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A Balanced Approach to Patent Utilization

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A BALANCED APPROACH TO PATENT UTILIZATION

MARLO T. MIKSCHÉ[†] AND STEVEN W. ROTH[‡]

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I. INTRODUCTION

Inventors have historically used their patent rights to amplify advertising of their products and to protect their product marketplace (i.e., by excluding others from practicing their inventions¹). Times have changed. In addition to these classic approaches to utilization, companies now use their patents in a variety of other ways, including to gain publicity, influence standards organizations, engage in defensive licensing, reconfigure their portfolio, and pursue patent monetization.²

This article first explores the most common patent utilization mechanisms. It then discusses how to combine these mechanisms to support various utilization strategies. Finally, this article describes patent monetization and identifies factors at play in making monetization choices.

II. PATENT UTILIZATION MECHANISMS

A. *Types of Utilization Mechanisms*

At the outset, it is important to establish a definitional baseline surrounding the most common patent utilization mechanisms.

1. Exclusion / Litigation

By granting a patent, the government gives an inventor the right to exclude others from practicing his or her invention in exchange for its disclosure to the public.³ In the basic sense, the

¹ 35 U.S.C. § 154(a)(1) (2012) (describing the patent owner's right to exclude); *King Instruments Corp. v. Perego*, 65 F.3d 941, 949 (Fed. Cir. 1995) ("[A] patent confers the right to exclude others from exploiting an invention.").

² Colleen V. Chien, *From Arms Race to Marketplace: The Complex Patent Ecosystem and Its Implications for the Patent System*, 62 HASTINGS L.J. 297, 322–24 (2010) (discussing how companies such as IBM, Lucent, Harris Corporation, and others are able to generate revenue by licensing their patent portfolios).

³ Adam Andrzejewski, *Patent Auctions: The New Intellectual Property Marketplace*, 48 U. LOUISVILLE L. REV. 831, 832 (2010).

inventor is then able to reap the economic rewards of a monopoly by commercializing an embodiment of the invention during the term of the patent. Of course, exclusion is most readily applicable and effective in the case of market dominant products where successful litigation can yield legal monopoly power and/or significant royalty revenue.

2. Marketing

Patents are often used as a proxy for product or company value. Some companies, especially small ones, obtain patents for the sole purpose of promoting the inventiveness of their products. While the patents themselves may have very limited legal scope, they are nevertheless valuable as a marketing tool because patents connote leading edge technology irrespective of whether actual product value supports that impression. Companies also use the size of their patent portfolio to promote the company generally.⁴ Finally, bankers and investors can use patents to gauge company value.⁵

3. Freedom of Operation

Freedom of operation is another age-old patent utilization mechanism. There are many different variants of freedom of operation (sometimes called freedom of action), but fundamentally this utilization mechanism operates just as its name suggests—by providing companies with freedom to make, use, and sell products without exposure to royalty obligations, litigation risk, and

⁴ See, e.g., *IBM Tops U.S. Patent List for 20th Consecutive Year*, IBM (Jan. 10, 2013), <http://www-03.ibm.com/press/us/en/pressrelease/40070.wss#release>.

⁵ See Lee Spears, Sarah Frier & Leslie Picker, *Twitter Said Likely to Price IPO Above Increased Offer Range*, BLOOMBERG (Nov. 4, 2013), <http://www.bloomberg.com/news/print/2013-11-04/twitter-said-likely-to-price-ipo-above-increased-offering-range.html> (discussing Twitter's patent portfolio relative to its competitors in the industry as a factor in IPO price).

injunctions.⁶

One of the most common examples of freedom of operation at work is the case where two operating companies engage in cross-licensing negotiations to each obtain a license to the other's patent portfolio.⁷ The licenses that stem from these arrangements can take a variety of forms, often with money changing hands, but the basic premise is in a way analogous to mutually assured destruction: "I have enough patents to successfully sue you and you have enough patents to successfully sue me, so let's just agree to license one another and compete on the basis of our products alone."

4. Licensing

Previously discussed was the use of the licensing utilization mechanism in the context of freedom of operation, but the use of patents in licensing is not limited to this context. In fact, patent licensing is often utilized solely for purposes of generating revenue, making it one of the pillars of a patent monetization program. This practice is used by operating companies and non-operating companies alike. Of course, non-operating companies (commonly called non-practicing entities (NPEs)) benefit greatly from this utilization mechanism because they do not typically sell products that could be exposed to another entity's patents.

