

stamford advocate

Priceline founder Jay Walker's latest venture looks to innovate licensing

By Elizabeth Kim

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JAY WALKER executive chairman of Patent Properties (*right*) with CEO JON ELLENTHAL (*left*) in Stamford.

Back in the 1920s, musicians were coming to grips with a threat to their livelihoods. In a battle that has resonance in today's Internet era, artists complained that the new-fangled technology called radio was effectively stealing their creative work. Amid the specter of lawsuits, a relatively nascent group

representing musicians and music publishers called the American Society of Composers, Authors and Publishers, more commonly known as ASCAP, reached an agreement for its members. In a model that is still in place today, radio stations agree to pay a fee in return for playing a large catalog of songs licensed by

ASCAP, which to date collects nearly \$1 billion in royalties.

"If you look back on what happened, you see a very simple story," said [Jay Walker](#), the Stamford-based entrepreneur best known for being the founder of Priceline, the online travel booking company that introduced a bidding concept to airfares and hotel stays. "Every stakeholder was really better off with reasonable pricing. Everybody in the food chain got paid in a fair and reasonable way."

With that in mind, Walker has for his latest enterprise taken the strategy of ASCAP and applied it to yet another creative class of workers, that of inventors. His latest start-up, [Patent Properties](#), aims to create a voluntary and affordable marketplace for patent owners and businesses. Staffed with a small team of 17 employees, the public company is expected to launch a subscription-based service later this year that will match up and broker relatively low-cost deals between inventors and their users.

"We believe that by using simplicity, technology and common sense that works for everybody, and especially by keeping prices very low, we can replicate in the intellectual property and patent world what ASCAP did in the music world," said Walker, who serves as the company's executive chairman and lead inventor.

The potential stakes for the economy appear to be enormous. According to the company, of the

roughly 2.3 million active U.S. patents, an estimated 95 percent go unlicensed and, as a result, fail to generate any revenue.

The reason has to do with the often-prohibitive financial cost patent owners face in having to go to court in order to protect their interests.

As Walker put it in a recent interview for Chief Executive Magazine, "Having a patent is really just an argument waiting to happen."

For businesses, meanwhile, the object of the game has been to avoid licensing a patent until slapped with an infringement lawsuit.

To counter what it considers an "adversarial" environment between inventors and their possible customers, Patent Properties has devised a service that

asks patent owners to agree to a "no-fault" system that makes their inventions available to companies that pay a flat monthly subscription fee.

The company is targeting small to medium-sized businesses interested in developing their own R&D as well as research universities, which are large patents holders.

Subscribers will pay approximately \$1,000 to purchase a basic package of 100 patents customized for them by a software program that measures their statistical relevance. For every patent that gets packaged, an inventor can expect to receive an average of \$100 a year.

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JAY WALKER (*right*) said Patent Properties aims to create a voluntary and affordable marketplace for patent owners and businesses. CEO JON ELLENTHAL (*left*) acknowledged that there would be some resistance in the marketplace

subscription service will be ones that the company has been granted permission to use, subscribers will be provided with liability insurance. Patent Properties will foot 50 percent of the legal costs arising from infringement lawsuits as long as they are up to a certain limit.

There have been other efforts in the private sector to monetize patents. Among them, Intellectual Properties, founded in 2000 by two Microsoft alumni, is the largest of a growing number of companies that acquire patents and sell them for licensing. Known as patent assertion entities, they have been more negatively described as "patent trolls" for their rent-seeking practice of suing companies for patent infringement. Critics say that such companies wind up clogging up the courts and do relatively little to spur innovation.

Walker, who is named on more than 700 patents, has himself been accused of being a patent troll, a charge he staunchly denies. His company Walker Digital, an R&D lab which spins out inventions and start-ups, the most notable being Priceline, has actively sued companies for violating the company's patents.

Walker said that his latest venture has the potential to revolutionize the marketplace for patents and reward invention. Although Patent Properties stands to earn commissions for each patent it licenses, the company says that the bulk of the revenues from the subscription fees will be returned to inventors.

According to Michael Risch, a law professor at Villanova University School of Law who has written extensively about patents, the real test will be whether the company earns money for

inventors. Risch said that the model of charging a flat and relatively low price for patent licenses was one that he had not yet seen.

"The key is that (the inventions) have to be important enough so that people will pay," he said.

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Camilla Hrdy, a visiting fellow at the Information Society Project at Yale Law School, also cited Patent Properties' fee structure as its distinguishing feature.

In an email, she wrote that she hoped the company could "alleviate transaction costs in patent licensing markets."

[Jon Ellenthal](#), the CEO of Patent Properties as well as Walker Digital, acknowledged that there would be some resistance in the marketplace. Instead, he said the company was looking to early adopters. As part of its business plan, it will allow startups to delay payment for the subscription service for two years.

"We jokingly say that most people want to go third," he said. "Our job is to bring something brand new and different that changes how an industry does business."

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