



Patent owners must reassess strategies in the face of increasing tech convergence

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Technological convergence is speeding up at an unprecedented rate. As it continues to impact more and more industries, it is critical for patent owners to adapt and prepare. Some of the world's top patent strategists, featured in IAM's annual **Strategy 300 Global Leaders**, dive into what companies and patent owners should be doing to brace for the future, as well as predicting how the IP transactions space might evolve.

Current trends – how the experts are preparing

Data is changing the playing field

As a result of increasing tech convergence and the IoT, licensing trends are indicating a significant shift in the playing field, and this brings new challenges along with it. Zacco's **Stein Aamot** reports that "IoT and sensors in general have substantially increased the amount of data collected from industry and the environment". Previously, devices that collected data were patented and protected and revenue streams were mainly developed from producing, selling or licensing these devices and processes. "Now with Big Data, there are possibilities to create new products or processes from data alone," he claims. "This has shifted the playing field so that it is data owners that monetise the technology, often through licensing or marketing."

However, fresh challenges are arising, particularly with an increased focus on data protection and security. "Licensing is more prominent and increasing digitalisation means that cybersecurity is a key topic when protecting intellectual property," Aamot warns. IP firms should be able to offer a "well-rounded and comprehensive solution" that incorporates everything required to develop, secure and enforce key assets.

Peggy Chooi of Innovation Asset Collective is gearing up for this data-driven shift. She notes that the "transformative capabilities of computing power, AI and AI-enabled technology and innovations are already impacting the data-driven cleantech industry". These impacts are not just technological, but legal, ethical, social and economic. She reveals that IAC is built to be

adaptive, agile and responsive to this rapidly evolving landscape, and that they are “constantly learning and acquiring new skills, engaging and working with external partners, experts and stakeholders” in order to support the next generation of Canadian data-driven cleantech companies.

Patent owners must reassess their IP strategies

As technological convergence continues to impact various industries, there are several key factors that patent owners must consider.

Look to the future

Sauvegarder Investment Management’s [Erich Spangenberg](#) insists that patent owners “must reassess their existing IP strategies”. If your current strategy is expanding commercial opportunity or similar, he reckons “you are probably onto a good strategy”. If it’s for defensive purposes, to increase the number of patents owned or if the strategy is simply uncertain, then Spangenberg recommends hitting “the pause button and rethink[ing]”. “Those historical strategies are likely only suitable for a very small group of companies and industries, given the rapidly evolving technological landscape,” he warns.

The Internet and cloud computing are two examples of how technology is forcing the law to evolve on issues such as venue and divided infringement, according to Winstead’s [Phillip Philbin](#). “Starting as early as claim drafting, patent owners have to analyse how and where a patent could be infringed today, and anticipate how and where it could be infringed a decade or so in the future”.

[Michael Heim](#) of Heim Payne & Chorush agrees. For those in industries with a high level of tech convergence, his advice is to “look past the immediate horizon and project where you think the technology will be, or where you want it to be, further down the road”. Heim insists that great innovators look past the issues we face now and anticipate future needs and problems that must be addressed.

Cover broader territory

Angela Quinlan, Paul Riley, Kapu Kumar and Stephen Pomraning of [Key Patent Innovations](#) outline a three-step plan for patent owners assessing their IP strategies in the face of tech convergence. First, when drafting, patent owners “need to make sure that the claim scope is broad enough to cover the future product roadmap”. “Second, companies should consider proactively establishing internal plans to out-license patents and technology to other companies that sell products in non-competing industries.” Third, companies should implement “regular IP audits”, during which they identify patent assets for potential divestment. “As technologies converge, it becomes more and more likely that patents issued years ago have value that was not foreseen at the time,” they say. Periodic portfolio reviews will allow companies to effectively unlock additional value.

Similarly, [Jeffrey Gluck](#) of Panitch Schwarze Belisario & Nadel advises patent owners to “evaluate the patents that they hold to determine whether these cover developing technologies, as new uses may develop for existing patented technologies”. For patent applicants, a key strategy is to anticipate developing technologies that might use their inventions, which can be done by broadly disclosing and claiming the subject matter so that resulting patents may be applicable, in addition to targeting the intended use.

A geographical perspective

Patents are arguably the type of intellectual property that differ the most country-by-country, both in terms of subject-matter eligibility and enforcement (despite novelty, inventive step and applicability requirements being practically universal). Despite recent trends towards cooperation between patent offices of different jurisdictions, [Hector Chagoya](#) of Mexstrategy claims that independent examination “still leads to differences in the scope of the patents granted for the same invention in different countries”. Therefore, patent strategies “need to consider covering broader territories and reinforcement by copyright protection...and trade secrets”.

However, a broader approach is not always recommended. In China, while [Aaron Winger](#) of Schwegman Lundberg & Woessner is seeing “Chinese companies participating more frequently in standard-setting bodies instead of attempting to develop China-only standards”, he claims that the Supreme People’s Court has repeatedly affirmed the right of Chinese courts to set worldwide royalty rates for SEPs when there is a China nexus usually at lower rates than would be set in foreign jurisdictions. “Accordingly, SEP holders may want to minimise their China nexus – by reducing their patent filing in China, license their patents solely on a country-by-country basis and avoid in-person negotiating.”

The future of IP transactions

IP transactions in the healthcare space have been transformed by the increase in tech convergence. “Five to 10 years ago, there was a clear separation between licensing of (usually patented) healthcare and life sciences technologies, and licensing of software and IT,” says [Rob McInnes](#) of Rob McInnes IP Advisory. “Now, there are hardly any healthcare or life sciences deals

that I work on that lack a key element involving the use or licensing of IT as part of the package of technologies involved in the transaction.”

“As technological convergence reshapes industries, IP transactions must evolve,” insists **Pallavi Shah** of Mobity. She expects to see a “rise in IP transactions, a focus on licensing and an acute need for expert guidance”, and firms will play a pivotal role in facilitating successful transactions. To prepare for this, established firms must “increase acquisitions and licensing to build a defensive IP moat to keep new entrants at bay”. Shah is already seeing automotive companies divesting traditional patents and reinvesting the proceeds to buy intellectual property for electric vehicles and 5G, which is spurring more IP transactions and boosting their value.

Indeed, the rapid evolution of tech convergence means that companies can no longer “rest easy on their laurels” and “envisage the same success that they have enjoyed in the past”, says **Debbie David** of DCC Advanz Malaysia. She imagines that “IP transactions will need to cross into and consider matters relating to the online and virtual realms where consumers are spending an increasing amount of time”, such as online marketplaces, the metaverse and social media. As one of the biggest topics of today, AI has triggered – and will continue to trigger – changes in the IP and transactions space.

As the transition from a tangible asset economy to one in which 90% of value is represented by intangible assets is largely complete, according to **James Malackowski** of Ocean Tomo, he expects that IP transactions will “continue to scale, but in an incremental rather than transformative manner”. The next decade will see “further refinement and development of valuation standards”, and through national efforts to build regional or global IP markets, “we will also hopefully see the development of widely used rating platforms”.

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