

Extinction-level event: out of adversity, opportunity

Recent legislative, judicial and regulatory developments mean that established, assertion-based patent monetisation models in the US face a potentially bleak future. However, this could encourage new types of businesses that revitalise the bond between patents and invention

By **David Kline**

The gentleman stood quietly dignified, gazing around the room at all the eager young deal makers networking with one another at the IPBC Global in San Francisco in June. He had witnessed this sort of scene before – indeed, he had been there at the birth of the IP monetisation industry itself, helping to transform patent licensing from an ancillary function of technology-centric companies into a highly lucrative standalone business. He was, you might say, one of the original 49ers (along with Marshall Phelps) in the patent licensing gold rush, and he had made a great deal of money for himself and others.

One might expect such an industry veteran to have felt wistful at the sight of all those younger, hungrier players. He had been young and hungry once, too. But in his eyes I saw only relief, as if he believed that he had just dodged a very large bullet.

“You know, if I were a young man just starting out in this business today...” he paused a moment, then smiled apologetically. “To be honest, I would find myself a new career.”

End of the line

Welcome to the end of the line for the patent assertion gravy train. Patent licensing will continue, of course, but only

rarely as a standalone business relying primarily upon litigation to generate revenues. And even then, the survivors will tend to be well-capitalised firms with high-quality assets (and an even higher tolerance for risk) that can adroitly adjust their business models, licensing methods and brands to suit today’s decidedly unfriendly post-America Invents Act and post-*Alice* legal and regulatory environment.

As *IP Watchdog* editor Gene Quinn observed: “There is no longer a viable business strategy for those who were simply buying a patent or portfolio and rushing to the nearest patent litigation firm. The fact that easy money cannot be made [however] does not mean that there is no money to be made. The path to money is longer, more difficult and requires thoughtful business knowledge and industry acumen.”

True enough, but make no mistake about the gravity of today’s situation. The patent licensing industry is facing nothing less than an extinction-level event. IPXI, Conversant, Acacia, Wi-LAN, Inventergy, Jay Walker’s Patent Properties (now renamed Walker Innovation, Inc) and virtually all public or private standalone licensing companies are recalibrating, retrenching, diversifying their business models or in crisis (if not becoming extinct outright) as patent asset values collapse and portfolio monetisation prospects depreciate in the face of court and licensee opposition. And there are no signs that things will improve any time soon.

That is the bad news. The good news is that extinction events tend to trigger great surges of innovation among the survivors. In biology, mass extinctions have always been followed by the rapid innovation of new body designs and their adaptive radiation into new ecological niches. In the IP industry, today’s inhospitable (and

for some, unsurvivable) new environment is already sparking unprecedented innovations in IP business models.

Examining these innovative new models, it soon becomes clear that most share a common feature. The most successful new business models involve reconnecting patents in some fashion to invention again, as well as to operating businesses with real products and services.

Before we explore these innovative new IP business models in detail, let us first triage some of the casualties that are littering the patent licensing landscape.

Great in theory, not so in real life

The canary in the coalmine that heralded the cave-in of standalone licensing models was the February 2015 death of IPXI – the world’s first financial exchange for patent rights. It was a victim, first and foremost, of a Patent Trial and Appeal Board (PTAB)-driven post-Alice legal regime in which patents are being invalidated or judged non-infringed left and right – and in which prospective licensees therefore have little incentive even to engage in a conversation with rights holders.

However, there was another, in some ways more fundamental problem with IPXI’s business. Yes, it had a comprehensive business plan, a prestigious board composed of top industry influencers and what appeared to the company (and to many observers, including me) to be an attractive offering for businesses – the chance to buy unit licences to vetted patented technologies under transparent, standardised terms and market-based pricing.

But what IPXI did not have was sufficient market demand for its service. Its business made perfect sense conceptually, in the same way that Jay Walker’s US Patent Utility (now renamed Haystack IQ) works brilliantly in abstract terms. Yet despite being a business that made a *a priori* sense to IP insiders, few real-world customers actually wanted it. In short, IPXI’s business was largely product driven, not market driven.

