



Beyond 101: An Inventor's Plea for Comprehensive Reform of the U.S. Patent System

By Emil Malak / July 8, 2019

“Shenzhen is becoming the new world leader and global technology hub, rapidly leaving Silicon Valley behind. China’s Huawei has assigned about 10,000 of its developers to work across three shifts in Shanghai, Shenzhen and Xi’an to eliminate the need for American software and circuitry.”

Inventors are seeing the light and are looking increasingly to the East for protection of their patents. Specifically, to China, where patent protection was once non-existent; China has overhauled its patent system and become more attractive to inventors than the once mighty USPTO. In 2016, the State Intellectual Property Office of the People’s Republic of China (SIPO) received 1.3 million patent applications. That’s more than the combined total for the United States Patent and Trademark Office (USPTO; 605,571), the Japan Patent Office (JPO; 318,381), the Korean Intellectual Property Office (KIPO; 208,830) and the European Patent Office (EPO; 159,358).

China Steps Up

My relationship with China began in 2005, when Digifonica International Inc. (now Voip-Pal.com Inc.) had an office in Beijing. It was my honor to be introduced to and become friends with Deng Pufang, the oldest son of former Paramount Leader Deng Xiaoping. This wonderful and caring man is a legend in China. Left crippled by Mao’s Red Guard in 1968 at the age of 24, he has dedicated his life to improving the lives of the almost 80 million people in China with disabilities. Deng Pufang invited me to give a speech to the China Disabled Persons Federation (CDPF), which was an unforgettable honor for me.

Not long ago, I was contacted by some high officials from China's Ministry of Industry and Information Technology (MIIT) requesting my input for further improvements to China's patent system. I asked, "Why the sudden interest in protection of intellectual property?" Their answer was simple and quite informative. They want foreign inventors to see China as a safe haven for patent monetization and trust their patents will be protected. They also recognize this as a great opportunity to fill the vacuum created by the unfair treatment of inventors in the United States. They are very aware of the difficulties small inventors/patent holders encounter in their monetization and patent enforcement efforts.

USPTO: Beware the Newly Proposed Agency "Far East Patent Issue and Enforcement Department"

According to sources close to the author, China is in the process of forming an alliance with other far east countries with a combined population of about 3.6 billion people, nearly half the total world population. This proposed alliance of far east countries would create and coordinate its own allied patent courts, which would deal with all matters of patent enforcement, infringement and damages. Chinese patent examiners would handle all technical issues equivalent to U.S. Section 101/ abstractness, Sections 102 and 103, prior art, indefiniteness and novelty etc. The new coalition would reportedly be called the Far East Patent Issue and Enforcement Department. When the Department finds in favor of the patent owner, injunctive relief would be granted, and the infringer would be ordered to cease and desist using the patent or patents in question. The infringer would be compelled to enter into a licensing agreement with the patent owner before resuming use of the patent.

This new proposed office would be headquartered in Shenzhen. As I have previously stated, Shenzhen is becoming the new world leader and global technology hub, rapidly leaving Silicon Valley behind. China's Huawei has assigned about 10,000 of its developers to work across three shifts in Shanghai, Shenzhen and Xi'an to eliminate the need for American software and circuitry.

Soon they will no longer rely on Intel or other western chip makers. Additionally, Huawei is quite far along in the development of their own search engine and smartphone operating system, both of which will deal a major blow to Google's search engine and their Android operating system. Where will this leave Apple's iPhone?

Inventors are Losing Patience With the U.S. Patent System

I, along with others, have been quite vocal that change like this has been needed here for some time, but no one has been listening. The U.S. patent system is in dire need of streamlining. The process is far too long and combative. Patent owners have a right to enjoy the benefits of their patents without becoming embroiled in constant and prolonged legal battles just to assert the rights to their intellectual property.

Until recent years, America was the place that welcomed and supported inventors. Today, the anti-patent system and the courts seem to be determined to subjectively invalidate good inventions. America must lead the world once again in encouraging and supporting all inventions, particularly those in the computer science field that control the way the world communicates. Innovators should be encouraged to turn their abstract ideas into real inventions that improve all of our lives. I am also a strong supporter and a big fan of Director Andrei Iancu. His appointment was a very positive move which will hopefully bring about the necessary changes. He has made excellent decisions since taking the helm at the agency, but to a large extent much of his efforts are for naught until current patent laws are changed and the America Invents Act is repealed and replaced with a set of laws that is fair for all.

While China and the far east have taken big steps to embrace patents and innovation, we in the west continue to fight it and keep inventors from ever achieving monetization of their intellectual property. The broken U.S. patent system facilitates the stealing and unauthorized use of patents by the Silicon Valley and other giant corporations. We must wake up now, before it is too late.

The current U.S. patent system is hostile towards inventors and was designed to drive small inventors and companies like mine into bankruptcy. How much longer are we supposed to wait and how much more will we be forced to endure before we reap any

rewards for our labors? I am now 67 years old, having dedicated the last 15 years of my life to developing technology covered by certain patents related to Routing, Billing and Rating (RBR). Thus far, we have been 100% successful in defending eight *Inter Partes* Reviews (IPRs): four from Apple, three from AT&T, and one from Unified Patents. We are presently in litigation against Apple, Verizon, AT&T, Twitter and Amazon.

Are the defendants hoping I die of old age before this is settled? Patents have a life of 20 years, and because of the current process, many patent lawsuits are actually disputes over expired patents. In spite of these huge obstacles thrown at us, we are never dismayed. We will continue to battle until we win this war. The system will not beat us. We will beat the system.

Unless you are prepared to waste 20 years of your life with little or no chance of success, my advice to you is, “DO NOT PATENT WITH THE USPTO!”

Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of Voip-Pal.com Inc.

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Emil Malak is the largest single shareholder of Voip-Pal.com, Inc., a publicly traded company where he serves as a Director and Chief Executive Officer. He has spent the last 16 years overseeing the development of the company's intellectual property comprised of more than twenty telecommunications patents in the United States and several international patents in Europe, India, Canada and Indonesia. In addition to his work as Voip-Pal's CEO, Mr. Malak has spent the last 7 years involved with a medical research team of doctors, serving as the chairman of the board of Thorne BioMed Ltd. They are currently conducting cancer research in Germany where they are committed to pursuing a possible reduction to cancer metastasis.

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