

## The Patent Paradox

The question has plagued economists for so long that they finally had to name it. It's called the Patent Paradox and the question is this: Why are there so many patent applications given that most patents turn out to be worthless?

I addressed a part of this question in an [earlier post](#) but that discussion was focused more on the value of patents. While fewer patents are as worthless as conventional wisdom would lead you to believe, it is also clear that there is a "lottery ticket" aspect to the potential value of a patent where a small proportion of patents represent the bulk of patent value.

Still, the question is valid. If a quarter of patents won't cover their procurement costs and half of all patents are probably worth less than three times their procurement costs, why do so many companies go to the expense and aggravation of applying for a patent?

In [Patent Portfolios](#), Gideon Parchomovsky and R. Polk Wagner propose an explanation of this paradox. Their proposal is that patents should not be evaluated in isolation but should instead be evaluated as part of a broader portfolio. Their belief is that the value of a patent portfolio will be greater than the value of the individual patents.

The proposed mechanisms that drives this increased value are improvements in scope and diversity. The idea behind their concept of scope starts with a simple observation: an individual patent can only protect an individual innovation. What Parchomovsky and Wagner point out is that by acquiring patent protection for a range of innovations that are related to a targeted market it becomes possible to create a "super patent" that can be used to more broadly defend the entire target market.

The idea of diversity is that multiple related patents are easier to defend in court. When a company is defending itself in court, the risk is that the court will find that the underlying patent is invalid. When patent protection is spread over multiple patents even if a court holds a single patent to be invalid it is unlikely to find the same defect in multiple patents.

To be clear, this is a theory. Parchomovsky and Wagner's paper was published in 2005 and is well known in the literature, the truth is that it is just the opinion of two academics. While the paper provides case studies, makes some predictions and generally makes sense, I have not found a study that empirically confirms, or even tests, this proposition.

Hopefully, something is in the works.

Jim Carson is a principal of RB Consulting, Inc. and a registered patent agent. He has over 30 years of experience across multiple industries including the biotechnology, textile, computer, telecommunications, and energy sectors. RB Consulting, Inc. specializes in providing management, prototyping, and regulatory services to small and start-up businesses. He can be reached via email at [James.Carson.Jr@gmail.com](mailto:James.Carson.Jr@gmail.com) or by phone at (803) 792-2183.

Copyright 2014