As for Walker Innovation, it is not at death’s door, but its licensing business has suffered a serious hit. Over the last year, revenue has fallen by more than 50%, its stock has plummeted by 85% and enterprise value is now below \$2 million. Meanwhile, Haystack IQ (the former US Patent Utility) has fewer than 100 subscribers and likely will not come close to filling the gap left by stunted licensing revenues.

Noted Ladenburg Thalmann analyst Jon Hickman: “Subscriber growth has been quite disappointing. As such, we have materially revised our outlook for future

subscriber growth and revenues. We are now anticipating just 500 to 600 subscribers by year end 2016. Our revenue estimate for calendar 2016 is now \$7 million (down from \$27 million). We are downgrading the shares [from Buy] to Neutral and lowering our price target to \$0.60 from \$4.25.”

Management at Walker Innovation is taking steps to deal with the situation. In an August 7 email to the company’s advisory board, CEO Jon Ellenthal wrote that: “The patent licensing environment has changed substantially in the last two years, due to the AIA and Alice, and it’s a tough time to be a patent owner. This has directly affected us by limiting our licensing revenues, which we counted on to be our primary source of working capital to fund our investment in the new subscription service. We will be cautious with cash even it means limiting investment in the service.” The company is also seeking new sources of working capital – a potential capital raise or a strategic investor – to continue marketing Haystack IQ.

More significantly, Walker Innovation is adjusting its business model. “We have opened up a new source of business, which we refer to as custom innovation,” Ellenthal noted. “A number of very large companies have expressed [interest] in using our internal innovation capacity, led by Jay, and our new tools to create, prototype and scale new business opportunities for them.”

Walker is hardly the first or strongest mover in the innovation-on-demand space – that title arguably belongs to John Cronin and Phelps’s ipCreate. But his entry into the field does validate the logic, if not the necessity, of patent-centric businesses reconnecting themselves to invention and to the development of new products and services again. Indeed, I believe that this strategy offers the most viable solution to the IP industry’s present woes; it is examined in greater detail below.

From bad to worse

Most other companies in the licensing sector are suffering from similar declines in revenue and profitability. The stock prices of once high-flying public IP companies such as Marathon Patent Group and Acacia, for example, are down 55% and 75%, respectively.

However, to truly appreciate how deeply the licensing sector has been eviscerated, we need only look to ParkerVision. In the last year its stock price has plummeted by 95% in the wake of a series of unfavourable court and PTAB rulings, and the increasingly intransigent stance of infringers, for whom the threat of being sued is no longer the threat it once was.



Michael Gulliford, Soryn IP Group
Aiming to “level the playing field for IP protection for start-ups”



John Cronin, CEO, ipCreate

Creating “vertical market ‘Qualcomms’ in high-value areas ... that we can spin out into separate companies”

Against this backdrop, ParkerVision’s August 8 second-quarter earnings call degenerated into a confrontation. At one point, Robert Brown of Brill Securities addressed ParkerVision CEO Jeffrey Parker directly. “Jeff,” Brown began, “I want to say that as a shareholder, we have a financial disaster. We have a 26 cent stock and even in bankruptcy stocks have sold higher. I would like to know, if your funding fails to materialise, would you consider the sale of your patents so that we could recover something?”

“That’s a great question,” replied Parker, who immediately digressed back to a discussion of potential funding sources which, he maintained, “are all pretty bullish on moving forward with ParkerVision.” But he finally answered Brown directly. “Okay,” said Parker, “let’s assume none of that [new funding] occurs. Would we consider selling the patent portfolio? And the answer is, well, sure. That’s the most valuable asset of the company... It’s significantly greater than the current market capitalisation of the company.”

“We really need it now,” Brown countered. “Most of the shareholders are very upset. It can’t be weeks and months; it has to be as soon as possible. Because, I think, the string is running out. And personally, it’s been a disaster for us. [We have] clients who are very angry [and] we don’t want to be sued for stupidity.”

The string is running out?

