



BY RON WILSON, EXECUTIVE EDITOR

## A modest proposal for IP

**T**he US patent system needs fixing to the point that there are debates over just whose interests we should fix first. But no one seems any longer interested in the original idea: that patents protect the inventor—not a corporation—and that, by protecting the inventor, they encourage publication, accelerating the pace of innovation. So here's a suggestion: We should prohibit the assignment, the sale, or any other transfer of patent ownership, except for inheritance.

This change would not fix everything. But it would resolve a number of problems that corrode the system, and correct one problem that threatens to blow up the whole show.

First, consider the inventors. Today, granting patents to the people who did the inventing is fiction. Unless the inventor is self-employed and not under contract, an employer gets the patent. This appropriation is poisonous in a number of ways.

Engineers find ways to work around the system. They avoid documentation. If an idea starts to pan out, the engineer quits, launches a new company, and then files patents. That move is risky, but it is a better deal than getting your name on a bronze plaque in somebody else's lobby. Most of the time, the industry and the company that funded the work get nothing, and the inventor gets two years of 16-hour days at reduced salary. And that scenario is what happens if everyone avoids litigation.

Now consider employers. The system vacuums the best R&D employees from organizations just as they are about to do their most valuable work. Any way you look at it, that move

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destroys equity. Further, owning patents tends to force companies to focus on generating revenue from their patents—and away from serving their customers.

Suppose patents were not transferable, however. Inventors, instead of assigning patents to their employers, would license them in case-by-case negotiations based on the employment agreement. With licensing instead of assignment, the goals of the inventor and employer would align: Both want to maximize the profits from the patent, and the best way to

do that is usually cooperation. If the company wants the patent, it will help defend it. If the company isn't interested, the inventor can find other licensees in the free market.

Now think about venture investors. Today, when a venture company dies, patents are often its best surviving assets. But separated from the engineers who did the work, the patents have only a fraction of their real worth. If the patents remain with the engineers, the asset would be not just a possible future cash flow. The asset would comprise the patents; all the other IP (intellectual property) associated with applying them, including collected data, prototypes, and so forth; and the actual people who did the work. This asset is a far more valuable—and tangible—one that a buyer could exploit at once.

Finally, there is an even more serious problem that the industry must address. Some investors now see patents as financial instruments: contracts that entitle the owner to an—admittedly uncertain—future cash flow. Investment banks can buy and

pool patents and then create financial derivatives based on these pools. Financial technicians can model those future cash flows as stochastic processes, applying the math used for collateralization of subprime mortgages. We

all know the next chapter in that story. The new demand for patents undermines the whole concept of IP in the United States.

So let inventors own their patents and allow them to transfer limited rights under the well-developed body of licensing law. It's fair to engineers. It's best for corporations and investors. And it could prevent a catastrophe that today threatens the entire system.**EDN**

Contact me at [ronald.wilson@reedbusiness.com](mailto:ronald.wilson@reedbusiness.com).

