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The "Dirty Little Secret of Patents" is that Most are Worthless to Their Owners. Here is Why.

Notwithstanding the vast corporate and entrepreneurial resources expended each year to file, prosecute, manage and maintain patents, a significant majority end up having little or no business value to their owners. Patents can end up being worthless for any number of reasons, most of which center on the fact that the claims do not cover a product or technology either currently or in the future being made, used or sold by either the owner or a third party. And, when a patent does not cover a current or future product or technology, one might argue its only residual value is as the attractive government document on the right.



No doubt exceptions exist to my bold assertion that most patents end up as worthless to their owners. That is why I used the qualifier "most" in my statement. (And, if the reader is a patent owner, I certainly am not referring to your patents because, [like the children of Lake Wobegon](#), all of your patents are above average.) Whether or not you agree with my opinion, or whether you think that only "many" or even "some" patents are worthless, with the resources committed to obtaining patent rights and the expectations placed in them by their owners, the question must then become "**why do any patents end up not having any value?**"

Most patent owners, both corporations and entrepreneurs alike, place responsibility for obtaining and managing their patent rights in the hands of patent professionals. The path to value goes astray at this point because it is not the patent professionals' job to obtain a patent that has business value, rather, it is their job to get the patent.

Specifically, the Patent Office grants patents to inventions that meet the legal requirements for patentability. A patent professional's job therefore centers on assisting inventors in identifying what subject matter might meet these government requirements and to successfully convince the patent examiner that the invention is "good enough" to justify others being prevented from freely practicing the subject matter claimed in the application.

Except for very limited circumstances, the Patent Office does not care a bit whether the invention claimed in a patent application is commercially successful. This means that the patent procurement process takes place almost exclusively in the legal realm. Even if a patent application was initially drafted and filed with clear business objectives in mind, legal arguments and the legal process itself typically begin to overshadow the business aspects of the invention soon after filing. In other words, the patenting process is fought in the legal

trenches where success is measured by successfully arguing for allowance of the application.

It is therefore not surprising that a patent professional's incentives are typically aligned with the legal process itself, not the business value obtained from the patent rights she obtains for her clients. Think about it: law firm patent attorneys are paid by the hour or by the project and in-house patent attorneys are paid to manage these outside attorneys or to obtain patent rights themselves. The efforts of few, if any, patent professionals are evaluated in relation to the business value that they create for their clients. Patent professionals are measured, and therefore incentivized, by their ability to obtain patents on inventions, while still keeping patenting costs at a manageable level.

Moreover, patent law is highly specialized and can often seem arcane to those not trained in the area. Even sophisticated business people often express reticence about venturing into the weeds of the patenting process, instead preferring that their patent specialists handle the details. This effectively cedes decision rights for patents and resulting determinations of value obtained to those incentivized for patent legal successes, not business successes.

With the incentives of those responsible for obtaining patents aligned primarily with successful management of the underlying legal process, it follows that the business aspects of a patent can often become a secondary factor. In my opinion, this is a primary reason why most patents end up providing little or no business value to their owners.

Of course, the way to fix the problem of worthless patents is to realign the incentives of those involved in the process of obtaining and managing them. The scope of such a project would require restructuring of the patenting efforts and expectations of many, if not most, participants in the patenting processes.

While I have strong opinions about how to accomplish this, my ideas are beyond the scope of this article. At a minimum, however, bringing measurement of business value obtained from patenting efforts will require business managers to exercise more interest and control over the process than they have in the past.