5. Assignment

Assignment is the sale and transfer of ownership of a patent from the patentee to an assignee.⁸ The patentee may assign all or

⁶ Esteban Burrone, *New Product Launch: Evaluating Your Freedom to Operate*, WORLD INTELL. PROP. ORG. [WIPO], http://www.wipo.int/sme/en/documents/freedom_to_operate_fulltext.html (last visited Nov. 18, 2013).

⁷ *Id.*

⁸ Philip Mendes, *To License a Patent – or, to Assign it: Factors Influencing the Choice*, WIPO, http://www.wipo.int/export/sites/www/sme/en/documents/pdf/license_assign_patent.pdf (last visited Nov. 18, 2013).

part of the rights associated with a patent.⁹ Assignments must be in writing¹⁰ and are irrevocable.¹¹ While one party can assign a patent directly to another party for a variety of reasons, patents are most typically transferred to generate revenue for the transferring party. Therefore, the patent assignment utilization mechanism, like patent licensing, is an important component of a patent monetization program.

6. Patent Acquisition

Patent acquisition is the acquisition of one or more patents for threat removal or use with other utilization mechanisms. Threat removal, which involves purchasing patents to avoid exposure, is used in a manner similar to cross-licensing to support freedom of operation.

7. Portfolio Reconfiguration

Portfolio reconfiguration is the sale or acquisition of a patent to tune a patent portfolio to support operational goals. This utilization mechanism recognizes the inherent self-configuring nature of a patent portfolio. More specifically, patents that represent surplus coverage can be sold to generate revenue that is then used to purchase patents to satisfy areas of deficient coverage. Of course, trading patent assets is also possible.

8. Revenue-Focused Litigation

This utilization mechanism involves the use of litigation to

⁹ *Waterman v. Mackenzie*, 138 U.S. 252, 255 (1891) ("The patentee or his assigns may, by instrument in writing, assign, grant, and convey, either (1) the whole patent, comprising the exclusive right to make, use, and vend the invention throughout the United States; or (2) an undivided part or share of that exclusive right; or (3) the exclusive right under the patent within and throughout a specified part of the United States.").

¹⁰ *Waymark Corp. v. Porta Sys. Corp.*, 334 F.3d 1358, 1364 (Fed. Cir. 2003) ("Only assignments need be in writing under 35 U.S.C. § 261. Licenses may be oral.").

¹¹ Mendes, *supra* note 8.

support patent licensing. Licensing payments and royalty obligations are not typically budgeted expenses so many companies are loath to enter into licensing arrangements absent palatable concern over litigation risk. Therefore, patent holders who wish to effectively monetize their patents via licensing must occasionally resort to litigation to create an environment that engenders at least a nominal level of anxiety with prospective licensees.¹²

B. Examples of How Entities Employ Utilization Mechanisms

Patent holding entities will use various subsets of utilization mechanisms to further their particular operational goals. This section of the article sets forth a few of the most common utilization modalities.

1. Operating Companies

As used in this article, an operating company is a company that makes and sells products to generate revenue. Operating companies, large ones in particular, engage in patenting activity as an adjunct to product research and development.¹³ Therefore, the chief operational goal of operating companies is product support, so patenting activity tends to be product focused. However, operating companies nevertheless still have a large number of other operational goals in which patent utilization can come into play. Examples include: revenue generation, merger and acquisition support, and expense recovery.

In this sense, many operating companies make use of all of the different utilization mechanisms. For example, operating companies may bolster their product marketing efforts by touting associated patents so as to differentiate their products from

¹² See Chien, *supra* note 2, at 324–26 (explaining that offensive assertion of a company’s patent rights is a necessary step in a broad patent monetization strategy).

¹³ *Id.* at 315.

competitive products. An operating company may also initiate litigation to enjoin a competitor's product activities, pursue freedom of action via cross-licensing, and/or generate revenue through patent monetization.

