



# Licensing in the Boardroom 2007

The eBay of intellectual property exchange  
**Taeus International Corporation**

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# The eBay of intellectual property exchange

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Hank Barry, best known as former CEO of Napster Inc from 2000 to 2002, stated clearly in his keynote speech at the Spring 2007 LES (Licensing Executive Society) meeting in Atlanta: "The pen and paper system of transacting IP will not scale to meet the needs of the global marketplace." He impressed upon the audience the need for what he called an "eBay for intangible rights", where patent licences could be taken online and adjusted as needs change.

Following Mr Barry's keynote presentation, the idea of an eBay of IP was discussed by individuals representing university tech transfer offices, big pharma, the electronics industry, the legal industry and the gamut of IP consultants. The consensus was that an IP exchange is inevitable, though, as of yet, undefined by any of the participating IP specialists.

## Can an IP portal be built?

eBay is now in its 13th year. Online communities currently dominate the list of the most popular websites. The technology to create these modern portals is mature and relatively low risk, yet there is no dominant player in the market to be the IP portal.

Could it be that the business and legal issues surrounding licensing and technology transfer are so complicated, and so unique, that an online marketplace for IP is never going to catch on? Or is it most probable that such a development is inevitable and the world is just waiting for the correct model to emerge?

Barriers to its creation all need to be well considered by corporate board level executives in order to anticipate the direction the future marketplace for intellectual assets may take.

## What's hot today?

In order to create an IP trade and exchange portal that will re-shape the entire landscape of IP transfer, the features that make the most popular websites compelling to millions of users should be considered. Once established, test if these attributes can be incorporated into a website of open IP exchange.

According to Alexa.com, the top 11 websites are:

1. Yahoo.com
2. Google.com
3. Myspace.com
4. MSN.com
5. YouTube.com
6. eBay.com
7. Facebook.com
8. Wikipedia.org
9. Craigslist.com
10. Live.com
11. Amazon.com

Yahoo, Google, MSN and Live.com are all search engine portals. MySpace, YouTube and FaceBook are all social networking sites. Wikipedia is an online collaborative encyclopaedia; while eBay and CraigsList are product (and service) exchanges, and Amazon is an online retailer. All of these sites have many things in common – they are highly distributed, non-monolithic sites containing mostly user-generated content.

Most lists state their top 10, but this one conspicuously contains 11; to include Amazon.com. Although not always thought of as an information portal, Amazon.com has, by far, the world's largest database of user-generated book reviews. It is from this network of content-creators that Amazon generates its value and hence finds its way onto this list.

Any good readers want to ensure their time is well spent when they commit three to 10 hours to read a book. As a result, they frequently rely on Amazon.com reviews.

## Contenders in the market for the IP trade and exchange

Website	Alexa.com Site Rank
eBay.com	6
Craigslist.com	9
Innocentive.com	245,444
Yet2.com	309,495
OceanTomo.com	710,460
NineSigma.com	1,043,494
Tynax.com	1,719,304
YourEncore.com	2,006,445
OvenInnovation.net	2,648,469

Amazon has become the giant it is today, not only because of its low prices and superior customer service, but because of its network of reviewers and the content they create. The user-generated content – only available at Amazon.com – lowers the risk of wasting time on a mediocre book. This fact far outweighs the few dollars that might have been saved by shopping elsewhere.

Each of these top 11 websites is united under the principle of free and open exchange of ideas among participants. All mediation is done by other users of the site and not by the folks at headquarters. In effect, the network of contributors is the product. In Amazon's case, a book-selling business is layered on top of a book review portal.

### Is there a need?

Maybe there is too little demand for an open IP exchange. However, is there a company that doesn't want access to outstanding innovation? Is there an innovator who doesn't want access to the deep pockets of large organisations to bring their inventions to market?

Matthew Emmens, CEO of Shire Pharmaceuticals Group, pointed out in his keynote at the LES Spring Meeting that drug companies now license or purchase compounds very early in their development. Today it is not uncommon to license stage one compounds and incur all the additional risk that comes with doing this.

The job of Mr Emmens and his scientific team is to take a bet on early stage emerging compounds and do the scientific and market due diligence to reduce the risk as much as possible. For Shire the "not invented here" syndrome is just not a problem. As he stated: "We built a two billion dollar company and have not invented anything." Shire and the rest of the pharmaceutical industry recognise that in order to succeed in the 21st century they must tap the talent pool outside of their organisations.

