

INTELLECTUAL PROPERTY SPRING 2015

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The Johns Hopkins University (B.E.S.)

University of Maryland (M.S.E.E.)

American University (J.D.)

Pratt & Whitney Aircraft Group

Fairchild Space & Electronics Co.

Cushman Darby & Cushman, LLP

Steptoe & Johnson, LLP

Admitted to practice Law:

MD, DC, HI, USPTO, U.S. S.Ct., ...

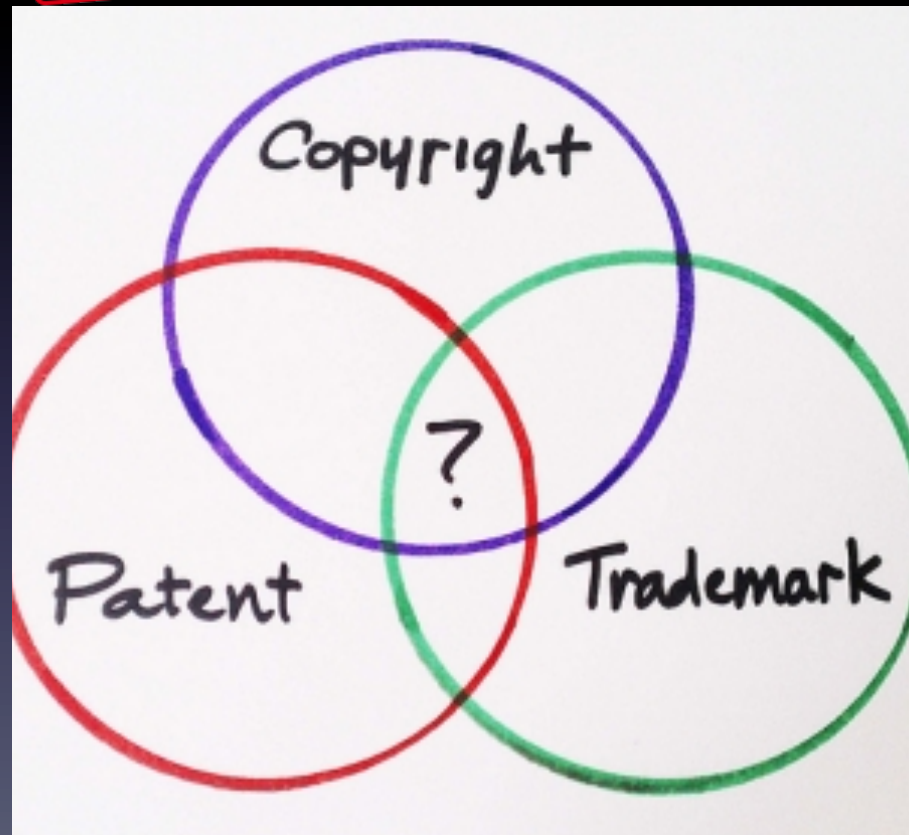
AUS Authorized Scientific Diver



INTRODUCTION TO INTELLECTUAL PROPERTY

- Non-rivalrous
uses
- Instances
distinct from
rights

CONFIDENTIAL



SUBJECT MATTER

"Trade secret" means

information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

-- Uniform Trade Secret Act

PATENTABLE SUBJECT MATTER

. . . any new and useful

- *process,*
- *machine,*
- *manufacture, or*
- *composition of matter*

-- 35 U.S.C. § 101

BUT NOT

- abstract ideas
- laws of nature

PATENTABILITY ELEMENTS

REQUIREMENTS

- Subject Matter
- Utility
- Novelty
- Non-Obviousness
- Enabling Disclosure

EXCLUSIVE RIGHTS

- Make
- Use
- Sell
- Offer for Sale
- Import

ORIGINAL WORKS OF AUTHORSHIP

Copyright protection subsists, . . . , in **original works of authorship fixed in any tangible medium** of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

-- 17 U.S.C. §102(a)

COPYRIGHT REGIME

- Subject Matter
- Originality
- Formalities
- Ownership
- Infringement
- Remedies
- Reproduce
- Derivative Works
- Distribution
- Perform/display
- Circumvention
- Moral Rights

TRADEMARKS

Trademark is a symbol
of the **goodwill** of a
business.



