



Developing a patent valuation standard

A new initiative aimed at standardising the way in which patents are valued should be embraced by the business and patent communities

A couple of weeks ago, I received a letter from the DIN (*Deutsches Institut für Normung*, the German Institute for Standardisation). If you receive something similar, it is very likely to be an advertisement for some conference this institution is organising. Conferences are very popular these days.

However, because I was not 100% sure about the nature of the letter, I decided to read it again. Its authors had incorporated a list of people, many of whom I knew. This intrigued me. But the authors had been very smart: the list included my own name. This was reason enough to read the letter completely.

What did it contain? It was an invitation to participate in a workshop to establish a standard for patent valuation. What they meant was quantitative financial valuation.

Why on earth did they invite me? I am only an expert on qualitative patent valuation: in other words, patent due diligence.

The workshop was to be held only about 10 days later at the DIN in Berlin. So I called my friend Frank, who lives in Berlin, to arrange for bed-and-breakfast in his house. Also, I asked the organisers for a draft of the standard.

On the train, on my way to Berlin, I read this, desperately searching to see whether there was anything at all I could contribute. I found several clerical errors, but you can't put this forward in a workshop. Luckily, however, as I will recount further below, my search was not in vain.

Anyway, next morning, my friend Frank drove me to the DIN. "Oh," he said, "this is how the law is made: people, who are not an expert in the field, read the draft in the train desperately seeking something to contribute. What did Bismarck say? 'Those who love sausages or the law shouldn't watch either being made.'"

What sense does it make to establish a standard for patent valuation? Well, what do we all want? Sustainable wealth for our

fellow citizens around the world and their descendents. What is the current view on how this can be achieved? By technical progress, among other things. And there is a good deal of evidence that this belief is not completely wrong. If I compare the standard of living of today with the days of my childhood back in the 1960s, the difference is striking; even more so if you go back to the childhoods of my parents or grandparents. How do we think we can best solve environmental problems? Technical progress is surely going to play a big part. I know that this has the flavour of ideology, but give me something better.

So, how can technical progress be promoted? We need inventions and their exploitation – their realisation or transfer into our daily lives. What helps to facilitate this? Legal protection and money. But surely, there is a lot more we could do; for example, a technology transfer market. For such a market, you need prices. And in order to attract money – which for the main part is risk-averse – you have to reduce the risk incurred. One way of doing this and to establish trust is to devise a generally accepted standard for quantitative financial patent valuation.

This would also help to reduce many of the problems associated with the limited amount of information generally available for investors in the complicated area of technology and patents. And this is what banks have been asking for before they can feel comfortable in investing in patents or in using them as collateral.

What was agreed upon in the workshop was a so-called PAS, a publicly available standard. Hopefully, this will mature into a DIN (*Deutsche Industrie-Norm*, a German industry standard). Who knows, in the end we may have an international standard serving an international technology transfer and patent market.

What does the PAS teach? Bearing in mind that this short column prevents me from going into things in detail, the PAS teaches that quantitative financial valuation of patents cannot be separated from qualitative valuation of patents. To come to a robust result for any patent valuation, you must scrutinise the patent in question and the intricate interrelation between its legal

and economic aspects. After all, what good is having a wonderful patent but no market? What long-term good is having tremendous cash flows if the patent belongs to somebody else? What good is having a potentially huge market but no freedom to operate? What do you do if you have licensees but the patent in question is subject to an invalidity proceeding, whose outcome is difficult to predict? It could be that your patent may be in force for another 10 years, but that the product lifecycle comes to an end very soon. And so on. Many aspects must be taken into consideration.

So, the standard consists in enumerating the most relevant legal aspects to be considered and the most relevant economic aspects to be considered, as well as some of the most important interrelationships between these two areas. Any patent valuation has to take this into account.

Needless to say, there is a lot more to be found in the standard – and in real life.

The standard focuses on the valuation of individual patents, because this forms the basis of any decent valuation work. If it comes to the valuation of a whole bunch of patents, a portfolio, any perfect valuation would have to value every single patent in the portfolio in no less than the standard manner. On top of that, the constructive or destructive interferences and synergies between the patents in the portfolio would have to be taken into account. In most practical cases, this is not feasible. A number of automated statistical ways have been devised to value entire portfolios. These, however, are not the subject of the PAS – at least for the time being.

Who is to be credited for initiating this process of standardisation for patent valuation? As far as I can see, it is Alexander Wurzer. I hope I am not doing anybody any disservice in not mentioning him or her.

The PAS should be available on the internet any day now. So let's go on. This initiative deserves a lot of support.

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