Written by
Bruce Berman

Silicon Valley: Too big to fail, or too big not to?

Successful tech companies have transformed what was once the cornerstone of invention into a place that is strangely inhospitable to bold ideas and strong IP rights. What will it take for Silicon Valley to get its mojo back?

Driving down Highway 101 or El Camino Real from San Francisco to San Jose, you come upon dozens of well-known businesses – many of them global brands that form the foundation of the information economy. For innovative companies and entrepreneurs, the opportunities to repeat the success of companies such as Apple, Intel and Google have become significantly fewer and further between, and patents are playing a role.

The pressure is on for new businesses to succeed faster and bigger. The opportunity to try something new and fail with honour – once a hallmark of Silicon Valley – is fading. Moreover, many employees of established companies believe that disruptive technologies can cost local jobs in the short run, even if they may generate more new ones over time. Cynicism is growing towards businesses that are willing put new ideas into practice; so is suspicion of the rights they secure to protect potentially game-changing inventions and those that control them. No wonder, venture capital investing is down and exit strategies are more limited. Even the private equity's industry's median return has been 6% a year since 2007, far below its historical 13%.

"It has never been easier to start a company, and never harder to build one," said David Lee, a venture capitalist at SV Angel.

David O Sacks, a Silicon Valley executive who sold Yammer to Microsoft for US$1.2 billion last year, summed up the challenged in a post on Facebook.

"I think Silicon Valley as we know it may be coming to an end," Sacks wrote. "To create a successful new company", he said, entrepreneurs have to find an idea that "has escaped the attention of the major Internet companies, which are better run than before". On top of that, it must be "protectable from the onslaught of those big companies once they figure out what you're on to".

If I hear Sacks right, he is saying that "those big companies" are in the position to take an entrepreneur's idea and run with it (or to quash it), not only because they have the size and capital, but because the patent rights which may protect it are less meaningful and more arduous to enforce.

An aversion

Independent software and e-commerce developers and big tech have something in common: they share an aversion for recognising others' innovation. They typically see patents as threats, not as potential assets that can facilitate success. Surely, broad patents can create a minefield that can make legitimate competitors cringe. But without reliable IP rights, new technologies would be even less likely to evolve and backing for many groundbreaking ideas would be scarcer. The campaign against software and other patents is motivated by a perceived need to neutralise the leverage provided by strong invention rights, especially now that more managers and strategic investors are equipped to enforce them. A patent can be a frightening thing to a business that might be infringing the wrong one or holder.

Ironically, large Silicon Valley companies are being awarded more patents than ever. They are also purchasing them where they can for whatever price they may command (cost is not usually an issue; nor is driving up prices). Increasingly larger portfolios have done little to diminish the Valley's suspicion of strong, litigation-quality patents and those businesses, practising or not, that may own or capitalise them.

Companies that own what may have once been disruptive inventions that are now somewhat mainstream tend to hold on to what they own by managing their assets and minimising risk. To them, patents represent potential risk. Their deliberateness may be a boon to margins and market share, but are a barrier to new ideas that could encroach on profitability and threaten their brand. I have no doubt that there are managers at Google who are kept up at night thinking about killer search algorithms or business models that are right now being developed on someone's Mac or PC that could bring them down. Despite owning better than 18,000 of them from its purchase of Motorola last year, patents are something that Google is likely to fear more than embrace. The founders of successful tech companies, like Sergey, Steve and Mark, *et al*, are today closer in spirit to 19th and early 20th century oil, steel and rail titans than they are to entrepreneurs.

Hackers' mantra

The hacker's mantra heard often around Facebook, "Move fast and break things", has become more style than substance. A pre-initial public offering valuation of US$100 billion will tend to do that. "Move fast and break the bank" may be more like it. Patenting and commercialising new inventions is becoming expensive, risky and, as far as patents are concerned, increasingly subversive. Once pioneering enterprises' response to success is to play it safer. Maybe the real innovators have moved to Kansas or Michigan, where the engineering schools are hungrier, the economy more stagnant and the rent cheaper, allowing for a slower burn and longer time-line?

Of late, Silicon Valley's activities have been tempered by too much size and paranoia about invention rights. It may take another recession, or tech bubble, and cheaper real estate to get its mojo back. While competition is generally good for innovation, it can also reach a point of diminishing return. Too much pressure to succeed too quickly with weaker rights is a poor catalyst for future return. The opportunity to fail is a key to success.

Bruce Berman is an IP strategist and observer. His firm, Brody Berman Associates, advises patent holders, managers and investors about communications and value.