Blame for this state of affairs can be laid at many doors. The trolls who hijacked the patent system and used it to pillage innocent businesses rather than to promote

innovation. A US Congress and court system that overreacted to troll abuses in response not only to legitimate citizen outrage, but also to a disingenuous lobbying campaign by Big Tech firms, for whom *other people’s patents* are an impediment to their freedom to operate however they wish. And yes, an IP industry that underestimated how damaging troll abuses would be to public confidence in the patent system and, ultimately, to IP values – and thus failed to get in front of the problem.

Perhaps we were blinded by our constant mantra that patents are a “discrete asset class” and failed to see the danger in them losing their connection to the invention of new products and services and becoming disembodied weapons of litigation instead.

Or perhaps the belief that patents are a discrete asset class was itself delusional. As EverEdgeIP analyst Chris Donegan has observed: “Patents are not an asset class if they can be invalidated at will by patent offices. Imagine if this could happen to stocks or bonds. Financial chaos would result.”

Damaging effects across the economy

Whatever the precise alignment of blame for today’s crisis, there is little doubt that its effects will be felt far beyond the IP sector.

In an environment in which the enforceability of patent rights is uncertain at best, it is reasonable to expect some decline in corporate R&D investment. Not by large tech firms necessarily – they spend billions annually on R&D and have the resources to wage years-long wars of attrition against infringing rivals. However, mid-market and smaller companies which lack the funds and expert IP resources to guarantee appropriate returns from innovation will likely see some reduction in R&D investment. CEOs and chief financial officers, after all, review R&D and IP budgets like they do any other corporate investment. And if they determine that the return on investment from R&D is likely to be smaller and less certain as a result of enfeebled IP protections, they will act accordingly.

This, in turn, could produce greater reliance by businesses on trade secret protection for sustaining their competitive advantage. For any individual company, this may not pose a major problem – the best IP strategies usually involve a mix of patent, copyright, trademark and trade secret protections anyway. However, greater reliance on trade secret protection could produce negative results at the industry and macroeconomic level.

Does anyone believe, for example,

Figure 1. PIPCO highs and lows – 52 week stock performance

Company	Stock Symbol	52 week high (\$USD)	Price as of 25-Aug (\$USD)
Acacia Research	ACTG	19.50	8.88
Interdigital	IDCC	60.47	48.25
Tessera Technologies	TSRA	43.54	32.44
ParkerVision	PRKR	1.38	0.25
Rambus	RMBS	15.41	12.97
RPX	RPXC	17.20	13.57
Patent Properties	PPRO	2.74	0.50
VirnetX	VHC	15.40	2.88
Vringo	VRNG	1.10	0.54
WiLan	WILN	3.90	1.83

BOLD = included in stock chart

that global smartphone use would have experienced such extraordinarily rapid growth under a trade secret regime? Impossible. Only a strong patent system enabling and enforcing the licensing and cross-licensing of proprietary technology across four disparate industries – mobile telephony, electronics, computing and software – could have produced the hugely successful smartphone industry that we see today.

