



A Strong Innovation Ecosystem is Needed for Job Creation

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On Thursday, November 6, 2014, Jay Waker, the Founder of Priceline.com, gave what can only be described as an inspirational keynote address at the 2014 IP Dealmakers Forum in New York City.

Speaking without notes, Walker was in rare form. This is the presentation that all Congressional Staffers and every Member of Congress need to hear. Walker spoke about everything from job creation to the need to allow innovators to benefit from the fruits of their labors. The common thread throughout his speech was simple — attracting more customers leads to job creation, the way you attract more customers is to solve problems in innovative ways, and then you patent those solutions, thereby creating a competitive advantage.

“If you are good at solving problems you can have a lot of customers,” Walker explained as he started his address. You can have a billion customers if you solve a problem in the modern world that a lot of people have, he told a packed audience of nearly 200 attendees, with more in the overflow room where his address was being broadcast internally. He then succinctly explained: “How do we solve problems: Inventors.”



Jay Walker sits with Jon Ellenthal as he is introduced as keynote speaker at the 2014 IP Dealmakers Forum.

If you want an engine to create jobs you have to have inventors who bring value. “Make no mistake, at the core is invention and innovation, pick your term, they are one in the same,” Walker said.

Without customers we don’t have jobs, and you cannot get customers without solving a problem and having some kind of competitive advantage. “If we don’t have a strong ecosystem that supports innovation we are going to have less of it. This isn’t rocket science,” he exclaimed. If we make something complicated we will have less of it.



Jay Walker on Nov. 6, 2014 at the IP Dealmakers Forum in New York City.

Walker pivoted from talking about jobs and the lack of a strong ecosystem to support the innovation that we say we want and moved on to recognize that today we see a strange phenomenon in the innovation space— companies that are innovating are increasingly keeping their innovations secret. Why would I want to share my advantage with competitors? Walker explained that 995 solutions to problems are kept to themselves, with only 5 out of 1,000 actually patented and disclosed. “Is this good for our country and economy? Absolutely not,” Walker explained. “Our enemies couldn’t come up with a worse system if they tried.”

“A patent is a title to a solution for a problem... if you haven’t solved a problem you have nothing to patent,” Walker told the audience. This is problematic because most solutions to problems have to build on someone else’s prior solution. So if our innovation ecosystem is encouraging innovators to keep secret the solutions they

identify then it will be impossible for innovators in the future to build upon the work that they don’t know about and could never find regardless of the scope or intensity of the search.

Walker then again pivoted a bit and started addressing the concept of failure, which he said is celebrated in the United States, unlike in other countries. In most cultures around the world failure is penalized, which means that there is no incentive or desire to attempt to succeed because the fear of failure is overwhelming. But if you fail in America it is quite different. “If you fail in America we say ‘good for you.’” Walker explained that it is uniquely American to prefer to celebrate a single success, even it that means you had to fail many times to get there. Walker went on to prove the point by saying that Bill Gates is perhaps the most celebrated American failure. Gates dropped out of college prior to founding Microsoft and becoming one of the richest men in the world. No one talks about his failure, we only care about success.

In his unscripted, highly entertaining stream of consciousness Walker again took this lesson and pivoted into his next point. “We have evolved a system where it is expensive to get a patent, which means most people can’t obtain them.” He then astutely pointed out: “the sport of kings is patent litigation.” Then the kicker: “We have figured out how to exclude nearly everybody from the game of innovating, and we are going to pay a heavy price if we don’t fix it.”

The unconnected dots between the story of America celebrating failure and how expensive innovating has become is the reality that the patent and inventing game is so expensive that it isn’t even possible for most people to fail, let alone succeed. And without failure is it even possible to succeed

unless you get lucky? We learn so much more from failure than success, but our innovation ecosystem is so screwed up that we aren't even letting people in the game. This was not what the Founding Fathers had in mind. Throughout most of history the patent and innovation game was affordable enough so that individuals could participate. Walker is right when he acknowledges that is no longer true.

