

The intangible investor

Written by
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Priceline founder says he can fix “totally broken” licensing system

Prolific inventor Jay Walker says new ideas are needed to make innovation less contentious. He is convinced that ‘no fault’ patent licensing will make it happen

Jay Walker is no stranger to big ideas. Walker – a successful entrepreneur who founded Priceline.com (NASDAQ: PCLN), an early online auction business that was slow to start, but now has a market value of \$40 billion – wants patents to be part of a marketplace.

Earlier this year Walker merged the remaining parts of Walker Digital, his invention company, into Patent Properties (OTC: PPRO), a company created from a reverse merger. Patent Properties continues to offer Walker patents for license, but will introduce this year or early next a “disruptive licensing solution for the mass market of patent owners and users”. Patent Properties received 401 granted patents and 79 pending applications naming Walker as inventor. The patents describe inventions in areas including authentication techniques, Internet searches, social networking, advertising and online transactions.

The Walker Digital portfolio has generated \$65 million in revenues since 2011 from licensing and patent sales, so the immediate future for its shareholders is likely tied to the company’s 19 ongoing litigation matters. What is potentially more intriguing than that revenue is the broad-based patent licensing business model for small and medium-sized enterprises, inventors and universities that Walker is proposing. He sees huge untapped potential for patents if the pricing can make sense.

Under-licensed R&D

No doubt Walker would like Patent Properties to own a piece of each transaction it orchestrates, similar to how Priceline profits from travellers’ demand for available airline seats and hotel rooms. He views the company in much the same way as copyright clearing houses such as the American Society of Composers, Authors and Publishers and Broadcast Music Inc

(BMI), only in this case Patent Properties would be monitoring invention rights.

“Of today’s 2.1 million active patents, 95 percent fail to be licensed or commercialized,” wrote Walker recently in a *Forbes* guest editorial. “These unlicensed patents include over 50,000 high-quality patented inventions developed by universities. More than \$5 trillion has been spent in the U.S. alone on research and development over the past 20 years, much of which went to create the very patents that remain unlicensed.”

No doubt a more liquid market for licensing would help to lubricate the innovation machinery rather than clog it, as some patents have been known to. A terrific idea, but one for which buy-in will not come easily. You have to admire Walker for trying to move the innovation ball forward with an approach that makes it easier for innovators to profit from inventions and fewer businesses to fall foul of them. (Recent videos on CNBC and Bloomberg of Walker explaining how a mass market for patent owners and users benefits innovation can be found at www.ipcloseup.com.)

Priceline was a pioneer in the online auction industry and came back from the brink of bankruptcy after 2001. Walker is one of the most prolific living inventors and is named on more than 700 patents. Back in 2000 he sold Synapse, a company he co-founded which used the credit card network to process magazine subscriptions to Time Inc, for more than \$500 million. In 2000 *Forbes* estimated his net worth at \$1.6 billion. He also founded TEDMED, a global community of people who are passionate about the future of health and medicine.

Walker has yet to provide details about how these micro-licences will be valued. I suspect that it will have something to do with a negotiated industry royalty rate, which to some may resemble compulsory licensing. In any case it will take a lot of convincing for licensors and licensees each to feel that they are being treated fairly. While Walker may believe in the utility of his disruptive business model for monetisation, it appears Patent Properties

has not given up entirely on good old-fashioned patent enforcement, where its immediate prospects are. The current market value of Patent Properties is \$55 million, on just 8,500 shares trading daily.

Give Walker credit for fighting the good fight. Clearly he is speaking out not just for the money or ego gratification. He truly believes that he is on to an important idea and I think he may be right. For most inventors, some licensing income is better than none. For operating companies, a licence is a small price to pay if it can prevent litigation, especially if there is a good chance the patents are valid and may be infringed.

Matching supply with demand

“We must develop an affordable and voluntary alternative that facilitates licensing for the vast majority of patents at fair, market-based prices, benefiting both sides of the patent equation,” says Walker. “And it is safe to say that Congress is not the right place to go for this solution.”

A market-based solution for invention rights would inject a level of reality into the patent debate and might get it out of the hands of courts and lawyers. It also would likely increase investors’ heretofore tepid interest in businesses that license IP rights.

With so many patents invalid, the onus is more than ever on the patent holder to prove that its assets are valid and infringed. However, at the right price for the right asset (or apparent asset), it imprudent for many businesses not to take a licence. Walker realises that accepting a market price for the rights to a desirable patent is not that different from bidding on an available airline seat. It is simply a reflection of how badly one needs to get from here to there.

Bruce Berman is CEO of Brody Berman Associates in New York. Eleven years of his IAM column are anthologised in a new book, *The Intangible Investor – Companies’ Most Elusive Assets*

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