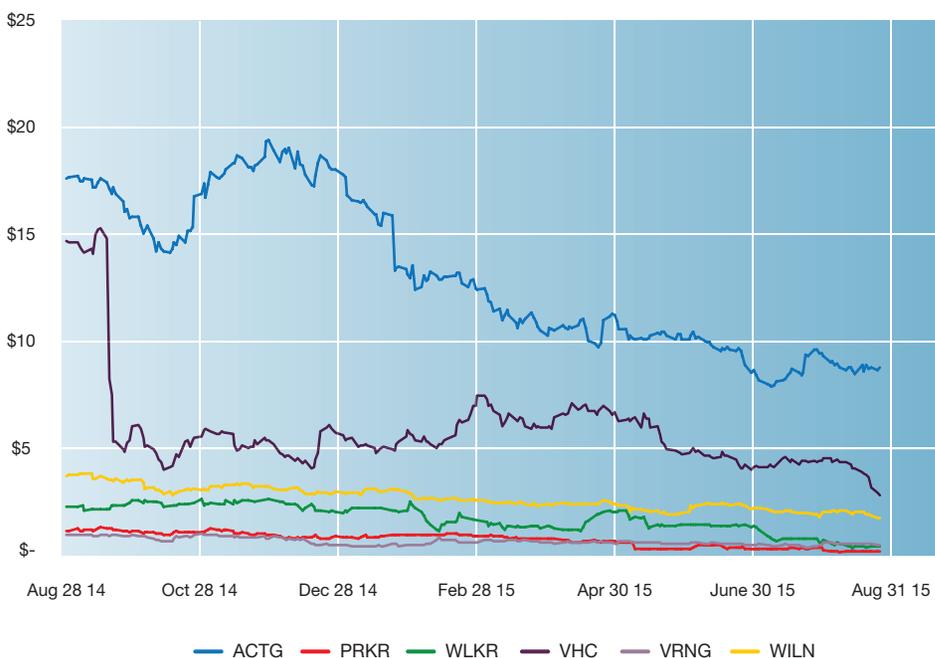
In the start-up sector, on the other hand, weaker patent protections may indeed have an impact at the firm level. Patent rights have always served as the great equalisers in business competition and young firms have long relied on them to facilitate venture investment, defend their market share and margins against incumbent rivals and enhance their prospects of an initial public offering (IPO) or other strategic market success. The 2008 study *Patenting by Entrepreneurs: An Empirical Study* found that 67% of venture-backed start-ups reported that patents had been vital in securing investment. That is because venture capitalists understand what economists Cao, Jiang and Ritter confirmed in their 2015 study *Patents, Innovation, and Performance of Venture-Capital-Backed IPOs* – namely, that “patents strongly and positively predict the long-run performance of VC-backed IPOs”. As Haussler, Harhoff and Muller observed in their study *The Role of Patents in Venture Capital Financing*: “Patents are a signal of quality that facilitates access to financing and helps start-ups overcome the liabilities of newness.”

To be sure, a weakened IP regime may not have much impact on so-called ‘unicorn’ start-ups such as Nest, which has a strong portfolio of acquired and internally developed patents, enormous resources and the expert guidance of Apple’s former patent chief Richard ‘Chip’ Lutton, Jr. Also unlikely to suffer much in the new patent order are start-ups such as GoPro, Square and Dropbox whose core patents have also helped them to build billion-dollar empires.

Hitting start-ups the hardest

But what of the thousands of non-unicorn start-ups struggling to survive and grow in an environment in which the patent six-shooter has been reduced to Derringer size and infringement by rivals is consequently harder to stop? Most venture capitalists will still want to see that a start-up has patents before investing in it. However, given today’s new IP realities, they will probably discount the value of that IP protection and the value of the start-up itself. They will

Figure 2. Selected PIPCO 12 month stock performance



correctly deduce that the next generation of start-ups will be unable to employ patents to defend their innovations and buttress their market positions as effectively as the last generation did.

Was it only 15 years ago that a young Amazon won an injunction stopping larger rival Barnes and Noble from using its patented one-click purchase system, thereby giving it the edge in online book retailing? Was it only five years ago that this same one-click patent emerged from years of post-grant re-examination in the US largely unscathed? (In Europe, of course, Amazon never got past the application stage). In today’s world, both events are so preposterously unlikely that it seems they must have occurred a century ago.

It is here, in the start-up sector, that weakened patent protections could have the greatest impact on the larger US economy. And if the fee-shifting and joinder provisions of proposed patent legislation are enacted, the adverse impact will broaden to include venture capitalists and universities, which along with start-ups play a unique tripartite role in the US economy. After all, the biggest new industries of the last 60 years – semiconductors (consumer electronics), PCs, software, biotech and e-commerce – were all launched by venture capital-funded start-ups which commercialised university research. Venture capitalist-backed start-ups have also been



Phil Hartstein, CEO, Finjan

“You can’t just engage in value extraction in the IP space anymore ... You have to actually create value”

responsible for nearly all net US job growth over that same period. If they weaken, so will the economy.

Some sectors of the economy may be particularly hard hit – biotech, for example, where curative therapies may be delayed or never emerge under a weakened IP regime. As the CEO of Juno Therapeutics, Hans Bishop, and ARCH Venture Partners co-founder Bob Nelson wrote in a March 24 2015 Forbes article: “Let us be clear: investments in the biotech industry are based entirely on patents. Without strong patents, we cannot raise money to find cures for disease.”