Walker returned to how nonsensical the U.S. innovation system has become, pointing out that at one point Microsoft had a rather absurd rule— it was a fireable offense to actually read a patent owned by someone other than Microsoft. So that means someone publishes only 5 out of 1,000 solutions to problems and you are actually more likely to be held liable if you read those 5 out of 1000 solutions that got published as a patent. “That is a disaster,” Walker exclaimed. We are at the point where “I need a federal judge to tell me what the meaning of “is” is. That is a system for the destruction for innovation, and that is exactly the system we have.”

Walker has no illusions, saying he understands that most of the people must work within the constraints facing them within their company structure and corporate culture, “but some of us have to get to work reinventing the entire system,” Walker explained. “I am all for improving the patent titling system, but if that is all we do we will still fail to create the jobs we want, the competitive advantage we want, the economy we want. We will fail because fixing the titling system will not fix the innovation system.”

Walker went on to say that Members of Congress are not going to sit around and spend time trying to figure out the solutions to fix our innovation ecosystem. The Patent Office isn't going to figure it out



Jay Walker at the 2014 IPDealmakers Forum.

on the regulatory side either. “The challenge is: Can America’s private sector step up and unlock people’s desire to take the other 995 solutions people have and move them into the patent system so they teach others in ways that people can use? That is what I am working on, and hopefully there are others.”

The people in Silicon Valley are moving at light speed and they want people to get out the way, Walker recognized. “I appreciate that you are breathing the air and drinking the water in Silicon Valley, but at the end of the day if you do not own the exclusive rights to the problems you are solving you are going to get copied at an astronomical rate.” This last point is one that I’ve wondered about for a long time. There has been a concerted effort to weaken if not completely destroy the patent system, which originated in Silicon Valley and for years has been pushed by several major

technology companies. For the first time I am starting to hear rumors that Silicon Valley is finally more fearful of the Chinese than patent trolls, so perhaps the time is right for Silicon Valley to reassess and realize the wisdom in what Walker says: without exclusive rights and a system of protection in place to enforce those rights you are going to get copied.

With another pivot Walker pointed out that he wasn't only referring to patents and, in fact, he used to prohibit the use of the term "patent" at the office. "I only want to hear about the invention. Tell me what problem you did solve," Walker explained. Of course, he went on to acknowledge the very real financial truth that somehow escapes appreciation by many people who otherwise seem intelligent and thoughtful— "if we can't own the solution to the problem the last thing I want to do is invest in the solution," Walker said. He went on to say that for every patent he has there were 10 solutions that he couldn't own. "Then there were the problems for which we could own the solution, but we could never get paid... because there were no economics that would let me in... [so there was] no economic value for me to teach it."

Walker wrapped up his address without discussing his latest venture, Patent Properties, which will soon be launching what he calls *The U.S. Patent Utility*. A question from the audience, which didn't seem planted but did seem somewhat skeptical, asked: "So what are you here pitching?" Walker said he didn't come to pitch anything, just to talk about the state

of disarray in the innovation ecosystem, but he did briefly take the chance to explain that he envisions the creation of an ASCAP like model for patents, which would allow the vast majority of patents that are currently in force but not monetized to return some revenue to the patent owners. The Patent Property licensing system will be based on statistical relevance and big data systems, using semantic search to identify the patents in force that are the most relevant to what a company is doing and then offer low cost licenses to all the patents in the portfolio that are matches.

"At the end of the day the issue is that less than 100,000 of the over 2 million patents [currently in force] have been licensed," Walker said. "The rest of them are worth something. They are like diamonds... the vast majority of diamonds are not gem quality, but they are useful nevertheless for a variety of technical reasons in a variety of applications." The typical license in the U.S. should be between \$1,000 to \$2,000 for those patents that make up the 95% of patents that are never used. "Are you going to get rich, no, but you will be able to pay your maintenance fees," Walker stated.

"My answer won't make any sense to people in this room, just like Priceline didn't make sense to anyone in this room... but disruption provides a solution for the non-consumer, or those who are not in the game. It was designed to deal with small businesses, Universities and people outside the industry. It is designed for people that could fly any airline at any time."