2. Aggregation Entities

Aggregation entities, often referred to as “patent aggregators,” exist to support the operational goals of their members.¹⁴ Since their members are typically operating companies, aggregation entities focus primarily on product support. It is no surprise, then, that aggregators make extensive use of freedom of operation. Aggregators, however, also make use of other utilization mechanisms. In fact, in a typical scenario, an aggregator will make use of many of the various patent utilization mechanisms. For example, an aggregator will acquire one or more patent assets so as to remove the threat posed by those patents to their members. The aggregator may then license the patent(s) to its members, hold the patents or sell them (i.e., for expense recovery). In the case where the aggregator holds a particular patent, the aggregator may ultimately assign the patent to one of its members for that member's use in litigation or licensing. Of course, the aggregator is inherently engaged in portfolio reconfiguration as its primary mission involves purchasing and selling patents based on its members' needs.¹⁵

3. Licensing and Enforcement Entities

A licensing and enforcement entity is an entity that typically does not produce or sell any products, but owns one or more patents which it attempts to license to others.¹⁶ These entities are

¹⁴ Anne Kelley, *Practicing in the Patent Marketplace*, 78 U. CHI. L. REV. 115, 119–120 (2011).

¹⁵ *Id.*

¹⁶ Raymond Millien & Ron Laurie, *A Survey of Established & Emerging IP Business Models*, 9 SEDONA CONF. J. 77, 78 (2008).

often referred to as NPEs, or pejoratively as “patent trolls.”¹⁷ A licensing and enforcement entity either purchases the patents that it is asserting, or in some instances, the inventor of the asserted patent portfolio forms the licensing and enforcement entity.¹⁸ When negotiations fail with a potential licensee, the licensing and enforcement entity may ultimately file a patent infringement suit against the recipient.¹⁹

The clear and typically sole operational goal of the licensing and enforcement entity is revenue generation. Revenue is generated from license fees, litigation awards, and settlements.²⁰ The licensing and enforcement entity employs the following utilization mechanisms: (1) Licensing, when it negotiates a license with a licensee; (2) Revenue-focused Litigation, when it files an infringement suit after licensing negotiations have failed; (3) Patent Acquisition, when it purchases or acquires the patents that form the basis of the portfolio it is asserting; and (4) Portfolio Reconfiguration, when it assigns patents it no longer needs in its portfolio.

4. Agent or Consultant Entities

Agent or consultant entities operate based upon the needs of their client. These entities include auction houses, licensing agents, and patent brokers. The goal of this type of entity is to generate revenue by providing services to its clients, which can implicate any of the utilization mechanisms. For example, an operating company may have a set of patents that it no longer needs for product support, so the company may contact a patent broker to assist in selling those patents, which calls for the patent broker to use the assignment mechanism when it assists in the sale of the operating company's patents. Another example is the case in which

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

an operating company holds patents that it would like to license for the purposes of revenue generation. If the company does not have its own internal patent licensing capability, an agent entity may be engaged to license the company's patents.

III. PATENT MONETIZATION

Patent monetization is the process of using a patent to generate revenue beyond simply selling a product that embodies the patented technology. In some cases, underlying products lack commercial success, so patent holders turn to their patents to generate revenue. In other cases, a patent holder seeks to generate additional revenue beyond that which is generated by the products themselves. Whatever the reason, patent monetization is a difficult and complicated endeavor and one that should not be undertaken without considerable thought and planning.

A. Go-To-Market Planning

Anyone knowledgeable in product marketing will tell you that a go-to-market plan is crucial to success. A successful patent monetization program is no different. Therefore, constructing a strategy for delivering the value proposition to a customer (i.e., a patent purchaser or licensee) is exceedingly important. Textbook go-to-market thinking involves understanding the customer, the product itself, product pricing, product promotion, and customer segmentation. An effective patent monetization program involves variants of these same considerations.

1. Understanding the Customer

Understanding the customer's needs in the context of the patent holder's needs should be first and foremost on the mind of the monetization program designer. As important as this requirement may be in the product context, it may actually be more important in the world of patent monetization. The intangible nature of a patent along with the flexibility with which rights can flow from one party to another make patents a highly tunable product. It follows, then, that the customer's needs drive how the product is

tuned. Part and parcel to this inquiry is the patent holder's needs. While the whole point of patent monetization is revenue generation, the patent holder may be tactically focused on near term revenue generation or the patent holder may be strategically oriented and as a result be more interested in driving a long term revenue stream. Just like the customer's needs, the patent holder's needs affect how the product can be tuned.

