

ARTICLES & PRESENTATIONS

U.S. Intellectual Property Activity Booming

by [Charles W. Shifley](#)

Something remarkable is happening in the United States. The pace of intellectual property activity there, including the pace of invention, patenting, brand development, licensing, and litigation, which was consistently accelerating, has taken a quantum leap into higher activity. Both businesses and individuals attuned to this change are reaping enormous rewards not otherwise possible for them.

What is causing this? Contributors to an explosion of IP activity in the U.S. include: The rapid development of the Internet, wireless cellular and satellite communications, and application of computers to control a wide range of systems and machines; the discovery of DNA, and the developments of genetic engineering; United States Supreme Court decisions that resolve that both computer programs and living organisms are essentially patentable; the creation of the U.S. Court of Appeals for the Federal Circuit, the U.S. "Patent Court," and its pro-patent decisions on issues of patent validity and damages; new U.S. legislation increasing the value of patents; the global demand for products identified with United States culture; the U.S. policies of expanding free global trade and having the U.S. compete essentially on its intellectual property; new international IP treaties; and the current, sustained bull market and economic expansion in the United States.

These and other causes contribute to the IP sector of the U.S. economy being in the highest of high gears. The signs of it are everywhere. In the U.S. courts, the number of patent infringement lawsuits have essentially doubled in six years, from 1,171 in 1991 to 2,112 in 1997. In the same six years, there have been at least eight patent infringement damage awards for over \$100 million U.S. While the largest, \$1.2 billion U.S., in *Litton v. Honeywell*, is subject to retrial, the second largest, \$909 million, in *Polaroid v. Kodak*, is final, and paid.

The pace of patent issuance is also accelerating. It took 15 years for a million U.S. patents to issue in the years from 1974 through 1991, to a total of 5 million patents. On the current pace, U.S. Patent No. 6,000,000 will issue in the year 2000, nine years after U.S. Patent No. 5,000,000. The number of U.S. patent applications being filed was up 15% in 1997 over 1996, to 237,045, with especially increased filings in genetics, communications, computer software, and semiconductors. Filings from Canada increased only 2%, from 4,893 to 4,972, in the same year.

IBM generated about \$1 billion U.S. in patent licensing revenues in 1997, up from \$30 million U.S. ten years ago, according to a report from *The Wall Street Journal*. Xerox has set up two "corporate infringement" laboratories, where employees disassemble competitive products and test software to spot potential patent infringement, also according to *The Wall Street Journal*. The goal of Xerox is said to be boosting its patent licensing revenues from \$8.5 million U.S. to \$180 million U.S. in four years. Harley-Davidson is the darling of the U.S. trademark world as well as the motorcycle world, for having increased its revenues from licensing its name to \$24 million U.S. annually. Harley-Davidson Cafes are now open in New York, New York and Las Vegas, Nevada.

The boom in U.S. IP activity has even extended into the practice of law itself. U.S. law firms are raiding each other for talented IP lawyers, hourly rates for lawyers' services are on the rise, and starting salaries for IP lawyers are reaching \$90,000 and in instances, \$100,000 U.S. Large, general practice firms that once left patent law to patent lawyers, are rapidly adding large IP departments to get in on the action.

Will the boom continue? Probably, even if the U.S. economy turns down. The rewards of having exclusive rights to significant inventions and brand names are a "carrot" driving the IP activity, and the potential quick downturns in company fortunes by loss of competitive edge are the "stick." Amgen, a leading biotechnology company, is a billion dollar enterprise largely on the strength of its inventions and patents on EPO ("erythropoietin"). Polaroid remains alone in instant photography because of its patent infringement lawsuit success against Kodak. Motorola, a cellular telephone pioneer, with its stock high-flying only a few years ago, has seen its marketplace position erode as its technology has lagged behind Ericksson and Nokia.

The U.S. courts continue to contribute to the IP market expansion. The standards for defeating patents in U.S. courts are as high as they have ever been, and the barriers to recovering substantial damages for infringement are as low as ever. Just recently, the Court of Appeals for the Federal Circuit opened the door further on the subject matter that is patentable, when it decided that even methods of doing business, long thought to be unpatentable, are instead patentable in the U.S.

Moreover, the telecommunications revolution and the Internet have the potential to bring even the world's remotest peoples into contact with cutting edge ideas. These forces may have their greatest impact in the U.S., as public and private schools target Internet access in classrooms as their technological goal. The Washington Post has also predicted that a "vast data tsunami" is about to "hit the Net," when later this year, the U.S. Patent and Trademark Office puts all its issued U.S. patents for the last 20 years on its www.uspto.gov Web site, for free public access. Bruce Lehman, U.S. Commissioner of Patents and Trademarks, states this database will contain the entire library of the technology of our time. If the combination of the Internet and this database results in a new explosion of ideas, as millions of new minds gain access to a huge fund of technological knowledge not ever before so readily available to them, the current boom in U.S. IP may be nothing compared to the "tsunami" that may be soon washing over us.