Evolving Global IP Marketplace

The Opportunity for LES to Contribute to Developing Business Models and a Global IP Economic Infrastructure

James E. Malackowski
LESI Manila Conference, June 2009
US Economic Inversion Extending Globally

Components of S&P 500 Market Value

<table>
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<tr>
<th>Year</th>
<th>Tangible Assets</th>
<th>Intangible Assets</th>
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<tr>
<td>1975</td>
<td>83%</td>
<td>17%</td>
</tr>
<tr>
<td>1985</td>
<td>68%</td>
<td>32%</td>
</tr>
<tr>
<td>1995</td>
<td>32%</td>
<td>68%</td>
</tr>
<tr>
<td>2005</td>
<td>20%</td>
<td>80%</td>
</tr>
<tr>
<td>2008</td>
<td>25%</td>
<td>75%</td>
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Source: Ocean Tomo
FTC Discussion on IP Infrastructure

- Valuation Standards
- Inventory
- Policy Leadership
- Std Contracts
- Acct & Reporting
- Primary Markets
- Derivative Markets
Key Question

How does LES contribute?
Valuation Standards

- Traditional appraisal standards
- Patent scoring reports
Traditional Valuation Standards (US Examples)

- The Uniform Standards of Professional Appraisal Practice (USPAP) effective July 1, 2006 provide minimum requirements for appraisers and is applicable to IP (Standards 9 and 10)
- Section 482: Allocation of Income and Deductions Among Taxpayers “Transfer Pricing Regulations”
- American Society of Appraisers, Business Valuation Standards, BVS-IX Intangible Asset Valuation (DRAFT) and SBVS-3 Standards on IP Valuation (DRAFT)
- Statement of Financial Accounting Standards No. 141 (Business Combinations), 142 (Goodwill and Other Intangible Assets Impairment) and 157 (Fair Value Measurement).
**Patent Scoring Reports**

**Patent Due Diligence Report**

**Report Date:** January 11, 2006

**US0543696**

**IPQ** Score: **180.5**

**Overall Rating:** **A+**

Electronic mail system with RF communications to mobile processors and method of operation thereon

**Assignee:** Campana, Thomas J., Jr.

**Inventor:** Antonekis, Terry, Stout & Kraus

**In Force:**

**COMPUSOFT**

**Class Description:**

**Class:** 455/412

**Genera Class:** 454B

**Subclass:** 351

**Number of Claims (Filed):** 89

**Number of Claims (Pending):** 81

**Number of Related U.S. Patents:** 1 pending

**Number of Related Patent Applications:** 1

**Number of Forward Citations:** 42

**Summary of Scores/Ratings**

- **Overall Percentile Rank:** 99.9%
- **Overall Patent Rating:** A+ (99.9%)
- **Normal expiration Date:** 8.1 years

**Scores & Percentile Rankings**

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<tr>
<th>Section</th>
<th>Raw Score</th>
<th>Percentile Rank by Group</th>
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<tr>
<td>TECHNOLOGY</td>
<td>1.50</td>
<td>98.7%</td>
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<tr>
<td>DISCLOSURE</td>
<td>1.24</td>
<td>86.6%</td>
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<tr>
<td>CLAIMS</td>
<td>1.87</td>
<td>99.2%</td>
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<tr>
<td>PROSECUTION</td>
<td>1.74</td>
<td>97.7%</td>
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<tr>
<td>OTHER</td>
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<td>95.6%</td>
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<td><strong>96.4%</strong></td>
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<td><strong>180.5</strong></td>
<td><strong>99.9%</strong></td>
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</table>

**Life Exp & Survival Probabilities**

- **Exp. Survival:** 87.1% (87.1%)

**Important Notice**

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**PATENT DUE DILIGENCE REPORT**

**Report Date:** January 11, 2006

**Related Technology Space**

The ’901 patent is currently classified by the USPTO in primary U.S. Class/Subclass 455/412 (Telecommunications) and Int’l Class G06F 00030/00. The closest corresponding SIC code is 3651 (Telephone And Telegraph Apparatus). Major patent holders in USPTO class 455 are listed below along with a patent-activity summary for the trailing 5-years.