DEFINITIONS

Trademark

The term “trademark” includes any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use...,
to identify and distinguish his or her goods,

-- 15 U.S.C. §1127

Service Mark

The term “trademark” includes any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use...,
to identify and distinguish the services of one person,

-- 15 U.S.C. §1127

TECHNOLOGY

- Patents on inventions
- Copyrights on software
- Trade secrets on manufacturing process
- Trade names

STRATEGY

MARKET PARTICIPATION

Business objective is usually profit.

$$P = PM \times SV$$

PM = Price - Cost

P = profit

PM = profit margin

SV = sales volume



STRATEGY

$$P = PM \times SV$$

Exclusive right can increase sales volume by giving exclusive product features that increase profit . . .

. . . by more than cost to acquire and police.



PATENT

$$P = PM \times SV$$

$$PM = \text{Price} - \text{Cost}$$

Exclusive feature:

- Increases price or
- Reduces cost or
- Increases sales volume



ACQUISITION COST

- Expensive world-wide coverage
- Multiple application costs in each country/region
- Differing laws



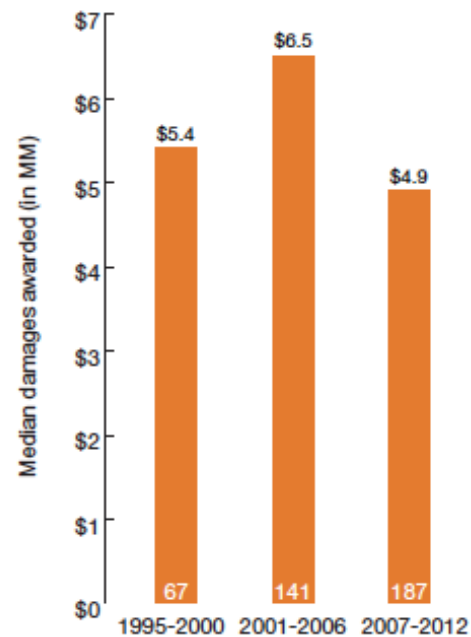
ENFORCEMENT COST

- High enforcement cost – where enforcement possible
- Many countries lack predictable judicial systems



US PATENT AWARDS

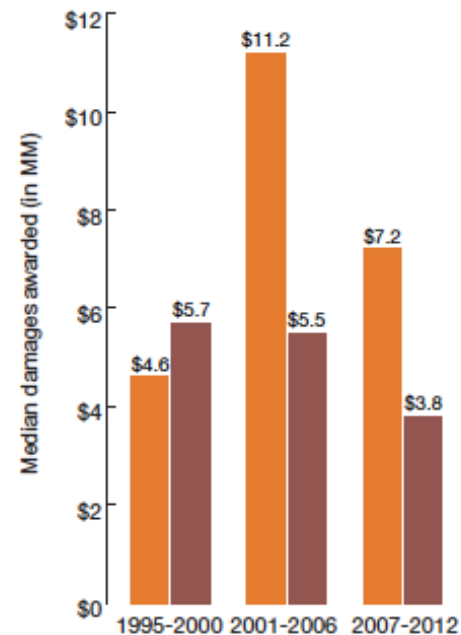
Chart 2a. Patent holder median damages awarded



Median damages are adjusted for inflation and represented in 2012 US dollars.

The number of identified decisions is indicated within the respective column.

Chart 2b. Patent holder median damages awarded: nonpracticing entities vs. practicing entities

