

## New Age Intellectual Property: Emerging Global Benefits

By Lawrence J. Udell

I originally wrote this article in the year 2000, which was a hectic time, especially with the potential disruption of it being the start of a new century and how would “modern” technology survive in the dilemma of Y2K and the new millennium. Well it did and we all gained a better knowledge of the high-tech world.

As I now look back at the exciting times that I have lived through over the past 83 years, this article today has a significant new meaning. Since the introduction of the Internet, intellectual property has not only found its special place in the world economic markets, but also is steadily establishing new values and new business opportunities. Hundreds of companies have been created over the last decade for the sole purpose of selling, licensing and transferring new technologies.

The World Wide Web has become an effective tool for this process and can showcase new technologies to a myriad of potential users. Since there are no geographic boundaries, the world becomes the market and continually enhances what is today a knowledge-based global economy.

This does present a great many intellectual property issues as to rights and the ability to transfer said rights. Potential infringement would not be recognized until exposed to the world. This of course is establishing new opportunities for not only law firms but international consulting conglomerates that not very many years ago were called accounting firms.

An example of the success of this new process is the dramatic increase over the last few years in licensing revenue. License Global estimated that in 2012 the world’s top 150 brand licensors generated US\$230 billion globally. The Disney Company alone generated \$39.3 billion.

It has been estimated that in the U.S. there are several trillion dollars’ worth of non-performing or dormant intellectual property assets. Considering that the U. S. Patent & Trademark office in the year 2013, issued 305,081 patents, which is 5,867 every week, and at the same time received 11,564 new applications every week, makes the potential value even greater. These figures have basically doubled in

the last decade. Bill Gates in an interview with the *Washington Post* stated that, “Patents are the new gold rush.”

According to statistics issued by OMB (April 2012) IP intensive industries create 27.1 million jobs and indirectly support another 12.9 million jobs. IP is also critical to our balance of trade; IP intensive industries accounted for \$5.06 trillion in value added, or 34.8 percent of the U.S. gross domestic product.

It is a well known fact that over 95 percent of all patents issued are never commercialized. So, whether it is an individual inventor or a corporation, there are literally millions of patents that are not being exploited. We can understand that with the individual inventor, this is very often due to lack of funding or that the product has no market. However, with the corporation, after going to the extensive time and expense from concept to patent, and not following the commercialization process, you have to ask, why?

There is a myriad of answers, from poor calculations of the market, to not having a competitive advantage, to other potential products taking priority, *etc.* These are but a few of the contributing factors to why companies end up with patent portfolios that are not producing income. This also applies to universities and research facilities, including private and federal laboratories.

When you consider the thousands of websites currently featuring technology transfer information or access, is it any wonder that the filing cabinets are opening? The National Technology Transfer Center in Wheeling, West Virginia, was an early attempt to move technologies from NASA into the private sector. It was created in 1989 by Congress, to provide American companies with access to federal R&D for the purpose of competing in the international marketplace. They have expanded their efforts to where

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they now have a great success record and proof that invested tax dollars in federal R&D can provide a real transfusion to the U.S. economy.

This is also true of the SBIR program initiated by Senator Warren Rudman (D-NH) in 1982 which has provided over \$30 billion to American small business and allocates over \$2 billion a year by the eleven federal agencies. I had the pleasure of providing early input into the program with Lee Mercer, Chief of Staff to Senator Rudman.

Since those early days over 30 years ago, the Internet has provided innumerable advantages. Information access has made it much more difficult for companies and people to protect valuable assets. What has become a big business and often overlooked, is corporate intellectual property espionage. According to the U.S. Chamber of Commerce, it is costing corporations well over \$100 billion a year in IP losses.

In the late 80's and early 90's I was teaching accredited courses in Entrepreneurship at California State University and lecturing throughout the U.S. and Canada on the ever-increasing value of IP. With a background in IP since the late 1950's, I assembled a small team of business and university colleagues and created a new program called T-MAP. This was the acronym for "Technology Market Assessment and Profiling."

The program consisted of matching federal lab scientists and their technologies with teams of business school students. The student team motivation was, "If you owned this technology, how could you become independently wealthy?" The program was co-funded by DOE and the various labs, such as Sandia and Lawrence Livermore. Each student team had a volunteer retired or corporate executive who served as their technical and business mentor.

Over the four years of its operations, hundreds of technologies were evaluated and several licenses consummated with corporations of all sizes. Stories of the program appeared in major publications, including the *Wall Street Journal* in 1993. It was truly a hands-on learning experience for not only the students, but the lab researchers who were educated in real world dynamics.