In stark contrast to just a few years ago, smart companies from all industries are realising that in order to stay competitive, they need to harness the collective wisdom of the planet and capture great technologies from small, inventive and autonomous teams of researchers.

The need for better mechanisms of technology transfer is also illustrated by the fact that up to now, the commercialisation effect of the Bayh-Dole Act has been minimal. In 2005, US\$200 billion was spent by the government on technology initiatives which led to 50,000 patents, 25,000 licences and 125

new companies. To put it into perspective, US\$1.6 billion is what the Bellagio Hotel (10,000 employees) in Las Vegas cost.

There is an obvious need for a better mechanism to bring technology into the marketplace.

### Today's IP portal landscape

The question that remains is this: is anybody succeeding today? YouTube.com sold for US\$1.6 billion, eBay's Market Capitalisation is US\$45 billion and Google's is US\$148 billion! Even Craigslist.com brought in a relatively paltry US\$25 million last year and employs 24 people (none of whom are graphic designers), despite Craig Newmark's refusal to accept advertising with the exception of paid job listings in seven large metropolitan markets.

With stakes this high, one does not have to go far to find entrepreneurial companies that have entered, are entering or entered and failed the race to become the dominant player in the IP trade and exchange marketplace.

To date, entrants into the IP trade and exchange market have found it most challenging to foster an ecosystem that can match the top internet portals of today. It would require a leap of faith for a company to eschew its current business model in favour of changing how IP is bought, sold, licensed and even created. Concurrently, outsiders, who have no current business model to defend, may not understand the market well enough to build what the customers want.

Current and past contenders in the market for the IP trade and exchange are identified in the box on this page. Some of them are profiled below.

### Ocean Tomo

Ocean Tomo has pioneered live IP auctions and has received copious coverage in the IP press. Its Chicago auction in Spring 2007 was an excellent event: 31 of the 58 lots sold for a combined total US\$10.6 million during the auction and about another million in post-auction negotiations was reported.

The live IP auctions are new but do not represent a paradigm shift in IP exchange. They are a new spin on the old IP brokerage model which goes like this: find sellers to represent, dress up the patents for sale, promote the patents to prospective buyers and transact the sale. As in other brokerage models, Ocean Tomo stands squarely in the centre of the transaction.

OceanTomo.com also has something it calls the Dean's List. According to its website: "The Dean's List is an on-line IP exchange

that brings IP buyers and sellers together unlike anything currently offered in the market.” For a fee, Ocean Tomo prepares the patent for sale and develops a business-grade description of the technology, the problem that the technology solves and the primary application for the technology. The company then posts it on its website in an open forum that unregistered users can browse. Ocean Tomo does not reveal to browsers the patent number or the seller of the technology.

In this forum, no Amazon-style reviews can be rendered or questions posted about the technology. The details are not received until the prospective buyer asks for more information from the seller.

Once Ocean Tomo collects its fee for developing the marketing presentation on the Dean’s List, it stays out of the transaction and lets the seller work directly with the leads that are generated from the Dean’s List.

#### Yet2.com

According to its website: “Founded in 1999, yet2.com is focused on bringing buyers and sellers of technologies together so that all parties maximise the return on their (IP) investments.” This may sound like a portal in spirit, but let’s see what’s under the hood.

Yet2.com was perhaps the earliest well-funded entrant to the IP exchange market. It currently lists about 4,900 technologies for sale in 28 separate categories, making it a relatively large player. The site is well organised, but in order to view more than a brief summary of the listed technology, a user must create an account and log in. As a result, neither the user nor Google nor the billions of potential web users can investigate the technology for sale, unless they are willing to give up their email address.

#### BountyQuest

BountyQuest.com (now defunct) tried to carve off a slice of the intellectual property portal market. Its goal was to connect people looking for prior art with those who could find it.

Its most famous bounty, posted by Tim O’Reilly, was on Amazon’s so-called one-click patent. There was no clear winner, but three finalists split the US\$10,000 prize money anyway. After the competition ended, BountyQuest posted the top 25 submissions on the site – many quite fascinating.