“I fear that the consequences for the US economy of deteriorating patent rights will be quite serious,” warns retired chief judge of the US Court of Appeals for the Federal Circuit Paul R Michel. “We will see reduced investment in R&D, reduced innovation and consequently slower growth in the economy and in our standard of living. It’s a race against time. Will we be able to reverse the anti-patent juggernaut before it does permanent damage?”

Europe and Asia will undoubtedly take up some of the slack in IP-enabled innovation and economic growth. The advent of the Unified Patent Court in Europe and the growth of national R&D centres such as Korea’s Electronics and Telecommunications Research Institute create new opportunities for innovators and patent licensors. However – Europe’s Spotify and China’s Xiaomi aside – neither region can replace as yet the United States’ risk-taking start-up ecosystem or consistently generate the sort of breakthrough technological advances historically made by US start-ups.

Do not count America out

The development of high-definition television (HDTV) may be instructive on this point. Back in the 1970s and 1980s, Japan and Europe enjoyed a huge lead over the United States in the race to develop a global HDTV standard. Government-industry consortia in Europe and Japan

spent billions of dollars on competing analogue HDTV schemes, while the United States was bogged down in bitter competitiveness debates over the nation’s flagging industrial base and the spectre of a rising ‘Japan Inc’ intent on gobbling up US industries, movie studios and even golf courses.

Yet in the end, both Europe’s and Japan’s government-mandated analogue HDTV programmes were totally outflanked by the unexpected entrepreneurial invention in 1990 of a wholly digital HDTV system by the US start-up General Instrument. By unlocking the secret of digitising television signals, General Instrument inadvertently gave birth to the whole digital technology revolution. The result was an avalanche of invention, investment and industrial convergence – and the cornucopia of new digital products and services that we enjoy today.

There is surely a lesson here for those who would discount the United States’ deep-rooted start-up culture or its ability to revitalise its economy. Even if the PTAB, Alice and new patent legislation result in a decade-long emasculation of patent rights, stunted R&D investment and inhibited start-up growth, history shows that the United States is a nation whose pendulum swings, while often extreme, eventually return to a more balanced position. This is not the first time, after all, that anti-patent sentiment has shaped US legislative, judicial and executive branch policy. For every period like the 1970s – when patent rights were hobbled under the banner of antitrust and US competitiveness declined – there have been decades like the 1980s, when patent rights were strengthened and innovation soared.

IP-centric businesses, of course, cannot wait for some eventual restoration of balance in US patent policy. They must deal with conditions as they are, not as they would like them to be.

In this, they may find an analogy to the strategies undertaken by Triassic survivors of the Permian mass extinctions. As biologists Peter Ward and Joe Kirschvink write in their 2015 book *The New History of Life*, the period after the “Great Dying” produced “a slew of newly-invented body plans, many of [which] turned out to be but short-term experiments, to be pushed into extinction by the competition and/or predation of better-designed organisms”.

The Triassic was a time in earth’s history when oxygen levels were barely half (11%) what they are today. In this low-oxygen world, the authors write: “The groups with the simplest lungs

“ Just as R&D divorced from manufacturing undermines both, separating patents from the innovation of new products and services will henceforth inhibit their monetisation ”

(amphibians and the early-evolved reptiles) fared the worst, and many groups that had been successful early in the Triassic, such as phytosaurs, underwent complete extinction.” However, the saurischian dinosaurs innovated new enhanced lung systems with air sacs, which increased oxygenation considerably and enabled them to breathe the thin air much more effectively.

In today’s low-oxygen IP ecosystem, using patents to promote innovation and buttress a company’s market position will be the breath of life for patent-centric businesses. For just as R&D divorced from manufacturing undermines both, separating patents from the innovation of new products and services will henceforth inhibit their monetisation. As the primary driver of business success in the 21st century, intellectual property’s greatest value will lie not in the standalone assertion of disembodied patents, but in its ability to enhance the product development, operations, margins, market position and financial success of operating businesses.

