

An Answer in Chaos

Enter "percent of patents that don't make money" into Google and you can see the chaos. From the first page you find claims that over 98% of patents never get commercialized yet, somehow, only 97% percent of patents lose money. And if you follow these numbers to the source you wind up in endless loops of hearsay and popular media cross-references. I chased one of these chains of unsubstantiation back to the 60's.

The numbers regarding patents can be huge. In March 2013, Monsanto and DuPont settled a patent infringement lawsuit for \$1.75 billion. In 2011, Nortel's patent portfolio was sold in a bankruptcy auction for \$4.5 billion. Yet the conventional wisdom and anecdotal evidence are also clear: many patents don't seem to be worth very much.

So what's a patent worth?

A study of patent value, called PatVal-EU, was published by the European Union in 2009. PatVal-EU was a survey of inventors of patents initially filed with the European Patent Office between 1993 and 1997. While the intent of the survey was to look at characteristics of inventors, it included a question asking the inventor to estimate the minimum price that the patent owner would have sold the patent rights for on the day the patent was issued.

Based on a sample of 7,754 patents, the top line number was that the average European patent was worth about \$8.5 million. But before we start running with these scissors, there are some problems:

First, the data is skewed. While the average patent in the study was worth \$8.5M, when you dig into the data you find:

The bottom 83% of patents probably averaged closer to \$380k

The bottom 67% of patents probably averaged closer to \$175k

The bottom 45% of patents probably averaged closer to \$72k, and,

The bottom 25% of patents probably averaged closer to \$25k.

Interestingly, you find that no more than 8% of the patents can be described as truly worthless but up to 25% of patents may be valued for less than the direct costs of acquiring the patents.

Second, this is self reported survey data which creates statistical concerns of bias in who responded, bias towards industries that value patents more highly, and how impartial inventors will actually be about their inventions. Unfortunately, it also is difficult to identify someone other than the inventor who would be more qualified to answer the question.

Finally, there is a problem with what I call the German issue. Specifically, when the data is adjusted with a dummy variable to identify German inventors, the average patent valuation was cut almost in half. It is unclear whether this is because German patents are worth more or because Germans value their patents more.

So in the end, the data finds some truth in the conventional wisdom. Many patents probably lose money. But the number of losers is far less than 97%.

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