



More Details Revealed on Jay Walker's Patent Utility — \$1,200 to Join, Typical License Expected to Generate \$1k

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We wrote back in March about Jay Walker's attempt to find a way of monetising the vast majority of US patents that get left on the shelf, unused. Earlier this month the beta version of the US Patent Utility went live and in a call with investors to announce Patent Properties' third quarter results (Patent Properties is Walker's NPE which is launching the new initiative), Walker and the CEO Jon Ellenthal revealed more details about the Utility which is due to fully launch in the New Year. As Walker described it, the project is "a big data software engine to drive innovation."

A typical, non-exclusive licence registered with the Utility is expected to make \$1,000 over its term, with 85% of that revenue going to the listing owner. Licensing members can list their patents for free, can pursue licensing strategies outside of the Utility and can exclude any party they want from being an eligible licensee.

On the other side of the equation are the general members who will sign up for a monthly subscription fee of \$1,200 and in return will benefit from a suite of services from a six-part 'patent action plan'.

Here's what you get for \$14,400 a year:

1. Each general member receives quarterly reports fully customised to its business from which it can learn about the patents that are relevant to its operating environment, and discover the litigation history of patents and their owners; receive updates on any patented technology being invested in by their top five direct competitors; and receive information on innovations that relate to the member's R&D priorities.
3. The Utility will assign a patent litigator from a network of law firms to conduct a twice yearly review with members so that they understand the IP risks and opportunities facing their businesses.
4. Over time the Utility will help each member build a portfolio of up to 50 licences to patents and innovations listed in the Utility's catalogue that are statistically relevant to a member's business.

3. In the event that a general member finds itself embroiled in patent litigation it will receive legal fee discounts of up to \$100,000 on the first \$200,000 of expenditure. A member can qualify for this on up to five different cases.
4. Each member will receive a discount of up to \$25,000 on legal fees to file more of its own patents.
5. If the general member has patents of its own that it lists in the Utility's catalogue then it will qualify for a five-year licensing guarantee of \$5,000 to \$50,000 and an immediate royalty cheque.

As we noted in our original post, the Utility is an unashamedly budget approach to helping small and mid-sized businesses, in particular, unlock some of the value in their patents, and to tap into the wider patent market. According to Ellenthal, there are 230,000 businesses in the US with revenues of between \$5 million and \$1 billion that operate in the top 10 industries affected most by patent litigation. He added that the Utility's initial outbound marketing efforts will be focused on the 40,000 companies that they have identified with revenues under \$250 million which own three or more patents.

To help support the case for unlocking what Patent Properties' leadership see as the vast reservoir of US innovation that remains unused, Ellenthal referenced a piece of research released earlier this week by Economists Incorporated which attempted to quantify the economic benefits from a relatively small increase in the proportion of patents that are successfully licensed. According to the authors of the paper, entitled 'Unlocking Patents: Costs of failure, benefits of success', a 10% to 20% rise in patent licensing revenues, which they estimate to be worth \$80

billion, will result in wider social gains for the US economy of between \$100 billion and \$200 billion.

The report highlights the problems thrown up by a licensing system that places too much emphasis on "hitting home runs" – ie, licensing those patents that are likely to realise hundreds of thousands or millions of dollars in revenues.

A cynic might well read the report, note its support for a market-based solution like the US Patent Utility, and respond that it would say that wouldn't it. But Patent Properties, to its credit, has made no secret of its support for this research. Plus it's hard to argue with the point that the American economy will receive some significant benefits if just a small slice of the 95% of US patents that go unused generate some sort of revenue.

The question is, is the US Patent Utility part of the answer? Here are some thoughts:

- The onus looks to be on convincing inventors and other patent owners to sign up as listing members and to throw their patents into the pot. The range of benefits available to general members at a relatively low cost suggests that the Utility could find plenty of interest. Part of the problem that can exist with inventors and patent owners who need to be encouraged to join as licensing members is that many inventors think their rights must be worth hundreds of thousands if not millions. That has only been encouraged by a media narrative that has placed patents, and a supposed jackpot that they represent, in the spotlight. Would those patent owners now be prepared to settle for a typical licence that generates \$1,000? That's better than nothing, but it's not always just the top end of the market that is dreaming of home runs.

- The Utility's timing is good – if you examine the latest numbers from Lex Machina, then the number of patent cases being filed is falling. The Utility's solution of placing statistical probability at the heart of licensing instead of the courtroom should be appealing.
- Can an example set at the smaller end of the business community have a trickle-up effect? This doesn't give us a solution to the Apple v Samsung conflicts of the patent world, which Jay Walker will rightly tell you are not his market, but the appetite for war may be fading. Long-term, sustained patent peace could have a notable network effect on all parts of the licensing market.
- The competition – the Utility is not the only initiative aimed at bringing a market-based solution to the problems of licensing. Notably RPX has been making a stronger play for the SME market and earlier this week announced a new insurance product aimed at small and emerging growth companies. With its guarantees to paid-up members of financial help in fighting cases and potential contributions towards more patent filings, the Utility can also be seen as an insurance product of sorts – but with the opportunity to generate financial returns thrown in.
- Despite the patent action plan, though, Walker's pitch is based on helping members make money from their patents. So, when entries or individuals do sign up many are going to expect to see the money. If they don't, the risk is that the Utility will go nowhere quickly. That means there has to be demand for the patented inventions that Utility members are offering. Patent Properties will need to create that demand.

For a relatively sophisticated SME, the Utility does offer what seems to be a pretty compelling package at relatively little cost. The question is how many such SMEs are there out there? That said, the Utility does have one big advantage: Walker's track record as a business leader and inventor, and his skill as a communicator, should ensure that he'll be firmly in the news over the next few months. Get ready to hear a lot more about the Utility.