That is how patents once created value and it is how they will again. On this point, EverEdgeIP’s Donegan is in agreement: “This intimate reconnecting of intellectual property to the business that it supports is a radical change of direction that will fundamentally restructure an IP industry that has grown bloated on patent monetisation revenues. It will challenge non-practising entities in particular to find new business models.”

New IP business models

Perhaps the best poster child for the transformation of non-practising entity (NPE) business models is patent advisory and optimisation firm Dominion Harbor Group (DHG). Ironically, CEO David Pridham was previously a co-founder of IP Navigation Group, an aggressively litigious NPE whose other co-founder, Erich Spangenberg, has been called “the most notorious patent troll in America”. Spangenberg himself was quoted in a *New York Times* article entitled “Have Patent, Will Sue” as saying that he liked to “go thug” with licensees. David Pridham, meanwhile, was the quiet professional who got most of the deals done and knew how to get a fair return for patent owners without alienating half the industry.

So it was no surprise when Pridham split to found Dominion Harbor in 2013, taking with him key IPNav staffers, including executive vice presidents Matt DelGiornio and Brad Sheafe. From the start, Pridham

began to reshape his firm’s NPE business model in several key ways.

First, DHG branded itself as an ethical licensing and advisory firm, though DHG was not the first NPE to embrace this concept – Conversant and Finjan took the lead here.

Second, DHG focused on generating returns not from disembodied, unpractised patents, but rather from patented technologies already commercialised in the market. A case in point is DHG’s client DDD Group, a developer of advanced 3D imaging technology. DDD’s patented TriDef 3D software is deployed today in more than 51 million PCs and computer chips, laptops, tablets and televisions made under licence by Sharp, Samsung, LG, Fujitsu, Lenovo and Intel.

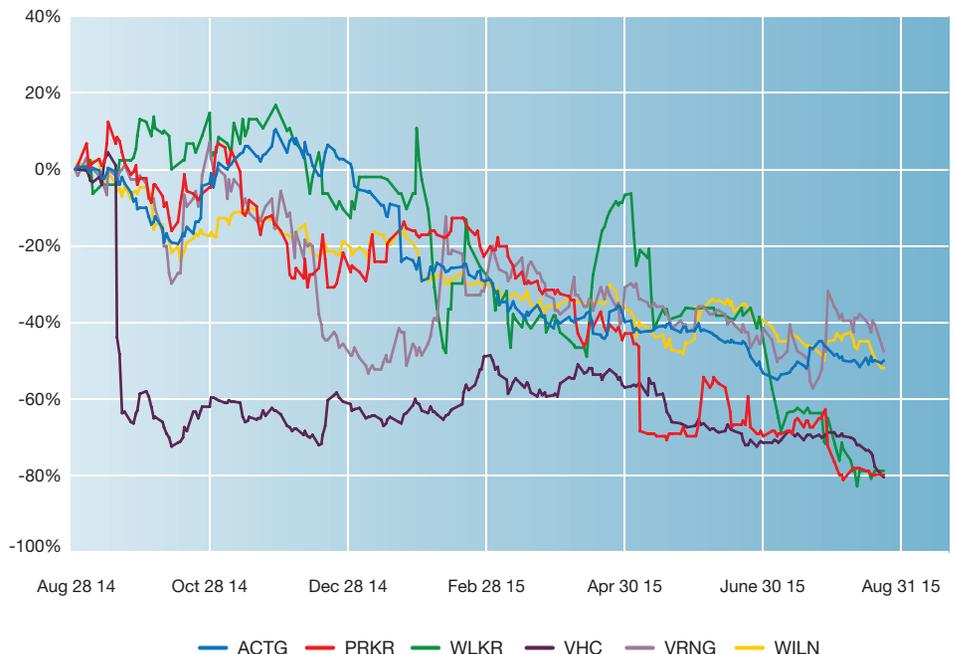
Third, Dominion modified its approach to technology companies increasingly allergic to NPE licensing demands. Now, when DHG engages in a discussion with a prospective licensee – in legal jargon, makes a ‘408 presentation’ – it makes a business case, not an infringement case, for why the company would benefit by taking a licence. This means providing the licensee with a positive benefit beyond simply the negative value of avoiding a lawsuit – offering the licensee complementary know-how or the expertise of the inventors, for example, or giving the licensee, alone among competing vendors of similar products, the chance to own an exclusive licence to core elements of the product’s technology.



