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Independence Day

“Tip of the Month”

Are “Worthless” Patents Valuable?

The term “worthless” means without practical value or usefulness. For patents, the term worthless is considered typically to mean an invention doesn’t seem to have any commercial potential. Having no commercial potential might mean the market is too small, or the product is too expensive to manufacture. It may also mean that the protection offered by a patent is considered too narrow. In other words, a competing product can be easily made that does not infringe the patent. Are these patents truly “worthless?” Weak or worthless patents may still have value.

The fact that a patent has been examined and issued by the US Patent and Trademark Office provides some legitimacy to the value of the patent.

For publicly-traded companies, even weak patents add value. Investors often look at a company’s intellectual property portfolio to determine whether investment is prudent. Investors typically look at the number of patents, the average number of annual patent filings or issuances, and the ratio of patent issuances to research and development expenditures.

Weak or worthless patents may also have decoy value. In a freedom-to-operate context, offering to sell more patents can elevate the confidence of the buyer to think that the buyer will have more freedom to operate in a given market. Having a large portfolio also increases the costs to a competitor who wishes to assess each patent in the context of trying to carve out a non-infringing product. These costs may dissuade competitors from either entering the market or challenging the patent.

Weak patents also have decoy value to benefit buyers purchasing multiple patents. A buyer might not want to tell the seller the exact invention of interest as this could increase the price. In this context, the weak patents become valuable by allowing a buyer to negotiate a lower price for the bundle that contains the desired patent.

Even prospectively weak patents may open doors to licensees and/or venture capitalists for patentees. Typically, a prospective licensee will not even meet with an inventor unless the inventor already has either a patent or a patent application pending.

Thus, when evaluating the value of a patent, remember that even a weak or “worthless” patent may harbor value to its owner. Also, keep in mind that a patent that is worthless to one company may be valuable to another.

If you have any questions regarding your own patents or any patents you may wish to buy, then call the attorneys at Mesmer & Deleault today at 668-1971, or contact us by email at mailbox @ biz-patlaw.com.

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