to consider. For example, the value of patents in licensing transactions may differ from litigation value (even if licenses are negotiated in the "shadow of litigation"), particularly where negotiated transactions involve sources of value apart from the patents themselves (including associated services, information exchange, etc.). This study approaches patent value by distinguishing patent enforcement from voluntary transactions, whereby the enforcement of patent rights means litigating a claim to judgment and obtaining a non-negotiated remedy. To measure such enforcement value, court-awarded judgments for infringement are analyzed herein. Specifically, this study mines a vast array of data relating to each patent held valid and infringed in each U.S. District Court decision from 2006 to 2011. The data-set comprises approximately 400 patents from approximately 300 cases decided during the six year time-frame. For each patent, over 70 unique data points have been coded regarding intrinsic attributes, acquired attributes and related market factors, including prosecution history factors, inventor expertise, patent structure and family characteristics, forward citations, recorded transfers and collateralizations, and party characteristics. Using this extensive data-set, this study seeks to achieve precise statistical analysis of the factors that drive patent enforcement value.

Biography: Jonathan specializes in intellectual property transactions. He has conducted patent analytics research for several years and is a recipient of the 2011 Samsung-Stanford Patent Prize for his earlier work studying patent infringement case values.

Email: jonathan.ashtor@skadden.com