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Getting a Loan with Your Patents



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Did you know you could secure a business loan with your patent(s)? Many people are unaware that a patent or patent portfolio can be used as collateral to secure a loan, but if you take a look at the assignment records at the USPTO you can see just how common this practice really is.

An assignment indicates who owns an issued patent or pending patent application. They are registered with the USPTO and available for public inspection. There is a special type of assignment called a "security agreement". A security agreement indicates that a patent owner has used its patents as collateral for a loan. The security agreement says that the lender will get ownership of the patent if the

current patent owner defaults on the loan. The security agreement also restricts what the patent owner can do with its patent so that the value of the patent is preserved. A patent owner might be obligated, for example, to pay the maintenance fees for an issued patent. Once the loan is paid off, the security agreement is released. If the loan goes into default, however, the ownership of the patent is transferred to the lender.

A formal patent valuation is important for determining how much of a loan a patent portfolio can support. There are consulting firms that specialize in patent valuations, like GTT Group. I spoke with Dan Buri, Director of Asset Services for GTT Group, about the overall patent valuation process. He indicated that lending is often based on a total company valuation with patents supporting the valuation. Key drivers of patent value are current and forecasted demand for the patented invention(s), evidence of use in the market, and the remaining life left on the patent(s). Patent valuation, however, is dependent upon market circumstances and the end goal for the valuation. For instance, a company valuing a patent from an internal defensive perspective will likely approach the overall patent portfolio value differently than a company considering the patent portfolio's offensive market value.

A random sample of 100 recently issued patents showed that 8 had security agreements. The companies getting these security agreements ranged from startups to Fortune 500 companies. Startups often need bridge loans to cover the gaps between successive rounds of funding. They use their issued patents and pending patent applications as collateral for the loans. Fortune 500 companies can face difficult times as their marketplace changes. They too may need to use their patents as collateral for financing. Citicorp, for example, has a security agreement on 7,176 Eastman Kodak patents.

Banks tend to be the primary lenders providing patent-backed loans. Equity investors and even angel investors also provide loans backed by patents. The banks tend to be those that focus on startups and emerging companies. Comerica Bank and Silicon Valley bank, for example, actively market their services to startups. Comerica has security agreements in place on 8,128 patents and patent applications. Silicon Valley Bank has security agreements in place on 16,124 patents and patent applications.

Once a loan is paid off the bank or other lender releases the security agreement and the assignee has unencumbered ownership again. Records of security agreement releases are also found in the USPTO's assignment data base.

If a loan is defaulted on, then the lender becomes the owner of the secured patent applications or issued

patents. The lender may sell off the patents or actively enforce the patents if there is significant infringement. There are companies that specialize in taking over repossessed patents for enforcement purposes. They are derisively known as “patent trolls”. No one likes a patent troll, but their activity supports the value of repossessed patents by creating a market for them. Without the support of patent trolls, many more startups and even Fortune 500 corporations might be failing since their patents would not have enough market value to collateralize their loans.

Patent(s) can be used to secure loans. These loans can be important sources of cash flow for emerging startups as well as struggling major corporations. Establishing a value for a portfolio of patents is important for securing the loan. Large and growing markets for the patented inventions, active infringement of the issued patents and significant years of remaining patent life are important factors for demonstrating the full value of patents to a lender. Patent trolls support this value by creating a market for patents taken over by lenders when the loans go into default. This helps make patent based lending an important source of business financing.

About the Author

Mark Nowotarski is the President of Markets, Patents & Alliances L.L.C. and is a registered U.S. patent agent specializing in business method patents. He currently serves clients in the financial services, medical devices, consumer products and manufacturing industries.

Mark is also co-editor of the Insurance IP Bulletin. The Insurance IP Bulletin is dedicated to providing useful information to innovators in the insurance industry regarding the protection of their inventions with patents and ways to effectively promote their innovations.

Mark is a former Associate Director of R&D for Praxair. There he was responsible for the development and successful worldwide introduction of new products into the health care, electronics, and manufacturing industries. He was a leader in the reengineering of Praxair's patent system, and was responsible for technology planning for their home health care division.

Mark is an inventor on 17 US patents. He was appointed Corporate Research Fellow for the commercial

impact of his inventions (+\$300 million in sales).

Mark has a Master's degree in Mechanical Engineering from Stanford and a Bachelor's degree with honors in Aerospace, Mechanical Sciences and Engineering Physics from Princeton. His academic awards include the Sigma Xi award for most outstanding Mechanical Engineering research at Princeton and the Union Carbide Award for Academic Excellence and Leadership in Mechanical Engineering, also at Princeton.

3 comments

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1. Jodi June 21st, 2012 12:54 pm

Any startup allowing the possibility of someone getting hold of their patent(s) either isn't thinking ahead or the patents aren't worth much.

For a startup, if you truly need money, there are other ways to raise it – consulting, stay at your day job until you have enough cash, write some software, etc...

Many startups would probably be better off to just sell the patent outright and take back a license rather than let someone else get hold of your core assets. At least that way they can still practice their innovations.

>>> "If a loan is defaulted on, then the lender becomes the owner of the secured patent applications or issued patents. "

Exactly.

2. Mark Nowotarski June 22nd, 2012 8:30 am

Jodi,

Interesting observations. Have you had experience in this area? It sounds like you might have some anecdotes that would be of interest to our readers.

3. Granted Patents and Patent Processes - Weekly Link Round-Up | PatentCore June 22nd, 2012 11:51 am

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