Public Patents, Private Information

Should information about the optimization, licensing, and enforcement of patents be kept private? Patent protection is often unavailable for new or particularized uses of patented products, resulting in underinvestment. Patent holders generally do not publicize their licensing efforts, resulting in inefficiencies in ascertaining value. Litigation settlements may be confidential, including those involving reverse payments to maintain a likely invalid patent.

The question is under what circumstances should we nudge or require transparency after the patent grant. In assessing a sampling of patent development, negotiation, and enforcement mechanisms, I propose a mechanism for determining whether such information should be made available.