We have all been witness to the fact that a single invention can create a huge industry. Consider just the last fifty years, with such shining examples as the: transistor, integrated circuit, Kevlar, fiber optics, personal computers, MRI scanner, space shuttle, microprocessor, the laser, DNA, GPS, *etc.* A great example that I had the privilege of witnessing was the LCD (Liquid Crystal Display) invented and licensed

worldwide by my former colleague and dear friend James Fergason, who at the time of his passing on December 9, 2008 held over 150 U.S. and over 500 foreign patents. Jim was inducted into the National Inventors Hall of Fame in 1999. His invention has led to a multi-billion dollar industry that employs over a million people throughout the world. He was a shining example to inventors everywhere how a humble Missouri farm boy became a multi-millionaire entrepreneur. We often traveled together giving speeches for the USPTO. In 2006 he was awarded the Lemelson-MIT award of \$500,000, which he donated to various children's hospitals. I was proud to have nominated him.

The federal government's budget for research and development in 2014 is \$140 billion. When you add the federal laboratories, universities, colleges, non-profit R&D facilities, plus American corporations, collectively there is a staggering \$450 billion-plus a year spent on R & D. The results are obvious with the employment and positive economic conditions that exist. This is a contributing factor to motivation for creativity and invention which is the greatest stimulation for the creation of improvements and new technologies.

Now consider the demise of hundreds of dot-coms that have failed over the past few years. If you look carefully at those who had a very limited lifespan, you will find that they did not own any intellectual property or, if they did, it could not be validated. They were basically smoke and mirrors. The perception of value was created by the hype and the extraordinary amount of private and venture capital that was invested. This was a great period in America, since multi-millionaires were being created on a daily basis. It proved that a good new idea could create a company, especially when supported by an experienced management team. Whether it survived or not was not always the criteria, the money chase obliterated good logic.

Within the past several years the venture capital industry pumped billions of dollars into computer and Internet companies. Today the objective is still profits and return on investment, but done with far more conservative planning and much better detailed due-diligence on the technology, intellectual property and management team.

The firms that sell the assets of the failed dot-coms can easily place a value on furniture, computers and other tangible inventory. The problem is attempting to put a value on the intangible, such as patents, *etc.* After burning through \$135 million in venture capital, the British fashion site *Boo.com* sold off its IP

system for just \$375,000. An important negotiating ingredient is if the IP has any issued patents or pending. The intelligent comparison of values becomes obvious since there is no guarantee that the patent(s) will ever issue, so what is there to sell?

By the same token, in bankrupt situations there may not be a clear written document of who really owns the technology. The inventor and so often a co-founder assigned his or her rights to the corporation in exchange for equity. When the company is dying, then the question is asked; “If I exchanged my intellectual property for stock, and the stock isn’t worth anything now, do I get my IP or patents back, or are they sold to satisfy the creditors?”

Should the intellectual property not sell, the rights could revert to the bank that provided loans, or remain with the asset-management firm given fiduciary control over the assets. In such a situation, the original reason for the company’s founding may be based upon the IP, which has now been reduced in value, unless it is worth something to a competitor, who will buy it for a few cents on the dollar.

A great many companies are waiting in the wings to pick over the carcasses of those who are dying on the roadway to success. Why invest lots of money in creating new IP if it can be purchased for almost nothing? Sherwood Partners in Los Angeles, which liquidated assets for several tech companies was quoted as saying; “You’re buying a dream that’s not completed yet.”

However, there are more success stories than there are failures. Experience of success comes from the doing. Failures are a great lesson in what to do right the next time. The news media rarely provides stories on business failures.

The new products and technologies of tomorrow will come from the fertile minds of today’s creative inventors. Whether they are working in laboratories or in the garages of America, what they can envision can become reality. Technological progress has and is moving at an accelerated rate, since what is invented today creates the spark for the improvements of tomorrow. Nothing is standing still.

I can remember my participation in a challenge presented by Ken Olsen about 40 years ago. As the founder and Chairman of Digital Equipment Corporation and one of America’s early premier entrepreneurs, the patent portfolio owned by DEC included over 1,500 issued patents. The objective was to isolate those that had the potential to be licensed for a new source of income. The strategy that was created worked, however, in those days even the words

“technology transfer” or “commercialization” was not seriously considered. Also, there was no Internet to utilize for broadcast, or companies that would even consider taking on the challenge.

When you consider that today huge multi-national corporations are investing in the creation of their own incubators, which not only serve as a means to keep creative people within the company, but also allows them to be a part of a new entity that is funded by the mother corporation. The result is greater diversification, and the ability of the offspring to grow at a fast rate, because of its relationship with the parent. Over the last several years I have had personal experience working with not only companies, but countries that are establishing their new venture innovation incubators with the help of the United Nations and others.