**Patent Assignee**

- Xerox Corporation: 19
- International Business Machines Corporation: 19
- Brother Kogyo Kabushiki Kaisha: 16
- Levee Electronics, Inc.: 9
- Pitney Bowes Inc.: 8
- Francotyp-Postalis AG & Co.: 8
- Postmark Systems, Inc.: 8

**Patent Activity — Class 455**

Patenting activity in USPTO patent class 455 has been gradually increasing over the past 5 years, as shown in the above graph, with about 1897 new patents now issuing per year on average. Average pending times (time from filing to issuance) have been increasing over the past 5 years to about 3.55 years currently, indicating a somewhat higher than normal backlog of pending cases awaiting examination.

Of course, it should be noted that patent technology classification is an inexact science and relies largely on subjective review and analysis by human decision-makers. Because of this, some patents and patented technologies may be "misclassified" and/or put into existing classifications that do not exactly fit or aptly describe a particular technology. Thus, it may be beneficial to consider other possible patent classifications. Other relevant USPTO patent classifications in this case are indicated below along with estimated relevancy scores and growth trends for each.

**Relevant USPTO Classifications and Patenting Trends**

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<th>Class</th>
<th>Brief Description</th>
<th>Reference</th>
<th>Trend</th>
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<tr>
<td>621</td>
<td>Circuit breakers</td>
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<tr>
<td>345</td>
<td>Computer graphics processing</td>
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<tr>
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<td>440</td>
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<td>341</td>
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<td>273</td>
<td>Amusement devices: games</td>
<td>0.554</td>
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<tr>
<td>272</td>
<td>Electricity: measuring and testing</td>
<td>0.513</td>
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<tr>
<td>601</td>
<td>Surgery: kinesthetic</td>
<td>0.303</td>
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</table>

* Trend data represents patent issuance rates in a trailing 5-year period.

**Notes:**

- **IPQ** application notes on this page please refer to "Application Equation Results."
Valuation Standards – How Does LES Contribute?

- Further educational programming on traditional standards
- Comparisons of local valuation requirements and practice across Member Societies
- Encourage peer review publication on patent scoring reports and ratings methodologies in *les Nouvelles*
- Test valuation standards as a meaningful part of Certified Licensing Professional (CLP) qualification
Inventory

- National / Government IP inventory and listings
- Private company inventory and marking
National Innovation Inventory

- Billions of dollars invested annually
- Current technology solutions exist but are not commercialized because they are not widely known or effectively presented
- Little current coordination
APRIL 2, 2009 PROPOSED AMENDMENT TO 35 U.S.C. § 287(a):

Patentees, and persons making, offering for sale, or selling within the United States any patented article for or under them or importing any patented article into the United States, may give notice to the public that the same is patented, either by fixing thereon the word “patent” or the abbreviation “pat.”, together with the number of the patent; or when, from the character of the article, this cannot be done, by fixing to it, or to the package wherein one or more of them is contained, a label containing a like notice or by fixing thereon the word 'patent' or the abbreviation 'pat.' together with an address of a posting on the Internet, accessible to the public without charge for accessing the address, that associates the patented article with the number of the patent.
Benefits of Revised Patent Marking

- Potential for near-universal patent marking
- Improved access to patented technology after a patent expires
- Substantial savings in patent marking costs to responsible manufacturers
- An ability to provide constructive notice for products that cannot otherwise be marked
- An increased likelihood of “substantially consistent and continuous” marking
- Enhanced oversight of marking by patent licensees
- Standardized and simplified evidentiary requirements for patent litigation
Inventory – How Does LES Contribute?

- Develop a best practice inventory process and training program for Government and quasi-governmental entities
- Target governmental technology transfer professionals for LES membership growth
- Use of LESI website as portal to list or search of national inventories
- White paper preparation addressing patent marking
Policy Leadership

- National Patent & Trademark Office policy
- Labor policy
- Trade policy
Policy – How Does LES Contribute?