The two primary ways in which patents are monetized are patent licensing and patent sales/assignment.²¹ While circumstances vary, a large customer entity with a large existing portfolio may be more interested in patent licensing to further freedom of operation needs than in acquiring patents to bolster their patent holdings. A smaller customer with no patents may be interested in patent acquisition to establish a portfolio.

In this connection, a patent holder looking for tactical revenue will likely be focused on patent sales because these types of transactions are typically easier to conduct and conclude. A strategically oriented patent holder on the other hand, may be more focused on patent licensing, which, while more difficult, tends to be more lucrative.

2. Understanding the Patent Product

In the patent monetization context, the product is the patent or patent set in combination with the various agreement constructs through which patent rights flow from one party to another. We previously mentioned that the two primary patent monetization activities are patent licensing and patent sales. It should be understood, however, that a patent is a bundle of rights and that patent licensing and patent sales are really just known places on the continuum of rights that can flow from one party to another. Again, this inherent flexibility makes the patent product highly

²¹ See Andrzejewski, *supra* note 3, at 837 (discussing that while “[l]icensing has been the classic way of monetizing intellectual property rights,” outright patent sales have certain advantages).

tunable.

We rely on the concept of patent differentiation to understand the patent part of the patent product. Patent differentiation is best explored in the context of portfolio development where it can be the subject of separate articles and discussion. Accordingly, we only briefly touch on the subject here to give the reader a flavor of its value in the patent monetization context. In its simplest form, the notion of patent differentiation involves an understanding about as much of each patent as possible. Then, as understanding grows, the patents begin to differentiate themselves in several different ways (or dimensions). In this article, we will briefly explore three of the more important dimensions of patent differentiation.

We refer to the first of these dimensions as the market dimension. The market dimension, which involves the understanding of how a patent set applies to a particular product marketplace, is important to an effective monetization program. The product marketplace to which we refer in this case is the customer's product marketplace. For instance, if the customer is in the medical device field, patents that relate to GPS technology will not likely be of interest to the customer; whereas, patents that relate to pacemaker technology may well be of interest. These two sets of patents then have differentiated themselves in the market dimension. We make passing note of the observation that too much patent holder product focus hinders patent monetization because such a focus yields patents that relate to the patent holder's product marketplace and not necessarily to the customer's product marketplace, relegating monetization to only those areas where the two product marketplaces overlap.

The next patent differentiation dimension discussed is the knowledge dimension. The knowledge dimension involves understanding how much is known about one patent relative to another, "knowing what you know and knowing what you don't know" so to speak. For example, consider a hypothetical patent holder who owns three patents, Patent A, Patent B, and Patent C.

Suppose Patent A and Patent B have been the subject of considerable licensing and litigation activity, with Patent A having played a role in significant revenue generation and Patent B having been found mostly invalid after being unsuccessfully asserted in litigation. The patent holder has acquired in-depth knowledge of Patent A and Patent B. Continuing the example, the patent holder has spent very little time studying Patent C or using it in licensing or litigation. These three patents have now been differentiated in the knowledge dimension. Like the market dimension, the knowledge dimension is very important from a monetization perspective because the patent holder understands which of their patents can be accurately valued and which cannot.

The third patent differentiation dimension is the value dimension. This third dimension simply recognizes that once a set of patents is well understood, the patents differentiate themselves based upon value. Using the three patent example above, the patent holder knows that Patent A is much more valuable than Patent B, and that the value of Patent C is currently unknown or speculative at best.

In sum, patent differentiation concepts are very important to the monetization program designer because they provide the knowledge necessary to understand the patent part of the patent as a product.

The second part of the patent product is the various agreement constructs that effectuate the transfer of patent rights from one party to another. As mentioned, these constructs permit the patent product to be highly tunable. Like patent differentiation, the agreement construct subject is one that deserves separate and extensive treatment; however, we do briefly touch on some key aspects below.

If the agreed upon transaction is an assignment of a patent or a set of patents from one party to another, the assignment agreement put in place to realize such a transaction can take on a variety of forms. Two of the more interesting and consequently debated

aspects of a patent assignment involve possible reservation of rights by the patent holder and future entitlement to existing licensing payments and/or ongoing royalties. An operating company that sells patents will want to reserve rights in the patents it sells to support past and future product sales. These reserved rights amount to a license back to the patents sold. Reserved rights are seen as encumbrances by the purchaser and translate directly into value diminution.