David Pridham, CEO, Dominion Harbor Group

The first-ever IP bank for start-ups, seeding firms with third-party intellectual property

Figure 3. Selected PIPCO 12 month valuation performance





Gene Quinn, editor, IP Watchdog
 “There is no longer a viable business strategy for those who were simply buying a patent or portfolio and rushing to the nearest patent litigation firm”

However, in May 2015 DHG took its biggest evolutionary step in revising its business model. Expanding beyond standalone licensing, DHG launched the first-ever IP bank for start-ups, seeding promising young firms with third-party intellectual property provided by its partner, the Monument Bank of Intellectual Property. The patents in the IP bank come from a number of sources. Large firms deposit intellectual property in the bank as a way to monetise their underutilised patent portfolios without all of the legal and reputational risks associated with licensing, litigating or privateering via an outsourced NPE licensor. And, taking advantage of today’s depressed patent market, DHG itself purchases intellectual property in several key technology areas to bolster the portfolios of start-ups and help to launch them successfully into the market.

The rationale for DHG’s IP bank for start-ups is twofold. First, given the backlog at the US Patent and Trademark Office, the time to IPO for start-ups is now often shorter than the time to IP. The IP bank helps start-ups to overcome this problem by giving them ownership of patents that facilitate venture investment and buttress their market positions, as Pridham and Sheafe noted in an August 18 article in *Forbes* entitled “The Top 10 Reasons Why Your Startup Needs Patents”. In return, DHG and the IP bank’s depositors receive an equity stake in the start-ups getting the patents. The high-value optionality of an equity stake in a start-up is simply not available from licensing.

A number of other IP advisory and licensing business are also taking steps to align their models to the needs of operating businesses, especially start-ups, and to support the development of new products and services. Finjan Holdings, for example, has broadened its traditional licensing of cybersecurity patents by developing three new business segments.

“You can’t just engage in value extraction in the IP space anymore,” argues Finjan CEO Phil Hartstein. “You have to actually create value. That’s why we are developing new cybersecurity products and services, including cybersecurity apps for consumers, and investing in next-generation cybertechnology start-ups.”

Hartstein also believes that in today’s harsher environment, licensors will have to meet much higher standards of professionalism and credibility. “You really need top-notch in-house expertise now – technical, legal, financial – so you can do financial modelling of markets, map

patents to specific products, prosecute apps, manage licensing timelines,” Hartstein insists. “As a public company, we really need to have those capabilities in-house.” But one does not have to be public, he notes. “Dominion Harbor also has tremendous skill sets in-house. That’s why other licensors come to David and his team for help. They are very good at what they do.”

Another effort to strengthen start-ups with intellectual property is being led by IP advisory Soryn IP group, headed by Michael J Gulliford, which teamed up with niche investment bank Liquid Venture Partners to launch an initiative called Liquid Patent Consulting, offering portfolio development and optimisation services combined with banking advice to start-ups. The aim, says Gulliford, is to “level the playing field for IP protection for start-ups”, which are increasingly exposed to larger and better-funded rivals under the first-to-file rules of the America Invents Act.

Then there are the two big technology development and licensing companies, Tessera and Rambus. Although the stock price of each is down considerably from their highs for the year, both have taken steps to diversify their business models in ways that suggest they will survive and perhaps even thrive in today’s difficult climate. Both have shut down much of their litigation and instead embedded themselves in the R&D and design processes of their licensees, offering them genuine product or technology solutions along with the usual licences.

As an article in the May/June 2015 issue of *IAM* observed: “Inherent in this strategy [is] the recognition that a business which depends solely on patent licensing through litigation is unsustainable.”