- “Just Do It” – Develop a stronger policy voice
- List of core policy principals that represent LES beliefs
- On-going expanded efforts of LESI External Relations Committee
- Forum for debate on key policy questions or national differences
- Educational resource for policy makers
- Develop actual pro-IP policy recommendations
Standard Contracts

- Corporate IP license
- Government IP licenses
- Patent or IP sale
Standard Contract Benefits

- Greater transaction speed and efficiency
- Facilitates secondary trading / sale
- Greater perception of fairness to small inventors
- Market moving to create (eg. Ocean Tomo Auctions and various on-line platforms)
Standard Contract Issues

- Disclosure of encumbrances due to confidentiality provisions
- Understanding full scope of existing licenses / cross-licenses
- Communication of believed use or infringement
- Developing standard of reasonable disclosure and diligence
- Protecting buyer identity
- Know-how transfer
Standard Contracts – How Does LES Contribute?

- Create a set of LES Standard Form Agreements (updating previous efforts to do so by Robert Goldscheider and collection of LES Past Presidents)
- Contracting as a meaningful part of Certified Licensing Professional (CLP) examination
Primary Markets

- Sale (eg. auctions; www.PatentBidAsk.com)
- Licensing (eg. yet2.com)
- Traded exchange (eg. www.IPXI.com)
Ocean Tomo Auctions

$100+ million in auction volume
Active Bid / Ask Patents

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This patent is currently on consignment for the Spring 2008 Ocean Tomo Auction. Please visit www.oceanтомоаукцион.com for more information.

<table>
<thead>
<tr>
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Unit License Rights™

CORE DESCRIPTION OF ILLUSTRATIVE ULR TRADE
ULR(s): U137A, B & C Valve Seat Insert
PATENT: X,XXX,137 and continuations, continuations-in-part and foreign counterparts.
LICENSED FIELD OF USE: All
RESTRICTIONS: All secondary sales through IPX
ISSUER RIGHT TO USE: Yes
UNIT BASIS: One ULR covers one automotive or light truck engine
TOTAL OFFERED QUANTITY: 5 million license units offered in 50 unit lots
OFFERING TERM: 3 years
TERM OF LICENSE: Until consumed

TRANCHES
U137A: 1 million ULR’s at an initial offering price of $0.50 per unit (eg unit 1)
U137B: 1 million ULR’s at an initial offering price of $0.75 per unit (eg unit 1,000,001)
U137C: 3 million ULR’s at an initial offering price of $1 per unit (eg unit 2,000,001)
Primary Markets – How Does LES Contribute?

- Develop specific LES educational content on developing market tools
  - Valuation
  - Due diligence
- Consider events (eg auction) as adjunct to LES Conferences
- Imbedded on-line LES educational content (event driven or webinars linked to primary market sites)
- Standard LES approved disclosures / offering documents
Derivative Markets

- Equity indexes
- Patent indexes
Broad Market Public Equity Indexes

Zephyr StyleADVISOR Manager Performance
Single Computation
January 1997 - December 2008

Cumulative Excess Return vs. Market Benchmark

Created with Zephyr StyleADVISOR.
Growth Equity Indexes

Zephyr StyleADVISOR
Manager Performance
Single Computation
January 1999 - December 2008

Ocean Tomo 300 Patent Growth Index
Russell 1000 Growth

Cumulative Excess Return vs. Market Benchmark
Value Equity Indexes

Zephyr StyleADVISOR
Manager Performance
Single Computation

January 1999 - December 2008

- Ocean Tomo 300 Patent Value Index
- Russell 1000 Value

Cumulative Excess Return vs. Market Benchmark
Proven IP Risk Adjusted Returns

Zephyr StyleADVISOR
Manager Risk/Return
Single Computation
January 1997 - December 2008

Risk-Return Table
January 1997 - December 2008: Annualized Summary Statistics

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<th>Alpha vs. Market (%)</th>
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<td>15.96</td>
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<td>0.00</td>
<td>-0.0134</td>
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Created with Zephyr StyleADVISOR
Patent Indexes

Tradable Technology Baskets™ Illustration

Time (Years)

PatentRatings® System

- Product
- Category
- Company

- 1-year contract
- 3-year contract
Derivative Markets – How Does LES Contribute?