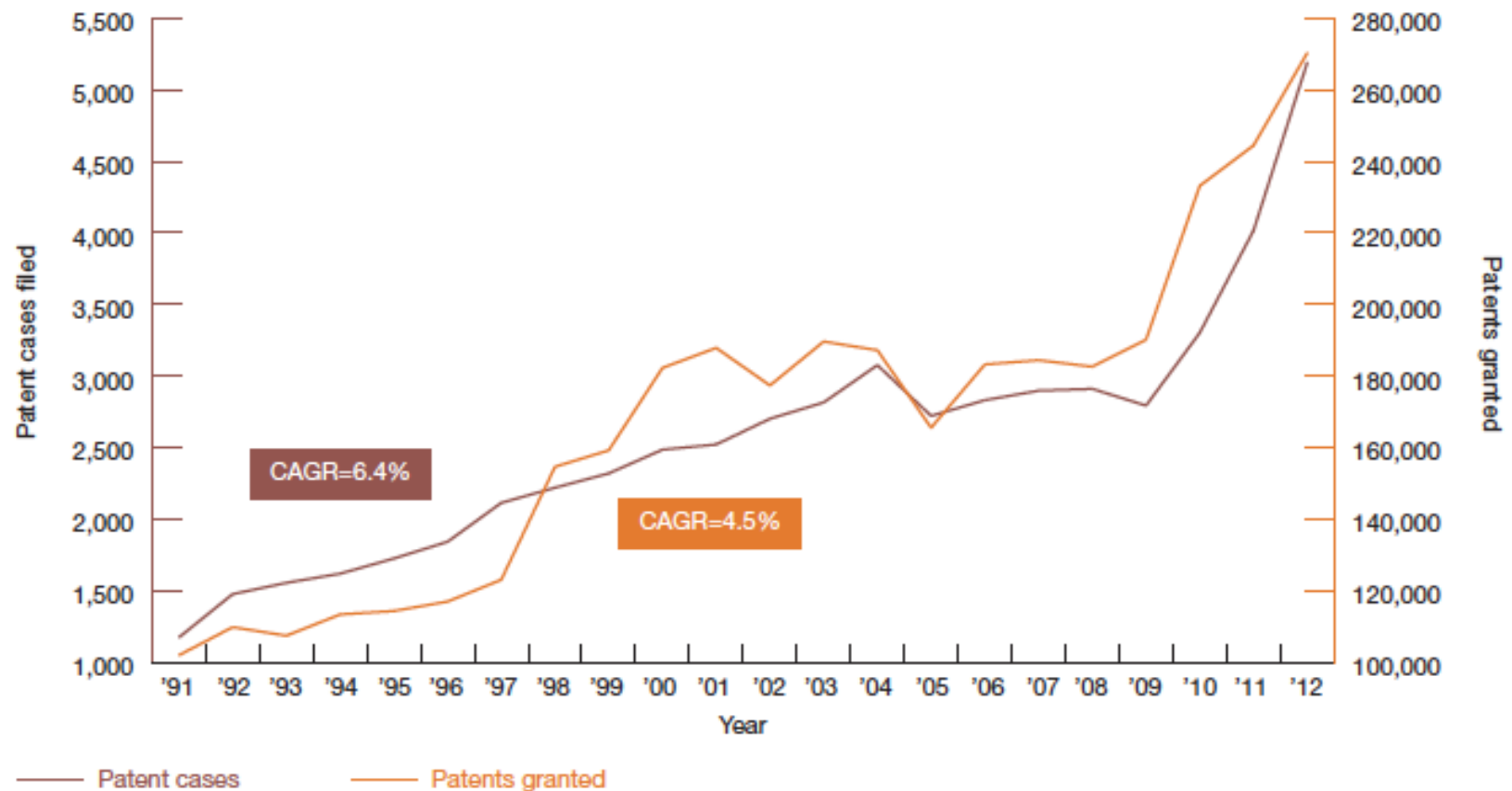


Nonpracticing entities

Practicing entities

Median damages are adjusted for inflation and represented in 2012 US dollars.

US PATENTS



Years are based on September year-end

TOP US PATENT ISSUANCE

2013 IPO Rank	2012 IPO Rank	Company/Organization	2013 Patents	2012 Patents
1	1	International Business Machines Corp.	6,788	6,457
2	2	Samsung Electronics Co., Ltd.	4,652	5,043
3	4	Canon K.K.	3,918	3,307
4	3	Sony Corp.	3,316	3,608
5	8	LG Electronics Inc.	3,117	2,682
6	7	Microsoft Corp.	2,814	2,704
7	9	Toshiba Corp.	2,679	2,601
8	5	Panasonic Corp.	2,649	2,829
9	6	Hitachi, Ltd.	2,399	2,723
10	23	Google, Inc.	2,190	1,151
11	14	Qualcomm, Inc.	2,182	1,471
12	10	General Electric Co.	2,086	2,040
13	11	Siemens AG	1,828	2,000
14	12	Fujitsu Ltd.	1,802	1,923
15	24	Apple, Inc.	1,775	1,136

<http://www.patentdocs.org/2014/07/ipo-releases-list-of-top-300-patent-holders-for-2013.html>



BUSINESS

TECHNOLOGY

ViaSat settles patent cases for \$100M

Carlsbad company will receive \$100 million in damages

By **Mike Freeman** 9:28 A.M. SEPT. 8, 2014 Updated 4 P.M.

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COMMENTS

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GEOPOLITICAL STRATEGY

DEVELOPED v. DEVELOPED

US, Japan, Europe, S. Korea

- Compete on technology – not on lawsuits
- Amass large IP portfolios
- Cross license for level playing field.

DEVELOPED v. DEVELOPING

China, India, S. America, Africa

- Political process
- Harmonize law
- Encourage judicial enforcement
- Trade linkage: GATT, TRIPS

GEOPOLITICAL STRATEGY

PRACTICING v. NON-PRACTICING

Patent “Trolls”

?????