



Skin deep

A recent survey on patent quality in the United States poses more questions than it provides answers

It's been said that beauty in eye the beholder. So, too, it seems, is patent quality. Intellectual Property Owners (www.ipo.org), an association dedicated to the needs of patent and other IP owners, and populated by many of the most of the prominent ones, recently conducted an opinion survey of US patent quality. The results were surprising but inconclusive; an indication that perspectives vary as to how well patents provide certainty about who owns inventions.

Despite protestations in the press about trolls and other rights predators, about half of all US filers are pleased with the quality of patents being issued by the USPTO. Only 47.5% of respondents to the IP survey (89% of whom generate more than US\$1 billion in revenue) are less than satisfied and 48.8% satisfied or very satisfied.

Greater disparities occur, however, when taking into account the industry in which companies operate or their annual revenues. When asked: "How do you rate the quality of patent being issued in the US today in your industry or field?" the results showed the not all large companies think alike.

Among computer, electronics and software (IT) companies responding only 40% said they are less than satisfied with the current state of issued patents. However, 10% of the IT group – more than twice the number of the overall survey – considers patent quality in their industry poor. This is in marked contrast to the chemical, Pharma and biotech area, where 54.5% were less than satisfied but not a single company reported quality in the poor range. And why not? Asserters with weak patents tend to prey on large IT companies with products on which several or more patents may read, and who do not want to risk an injunction or pay damages awards. Businesses with chemical or pharmaceutical products tend to be spared because invalidity is less of an issue because oftentimes one patent covers a single successful product or compound.

Size matters; so does industry

The largest companies (US\$50 billion or more

in annual revenues) were far less satisfied than merely big companies (US\$10 billion to US\$50 billion) and smaller companies (less than US\$1 billion). Those respondents in the smallest size group are the most positive, with a whopping 22.2% reporting they are "more than satisfied" with patent quality. The survey does not detail how many among the largest companies fall into IT, chem-pharma, and consumer-manufacturing categories. Perhaps, it should have.

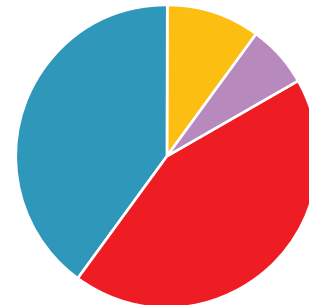
The questionnaire was sent to 139 companies, all of which were IPO corporate members and patent holders. Of those companies, 80 responded. Thirty companies were in the computer, electronics, or software field. Twenty-two respondents were in the chemicals, pharmaceuticals, or biotech field. Sixteen respondents were identified as consumer products, machinery, or general manufacturing. Twelve companies were in a field other than those listed.

Of the 80 companies that responded, 16 reported annual revenues exceeding US\$50 billion, 29 reported annual revenues between US\$10 billion and US\$50 billion, 26 reported annual revenues between US\$1 billion and US\$10 billion, and nine reported revenues less than US\$1 billion. Hence, 71 of 80, or 89%, of the respondents, were from companies that generate more than US\$1 billion in annual revenues. It would have been interesting to see differences in attitudes among companies in the lower end of the under US\$1 billion spectrum, who rely on fewer patents for freedom to operate or raise capital, and have less to lose in a possible counter-assertion.

Does size colour perception more than industry? To some extent, yes, depending upon the industry. Oddly, some large IT companies, disillusioned by uncertainty and long pendency, are suggesting an end to the patent arms race. They want to facilitate fewer, better examined patents that are less subject to dispute.

Patents are more abundantly filed and quicker to issue in the IT industries than in chemical or pharma areas. Big pharma wants to hold onto injunctive relief that can potentially shut down an infringing generic. In the IT world, that same approach can cripple a successful electronic device company like

Computer, electronics or software



■ MORE THAN SATISFACTORY 6.7%
■ SATISFACTORY 43.3%
■ LESS THAN SATISFACTORY 40%
■ POOR 10%

Source: IPO, patent quality survey

Blackberry maker Research in Motion (RIM). IT companies, thus, are more vulnerable to small companies, independent inventors or speculating trolls with dubious patents.

Are companies, especially IT companies, really helping the US and other PTOs to issue stronger, better researched patents that are less likely to be deployed unfairly? Is the legal system or are companies to blame for allowing inevitable disputes over inventions to become so costly to resolve? Perhaps a future survey will reveal more about this. For now, kudos to IPO for exploring how patent quality is as much a part of perspective as the law.

Patent quality is often confused with patent value. Some dubious patents are valuable, while many well issued ones are not worth the paper they are written on. Quality and value are rarely synonymous, but for most businesses bringing them into closer synch means less uncertainty and greater return. Investors take note.

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