The question over which party receives ongoing licensing and running royalty payments is also often hotly debated. The assigning entity will of course want to retain the right to such payments, while the purchasing party will want to receive the benefit of future payments. As with reserved rights, the way in which the patent assignment agreement administers these payment rights ultimately affects the value of the patent product.

Like patent assignment agreements, patent license agreements can take on a variety of forms. In fact, we believe most would agree that license agreements have an even higher level of variability than assignment agreements, making them even more tunable. Some of the more interesting concepts and structures are explored below.

Two of the most fundamental considerations in a patent license are scope and term. Scope defines the patents that are the subject of the license while term defines the period of time the license remains in force. License scope can vary from a specific patent or set of patents (an enumerated license) to a defined cross section of patents and products (a field license) to simply all the patents owned by the patent holder. Scope can also include patents issuing on known patent applications, patents that issue in the future (a capture period), and acquired patents.

Patent term is equally variable, ranging from something as simple as a specified term of years to something as complicated as life of patents now held and obtained by the patent holder for a specified time.

Beyond scope and term, there are several interesting higher-level constructs that can be used to tune the patent product to satisfy particular patent holder and customer needs. One such construct is a springing license. As its name suggests, a springing licensing is one in which rights “spring to life” on the occurrence of a particular event.²² Example events include the sale of a patent, the initiation of a lawsuit, the license of a patent to a third party, etc. The value of such a construct in the patent product context is that the cost to the customer can be less because no patent rights actually flow, absent occurrence of the triggering event. The downside to this construct, however, is the encumbrance that attaches to affected patents. Patent encumbrances come into play when determining the value of patents being sold. The point here is that the value received for a springing license is typically less than that of a more typical license, but the diminution of sale value that is attributable to the encumbrance is the same.

Another interesting patent license construct is the exploding license. An exploding licensing is basically the inverse construct of the springing license. Instead of rights springing into place, rights explode based upon the occurrence of some event.²³ While possible triggering events can vary, the most common triggering event is the sale of the patent, such that a customer has rights to a particular patent or set of patents until and unless the patent holder sells the patent. The swing between positive and negative effects of this construct in comparison to a springing license are fairly attenuated. Suitability of the construct requires a very specific set

²² See CORP. COUNSEL'S GUIDE TO INTEL. PROP. § 14:15 (2013) (describing the license held by a third party in *In Re Storm Technology, Inc.* as a springing license because it did not take effect unless a specific future event occurred); BLACK'S LAW DICTIONARY 751 (3d pocket ed. 2006) (defining springing use as "a use that arises on the occurrence of a future event").

²³ See Michael N. Widener, *Safeguarding "The Precious": Counsel on Law Journal Publication Agreements in Digital Times*, 28 J. MARSHALL J. COMPUTER & INFO. L. 217, 231 (2010) (describing an exploding license as one that allows an author to terminate a license upon the occurrence of a particular event).

of facts, which tends to reduce its value to the customer, but at least in the case of a sale as a triggering event, there is no diminution of value.

Two other interesting constructs are the library card construct and the draft pick construct. The library card construct involves the notion of the right of the customer to “check out” a patent for a particular use (usually licensing or litigation) and then check it back in afterwards. This structure can be a particularly useful tool for patent aggregators as they look to provide intelligent defensive support to their members.

The draft pick construct typically provides the customer with a license to a set of unspecified patents. The customer is then able to pick patents from the set to include in the license for a specified period of time. This particular construct is often successfully paired as a defensive mechanism with an enumerated license, effectively deterring a patent holder from bringing an action against a customer for one or more patents that are not included in the customer’s enumerated patent license.

3. Pricing the Patent Product

Patent valuation is one of the more difficult aspects of patent monetization.²⁴ This difficulty stems in large part from the intangible nature of a patent as an asset.²⁵ Varied agreement constructs, the encumbrance effects of licensing, differing levels of knowledge, and the uncertainty of future value only serve to make the valuation task more difficult.

Those who specialize in patent valuation understand that valuation is a very fact specific inquiry, with each patent typically

²⁴ See Gavin Clarkson, Note, *Avoiding Suboptimal Behavior in Intellectual Asset Transactions: Economic and Organizational Perspectives on the Sale of Knowledge*, 14 HARV. J.L. & TECH. 711, 716–17 (2001); Kelley, *supra* note 14, at 124–25.

