

Cutting-Edge Analysis Can Help Companies Leverage Patent Opportunities, Avoid Risks

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There is no shortage of new developments involving patents these days — from legislative initiatives in Congress to a host of recent U.S. Supreme Court decisions — and making sense of these changes and their impact on patent value, as well as the opportunities they present, is challenging. Through patent analytics, companies can better understand these developments, capitalize on new opportunities and manage their risks.

How Patent Analytics Works

Patent analytics involves research into the factors that are significantly associated with patent value and patent infringement liability risk and has yielded new insights and identified key statistical markers for evaluating transactions and disputes. An initial study on patent analytics, co-authored by Skadden attorney Jonathan H. Ashtor with researchers from the Kellogg School of Management and MIT Sloan School of Business, analyzes all patent infringement awards granted by U.S. District Courts from 1995 to 2008.¹ Hand-coding over 100 variables regarding the litigants, claims and patents at issue, the authors constructed a regression model that accounts for over 75 percent of the variation in award value and identified and quantified significant factors associated with expected liability. A second study focused on the value of an individual patent asset in greater detail.²

This second model analyzes every patent that was held valid and infringed over a six-year period — nearly 400 patents total — and it identifies the patent-specific characteristics and other factors that indicate value.

Utilizing research findings and statistical models, patent analytics can inform companies' decisions in patent-related matters. For example, portfolio analytics evaluates patents in a company's portfolio to suggest what the key assets are, test and benchmark valuations, compare aggregate asset worth and highlight potentially underutilized patents and potential value gaps. Docket analytics assesses award/liability expectations in potential and ongoing patent infringement disputes to help inform decisions regarding a company's litigation docket and resource allocations as well as to evaluate a potential transaction target's patent-related disputes.

Portfolio Analytics

Portfolio analytics provides a measure of the relative expected value of individual and groups of patents based on publicly available information regarding the specific assets and their owners. Below is a snapshot of three competing portfolios evaluated against each other.

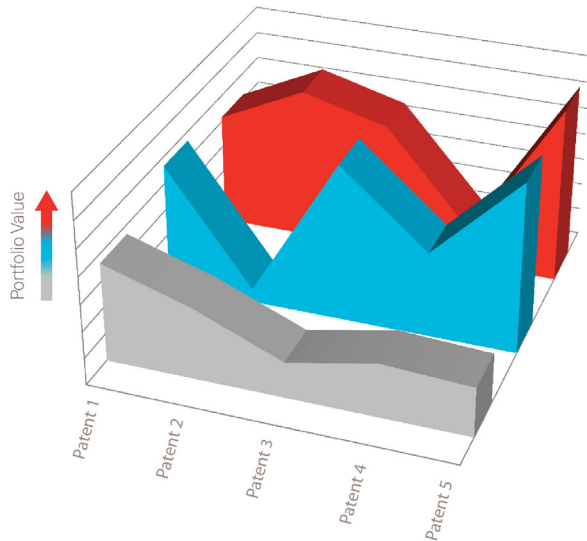
Each portfolio includes a sample of five patents of the three companies in question, with company patents grouped in gray, blue and red, respectively. As shown above, portfolio analytics provides a measure of the value of each portfolio in the aggregate and relative to each other. Additionally, each individual patent asset is represented by a vertex along each shaded bar, facilitating identification of the predicted highest-value and lowest-value assets of each company and across the set.

¹ "Explaining the Unpredictable: An Empirical Analysis of U.S. Patent Infringement Awards," *International Review of Law and Economics*, vol. 35 pp. 58-72 (2013).

² "Redefining 'Valuable Patents': Analysis of the Enforcement Value of U.S. Patents," 18 *Stan. Tech. L. Rev.* ___ (forthcoming Spring 2015).

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Portfolio Analytics



Portfolio analytics provides information useful for:

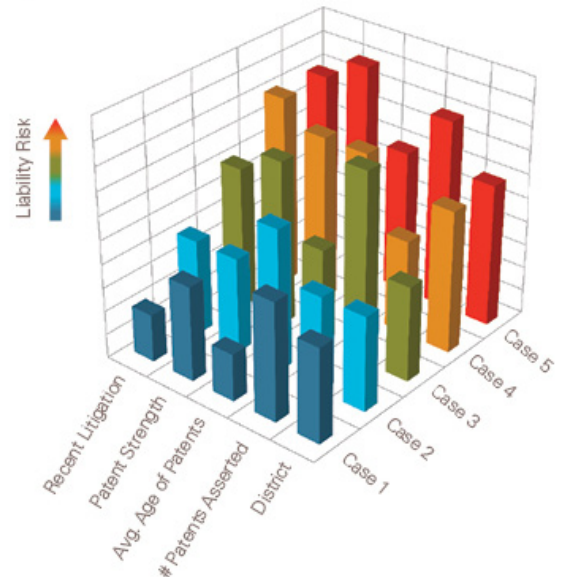
- Assessing portfolio value and identifying key patent assets;
- Ranking competing portfolios against each other;
- Analyzing the patents of prospective targets for acquisition or licensing; and
- Stress-testing valuation assumptions and focusing diligence resources in a transaction.

For example, in a technology collaboration, a company may contribute some assets and/or expertise and rely on its counterparty to provide necessary technology and other resources. In such situations, selection and vetting of the most suitable counterparty can be crucial. Portfolio analytics can be used to evaluate the relevant patents of several potential counterparties and assess the value that each contender is offering to bring to the table. In the M&A context, traditional legal due diligence typically would include reviewing the target's patent portfolio and searching patent databases to confirm the status and ownership of its assets. Portfolio analytics provides an additional level of quantitative insight into the strength and value of the target's portfolio, such as by identifying which patents have significant expected values and measuring the aggregate portfolio value against other portfolios recently acquired by the client or owned by the target's competitors. Portfolio analytics also can be used to pinpoint the target's most important patents, which then can be analyzed for potential issues concerning validity or third-party infringement.

Docket Analytics

Docket analytics provides a measure of relative expected liability or award value among pending patent disputes, utilizing publicly available case information — in this instance, details from complaints, dockets and relevant opinions or orders (if any):

Docket Analytics



As shown above, each dispute is analyzed and ranked against the others, from highest to lowest in terms of expected liability risk/award value. Additionally, certain risk/value factors in each case are mapped along the horizontal axis.

Docket analytics information can be used in a range of scenarios, including:

- Evaluating a potential target's litigation docket and potential risks, using only limited publicly available information;
- Guiding due diligence in the context of a range of licensing, collaboration or acquisition transactions;
- Assessing a company's own litigation docket with an eye toward allocating internal resources; and
- Analyzing new patent cases in real time as they are filed.

Docket analytics can be particularly useful in technology M&A and financing transactions, where a company is looking to acquire, invest in or underwrite a target company that is involved in multiple patent suits. In this setting, it provides a ready snapshot of potential outcomes in each suit, which can highlight key risks and guide further diligence.

Alternatively, with respect to a company's own litigation docket, information about its prior set-asides, settlements and awards can be modeled to create a specific baseline, which in turn facilitates quantitative evaluation of new cases and benchmark performance over time.

Patent analytics provides new insights that can greatly enhance a company's ability to assess opportunities and challenges, thereby facilitating better decisions in patent-related transactions, disputes and portfolio optimization.