When patents mean invention again, not litigation

Even the grandfather of all NPE licensors, Intellectual Ventures (IV), is seeking to ‘de-trollify’ its image and establish itself as not only a patent aggregator and licensor, but also as a venture and development partner for operating businesses, research institutes and inventors. It has formed a partnership with large Finnish grain processor Raisio and has allied with inventor Dan Belliveau to spin off a company called CF Global, which produces and sells coffee flour for use in a wide range of foods and beverages. However, it is far too early to tell whether IV’s efforts to more closely tie patents to the development of new products marks a major shift in its business – a realisation, at long last, of its decade-old promise to

be an invention company – or just a side note to the established ‘pay up or else’ NPE licensing model.

At another IP company, though, invention is the name of the entire game: it offers nothing else. ipCreate is an innovation-on-demand company headed by former top IBM inventor Cronin and Phelps, who previously ran both IBM’s and Microsoft’s global IP operations. It is already deeply engaged in more than a dozen invention and IP creation projects with technology industry leaders such as Philips and Sony. Simply put, ipCreate generates foundational patented inventions in disruptive new markets – wearable computing, autonomous vehicles and 3D printing, for example – which fall outside their partners’ traditional areas of R&D expertise. First ipCreate and its subsidiary, crowdsourced patent research firm Article One Partners, landscape an emerging new market for value. Then they employ their proprietary tools and processes to rapidly create disruptive inventions at key chokepoints of market change. They can typically develop and file patents on 90 new inventions in 90 days.

“The greatest value in our business model,” explains CEO Cronin, “is that our invention on demand work for industry partners will sometimes enable us to create special purpose vehicles – vertical market ‘Qualcomms’ in high-value areas where we have established strong IP beachheads – that we can spin out into separate companies. We and our investors believe this is where the highest-value optionality in the patents we have created will lie.”

As noted previously, ipCreate is not the only player in the innovation on demand space. IV is also doing at least some work in this arena, while Walker Innovation is opening up a new line of business in what it calls custom innovation. Then there is Julian Nolan’s iProva, a Swiss firm that employs a proprietary software platform to extract ideas from disparate industrial disciplines and develop outside-the-box inventions for large companies involved in the oil and gas, lighting, healthcare, automotive and telecommunications sectors.

From fear to hope

For now, though, ipCreate has the first-mover advantage and the greatest mind share in the innovation on demand space. It even owns the trademark for “Innovation on Demand”. However, given the calibre of inventive minds such as Cronin’s, Nolan’s and Jay Walker’s, it will be interesting to see how this field develops and changes in the years ahead.

Action plan

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For licensors, the challenges ahead will certainly be daunting, but for those who adapt well, probably survivable. Profitability and margins will be lower and timeframes for generating returns longer. However, synthesising the insights of senior IP executives whom I have interviewed over the last six months, I can suggest five likely keys to the successful IP business model of tomorrow:

- Restore patents’ organic connection to invention again and embed IP value in real products and services in the marketplace.
- Forget separating patents into a discrete asset class. Instead, integrate intellectual property strategy into traditional cross-functional business

operations, processes and metrics of value in order to enhance operating company performance.

- Build a broader multinational focus for IP work in order to tap near-term higher-growth opportunities in Europe (especially Germany) and Asia.
- For licensors in particular, focus on practised patents, build a high level of in-house expertise and develop a white-hat brand and reputation for providing positive value to licensees beyond simply the negative benefit of avoiding a lawsuit.
- Quality, not quantity, is king in a world where patents are being invalidated by the truckload.

One thing seems clear: going forward, the survival of IP-centric businesses will largely depend on their ability to revitalise patents’ intimate connection to invention, new product development and the needs of businesses competing in the marketplace.

“Patents used to be a second-order effect of innovation, never the primary goal,” says ipCreate chairman Phelps. “We need to go back to that way of thinking about IP.” That such words come from the person who was the first to turn patent licensing into a billion-dollar-a-year business tells you something.

No one has a crystal ball to predict the future. Often we are lucky just to recognise trends as they are happening. So perhaps it is enough simply to remind ourselves of something the great inventor and diplomat Benjamin Franklin once said: “Out of adversity comes opportunity.” *iam*

David Kline is the co-author of *Rembrandts in the Attic* from Harvard Business Press and a branding and communications consultant at David Kline Associates, Portland, Oregon, United States

Disclosure: David Kline has worked with several of the companies mentioned in this article.