²⁵ See Clarkson, *supra* note 24 at 716–17.

requiring the evaluation of a different set of factors. A non-exhaustive list of factors include: past licensing and royalty payments, subjective evaluation of value, effectiveness in litigation or licensing, encumbrance level, exposed unlicensed revenue, applicability of evidence of use, remaining patent term, product association, and defensive value. Irrespective of the particular factors used to arrive at a price, it is crucial from a go-to-market perspective to be able to intelligently articulate the pricing methodology to the customer. The absence of a rational pricing theory promotes discomfort and uncertainty for the customer, which ultimately negatively impacts deal success.

4. Promoting the Patent Product

We view patent sale promotion and product sale promotion as being very similar, but patent licensing promotion as being quite different. Taking patent sale promotion first, a patent holder has a variety of approaches through which patent value can be touted and communicated. Some approaches are quite general and non-patent specific while other approaches are very specific to the involved patent or patents. On the general side, patent holders sometimes rely upon commercially available tools that rate and rank patents and patent portfolios. The patent holder is then able to promote their patents through reference to the value attributed by these independent third party tools. Another, more specific, approach is to associate evidence of use with particular patents to show a customer how the patents could be used in the future. This approach can be used in the context of a competitive bid environment (i.e., an auction) or in the context of a particular customer's needs (e.g., litigation).

As mentioned above, patent licensing promotion is quite different than patent or product sale promotion. Therefore, we see the applicability of the promotion aspect of go-to-market planning as being strained in this context. Instead of conferring an asset upon the customer, like in the case of a patent or product sale, the subject of a patent license is really risk avoidance. Therefore, the

tone of a patent licensing negotiation tends to be more negative than that of a patent sale; sometimes considerably so. The promotion of a patent license, therefore, requires the injection of doubt by the patent holder into the customer's value equation. Doubt in this connection usually takes the form of uncertainty about the outcome of potential litigation with the patent holder (or a downstream assignee of the patent), but it can also take on the form of uncertainty over the continued viability of other business dealings, like product purchases.

B. Licensing and Sales – Balancing the Choice

As discussed, a patent monetization transaction will typically comprise a license, an assignment, or some combination of the two.

There are several factors that go into the choice between patent licensing and patent sales. For the most part, these choices involve the interests of the patent holder, although certain customer considerations can also come into play. As briefly mentioned above, it is often easier to drive tactical revenue via a patent sale than a patent license. This tendency stems from the incoming asset nature of the patent sale. By way of example, a customer with defensive litigation needs will typically be prepared to act quickly to purchase defensive patent assets; whereas, a customer attempting to gauge future risk avoidance value will tend to move much more methodically, even stalling at times. Of course the upside to the patent license approach is retention of the asset with the downside of a patent sale being loss of the asset. Regarding this downside, it is sometimes helpful to think of patents like trees. They both take a long time to grow and mature, and once the patent is sold or the tree cut down, as the case may be, the owner needs to start all over again.

Two other important patent sale factors are inventory and freedom of operation. These factors are interrelated. If an operating company patent holder has a surplus of patents in a particular field, freedom of operation concerns do not come into play, but if such a

surplus does not exist, the patent holder must weigh the value of the remuneration received in the patent sale against the diminished freedom of operation capability brought on by the sale.

Two additional patent licensing considerations are the encumbrance effect and increased patent differentiation. Both of these considerations come into play in the context of how patent licensing activity affects downstream patent sale activity. Speaking first about the encumbrance effect, a decision to license a patent is a decision to reduce its sale value during the term of a license, and of course if the term of the license is coextensive with the term of the patent, value diminution is permanent. Increased patent differentiation, on the other hand, is a two-edged sword that may increase or decrease downstream patent sale value. As discussed above, as patents are exposed to licensing activity, the patent holder learns more about the patent's value, up or down.

IV. CONCLUSION

Patent utilization represents a very interesting confluence of law, technology, and business practices. In this connection, patents can be used to promote a wide variety of business needs. These needs vary from product marketing to product protection to revenue generation. At the same time, poorly thought out patent utilization strategies result in greatly diminished effectiveness. As such, patents amount to a powerful, yet fragile, business asset that must be intelligently managed and exploited to maximize operational goals. We are hopeful that this article provides a degree of assistance in this endeavor.