The obvious results are greater employment, increased exports and a healthier economy. This benefits both the World Bank, and all those who are providing much needed resources into nations that are attempting to become more self sufficient.

In looking back, Edison was credited with hundreds of inventions and products that we have taken for granted. However, one of his greatest achievements is recognized as creating the research and development process and laboratories to prove the concepts. When you think of Henry Ford, you immediately relate to the automobile, however, one of his greatest recognized accomplishment’s was creating the manufacturing assembly line.

Today, the driving force in the world economy is inventions and technologies. It was not long ago when material assets, such as equipment and buildings were the priority, but not today since they have been replaced by intellectual property which now has established value on the corporations’ books. Shareholder value has a whole new meaning.

One great example of the new age focus on intellectual property is IBM. For the last twenty-one years they have been number one in patents granted. In 2013 they were issued 6,809. It is easy to understand why they earn over a billion dollars a year in licensing royalties and have over 250,000 scientists and researchers. This goes right to the bottom line.

Instead of the conglomerates created in the 1960s through ‘90s, we have learned the value of “strategic alliances” in pursuing corporate earnings. Now, the small company with patents can deal equally with the big corporation who has all the resources to exploit the intellectual property. A common bond has been found.

Only one of many examples of technological



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progress can be found in farming. In 1900 in the United States, 35 percent of the population (of 75 million) worked on farms or in the transportation of agricultural products. In 2013 with a U.S. population of 330 million, it is 2 percent who were producing more crops because of revolutionary technology; from bio-engineering to the tractors that are locked into satellites that provide a myriad of information for greater crop yield and production methods. We now have what is called “Precision Farming” born from the new technologies that progress and invention has created. American farms and ranches produce (at retail) \$547 billion to the economy.

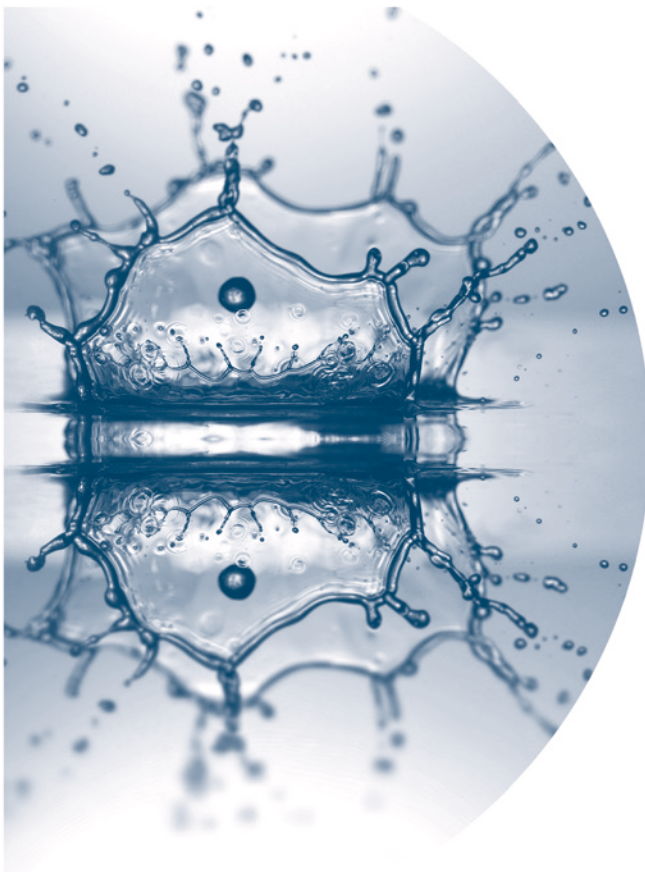
In 1900 the average citizen could expect to live to about 50 years. Today that has changed to 84 years and rising. Since 1950, more financial wealth has been generated in the U.S. than was created in all the rest of the world since time had begun. In 1900 there were approximately 5,000 millionaires in America. Today it is estimated there are over five million. We are a Nation of creators and doers that never learned about limitations.

We each can personally think of those inventions

and improvements that have had a major positive effect on our own lives. Not only from our health and the medicines that keep us well, but the diagnostic equipment to quickly analyze what is wrong and how to cure it. Just think back to our grandparents and the life that they took for granted, and compare it to today. Now project your thoughts into the future, where our grandchildren will be so much better off because of what we are inventing and discovering in labs and research centers throughout the world.

One thing is for sure, the creation of intellectual property will continue on an accelerated basis, with increased demands by industry and the consumer. IP is a whole new business that is not only changing the world today, but will continue for centuries to come. When technological progress ceases, then so will mankind.

So in summation, the obvious is that intellectual property is an unlimited and inexhaustible resource that is changing the course of destiny on an almost daily basis. Tomorrow is the future that we are creating today. ■



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