

Indications of Value

Many people feel that estimating the value of a patent is like estimating the value a lottery ticket. In essence you are trying to determine if the ticket is a winner. These people make the point that, like lottery tickets, the statistical distribution of patent values is highly skewed. And they are right. Once you dig into the details of the PatVal-Eu survey you find that the top 1.5% of patents represented about half of all patent value.

In the end though, I don't buy the argument. Techniques exist to value the cash flow, price premiums and cost savings that accrue from patents and patent owners would know the information required to use them. And even if half the value is tied up in the top, the other half is still a lot of money.

And the probability of winning the lottery is a whole lot less than 1.5%

But it would be nice to have some external indication of patent's value. This is the question addressed in [Citations, Family Size, Opposition and the Value of Patents](#) by Harhoff, Scherer and Vopel. In a study of 11,471 German patents, the authors build a model of patent value using publicly available information about the patents. The study concluded that the following factors could be used to predict patent value.

Forward and Backward Patent Citations: The concept of forward and backward citation is a commonly used, deeply ingrained and spectacularly confusing way to refer to documents that cite other documents. Forward simply means the patent (or document) was cited. Backward means the patent made the citation. What the Harhoff study found was that the number of forward and the number of backward patent citations both indicated higher probable patent values.

Backward Non-Patent Literature Citations: The more references a patent made to Non-Patent Literature (usually journal articles) the higher the probable patent value.

Number of Jurisdictions: If the same invention is patented in multiple countries (jurisdictions) this is an indication of higher patent value.

Surviving the Opposition Procedure: The German Patent Office provides for a process called opposition. Under the opposition procedure, anybody can oppose the validity of the patent grant within three months of the date of the grant. The Patent Office would then review the arguments for opposition and reestablish their grounds for issuing the patent grant. In the survey, about 8% of patents faced opposition about 14% of opposed patent grants were overturned. Surviving an opposition proceeding indicated a higher probably patent value.

Of the above factors, Surviving Opposition and Forward Patent Citations were the most important factors. While the Number of Jurisdictions, Backward Patent Citations and NPL citations were less important, their appeal is that this information is available immediately after a patent is issued.

A couple of other items to note were:

As a result of the America Invents Acts of 2011, the US Patent and Trademark Office have implemented opposition procedures analogous to the German procedures. These are called Post Grant Review and Inter Partes Review.

The article also provided some insight into what the authors call sleeping patents. These are patent that are held by companies that are not used or licensed for commercial purposes. This concept is at the heart of the many “patent troll” arguments going on today. The authors argue that while there is no direct value in a “sleeping patent,” there is significant indirect value. For example, a company may own patents to two different technologies that produce similar product improvements. In this example, the company would select one technology to implement the improvement but continue to maintain the other patent to protect against competitors using the alternate technology to make the same improvement. While this seems like a minor point, 1/3 of the companies in the survey used this strategy.

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