The concept failed, according to one blogger, because BountyQuest couldn’t effectively match the problem with the problem solvers. Tim O’Reilly wrote that its failure could have been poor execution or

bad market timing. He also stated: “It could also have been the fact that the patent mess is a thorny thicket that doesn’t lend itself well to penetration by amateurs.”

There are also other explanations. Since there can be only one bounty winner (or possibly more through mediation), it would seem that the risk profile for the seekers was too high if the primary motivation that BountyQuest was attempting to tap was financial. The seekers are, in effect, asked to work on contingency and, to make matters worse, they have no exclusivity. What law firm would take a case on contingency if it were not also offered exclusivity?

Worse yet, there was no collaboration between researchers, so each was an island. Nothing in the model promoted collaboration and communication among peers in the technical field. BountyQuest attempted to tap into the financial motivation of the bounty hunting community, but disregarded the other important motivations of bounty hunting such as ideology, community, egotism and even hubris.

#### Tynax.com

Tynax.com (registered in September 2004) bills itself as the “Technology Trading Exchange”. Tynax.com combines a technology exchange with a technology news and research service. It created a web-crawling technology for its news service which it also uses to scan third-party sites that offer patents and technologies for sale. The result is an aggregation of almost 50,000 technologies in a single catalogue, albeit mostly from third-party sites. The aggregation it provides is a handy feature and a step in the right direction.

Tynax also opens up its system to technology brokers, technology transfer professionals and other deal makers to post their technologies for sale. Technology listers pay to post their items; technology seekers get a basic level of services for free and premium services start at US\$95 per listing.

#### Innocentive.com

Innocentive.com has a different spin on the IP portal model. It was founded on the principle that there are many more creative and brilliant scientists outside of a firm than one could ever hire. Scientists generally come from outside the traditional talent pools in the US or the EU – home bases include Russia, India and China – but also from independent labs with excess capacity, outside of traditional industry networks or are even retired scientists looking to keep busy.

Innocentive.com matches this pool of talent with companies seeking solutions to novel problems.

Seekers of technology solutions in biology and chemistry create open challenges on the site and offer awards in the US\$10,000 to US\$100,000 range for the best solution. The solver who finds the best solution to the problem receives the award.

According to Wikipedia: "As of 2005 Innocentive had 34 of these 'seekers' (including Procter & Gamble, Dow AgroSciences and Eli Lilly), which have posted more than 200 'challenges' in 40 scientific disciplines, of which more than 58 had been solved by over 70,000 'solvers'."

The Innocentive model does not harness the collective mind in the same way as the top portals in other subject areas. Their motivational model attempts to exploit the global talent pool, but researchers still work in their own information silo.

This system may be limited by the fact that a logical scientist wouldn't work on a solution for the money alone. Over 70,000 competitors are looking for the same solutions to these challenges, so the likelihood of winning is slim. Additional motivating factors should be explored in the model.

#### **The creation of an open IP market**

Nobody pursuing an open IP marketplace has yet created the system that will revolutionise the IP trade and exchange landscape. As described above, the exchange sites are a variation of the sales and marketing paradigm that has been around for decades: give me

your stuff to sell; I'll package it for sale; I'll promote it (only now on my website that I call a portal); and I'll facilitate the transaction.

This model needs an update. Developers and entrepreneurs should realise that the marginal cost of adding a new customer to a smartly designed portal is close to zero. The Wikimedia Foundation's total expenses for 2006 were less than US\$800,000, increasing from less than US\$180,000 in 2005. Wikipedia.org receives over 30,000 page requests per second during peak hours according to its own site statistics. For a penny, Wikipedia.org serves up about 8,000 page views: effectively zero cost per page view.

A successful open IP portal will create communities where each new member adds value to the network, as is the case with Amazon.com, Wikipedia.org or even BestBuy.com. The system that changes the IP landscape will require no human intervention from the hosting entity to facilitate basic transactions. It will encourage cooperation as well as affable open competition among users. The model will support the entire ecosystem of inventors, technology seekers, legal and IP consultants. The model will simplify the complexities of tech transfer and empower the deal makers to construct their own transactions that are most appropriate to each deal made.

The model will recognise that IP transactions are not goods exchanged for a single currency such as money. Many deals will have restrictions in geography or be limited to a specific time period or be offset by cross-licensing arrangements.



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