- Educated voice to regulatory authorities (eg. SEC, CFTC, Congress)
- Structured development forums
- Peer review articles
Accounting & Reporting

- Update current IP disclosures
- Evolving tax policy
- Potential public equity qualification
- Data transparency and discovery
- Need for global unification
Update Current Disclosures

- Reinstate joint FASB and IASB research on expanded disclosure guidelines for intangibles
- Revise SEC definitions of asset-backed securities to include intangible asset classes
- Create safe harbor reporting of intangible assets in financial statements
- Clarify Sarbanes-Oxley requirements vis-a-vis intangibles
Evolving Tax Policy

- Generally update the tax code to anticipate impact of innovation economy
- Examine valuation standards for off shore IP transfers
- R&D tax credit
- Consider lower tax rates for IP royalties
- Harness the tax revenue due from the sale of technology to international buyers which is today hidden in royalty free licenses
Potential Equity Qualification

- Licensing revenue from intellectual property exceeds 15% of total revenues or 50% of reported earnings.
- Innovation Ratio [intellectual property value / total book value], determined by an independent third-party appraiser, exceeds 25%.
- Innovation Ratio, determined by an approved algorithm (e.g. Ocean Tomo PatentRatings®), exceeds that of the top quartile of a listed index based on such algorithm.
- The value of intellectual property, determined by an independent third-party appraiser, exceeds $1 billion.
Data Transparency - OTI.com

Research & Ratings
The IPO8 score is an objective measure of patent quality. Read more at PatentRatings.com
10 item(s) found.

Process for coloring granite
PO2 258.6
US4694887 A, filed Jun 17, 1986 - CHO YU H
A process for coloring granite a which comprises dissolving in a solvent a metallic salt formed by reacting a metal with a strong acid to form a solution, introducing the solution to a vacuum container charged with granite to permeate the solution into the...

Aspirating/ventilating apparatus and method
PO2 255.2
US4699444 A, filed Jul 28, 1984 - BALLARD MED PROD
A ventilating and aspirating assembly comprising an aspirating catheter tube internally disposed within and coextensive with a surrounding flexible collapsible stent preserving film envelope, a connector by which ventilating air is invasurally delivered...

Vacuum finger harvester for strawberries or the like
PO2 254.6
US4652453 A, filed Feb 13, 1984 - KINNEY DAVID J
There is disclosed a crop harvester for strawberries or other fruits or vegetables including a wheeled vehicle, preferably self propelled, adapted to pass along beds or rows of the crop and having a rotating perforated support element with hollow retractible...

Method and device for impregnating especially natural stones
PO2 253.1
US4620989 A, filed Sep 12, 1984 - JOHANN STIEDLER KG GMBH CO
Method and device for impregnating plates (3) with a dispersion (D), whereby the plates (3) are saturated with dispersant (M) in a device (1), and this plates (6) are dried with dry air in a drying system (2) from the surface (5) to be impregnated down to...

Temperature and/or pressure resistant hose
PO2 246.6
US4549080 A, filed May 20, 1984 - ITALIANA SERRATURE TORINO
A hose including a number of circumferential corrugations substantially parallel to one another when the hose is upright, separated by grooves, and connected in a longitudinal direction by ribs, so that each corrugation is connected to at least one adjacent...

Purchase a PatentRatings Report for this patent. (More information)
Accounting & Reporting – How Does LES Contribute?

- Public position and standard recommendation on disclosures
- Leverage LES website to collect transactional information
- Expanded LES surveys and related publication
Final Thoughts

- The developing IP infrastructure addresses the essence of LES
  - Business focus
  - Requires global consideration
- There will never be a better time or opportunity to make a difference
- Challenge and opportunity for both LESI and each member Society

How does LES contribute?
Contact Information

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INTELLECTUAL CAPITAL EQUITY®

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This paper represents the personal views of its author and not necessarily those of Ocean Tomo, LLC

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