

# **Innovation and Markets for Patents: A Case Study and Admonition**

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## **Idealistic Timeline**

- Inventor invents
- Inventor receives patents
- Patents help create market/market barriers
- Entrepreneur's company succeeds

## Actual Timeline

- Inventor invents
- Inventor files patents
- Inventor/Entrepreneur's company succeeds
- Patents issued
- Inventor/Entrepreneur's company fails
- Patents nearly fall into hands of patent "brokers" / "investors" / "intermediaries" / "market makers" / "non-practicing entities" / "PLECs" / "FTBs" / "trolls"

## Actual Timeline [1]

- 2Q 1997: Start-up Veo Systems begins invention and development of technology to enable "open" and "interoperable" electronic commerce (in retrospect, we're viewed as inventing much of "web services" stack)
- 1Q1998: Successful technology demonstrations; outside investments secured
- 4Q1998: Patent applications filed, but viewed as nuisance activity and "tax" on engineering resources (we're not thinking about "residual value" in the event we fail!)
- 1Q1999: Veo Systems acquired by Commerce One (characterized as "buying a brain trust")

## Actual Timeline [2]

- 1999 - 2003: Commerce One contributes the ideas and specifications in its patented technology to various standards efforts to encourage the adoption of open commerce infrastructure
- 1 July 1999: Commerce One IPO
- 1Q2000: Commerce One market cap exceeds \$10,000,000,000
- 26 September 2000: Veo Systems patents issue two years after they were filed

### United States Patent [19]

Meltzer et al.

[11] Patent Number: 6,125,391

[45] Date of Patent: \*Sep. 26, 2000

#### [57] ABSTRACT

[54] MARKET MAKERS USING DOCUMENTS FOR COMMERCE IN TRADING PARTNER NETWORKS

[75] Inventors: **Bart Alan Meltzer**, Aptos; **Terry Allen**, Sebastopol; **Matthew Daniel Fuchs**, Los Gatos; **Robert John Glushko**, San Francisco, all of Calif.; **Murray Maloney**, Pickering, Canada

[73] Assignee: Commerce One, Inc., Mountain View, Calif.

[\*] Notice: This patent is subject to a terminal disclaimer.

A market making node in a network routes machine readable documents to connect businesses with customers, suppliers and trading partners. The self defining electronic documents, such as XML based documents, can be easily understood amongst the partners. Definitions of these electronic business documents, called business interface definitions, are posted on the Internet, or otherwise communicated to members of the network. The business interface definitions tell potential trading partners the services the company offers and the documents to use when communicating with such services. Thus, a typical business interface definition allows a customer to place an order by submitting a purchase order or a supplier checks availability by downloading an inventory status report. Also, the registration at a market maker node of a specification of the input and output documents, coupled with interpretation information in a common busi-

## Actual Timeline [3]

- 4Q2004: Commerce One files for bankruptcy
- 6 December 2004: Patents auctioned off in bankruptcy; known patent “NPEs” outbid by “mystery bidder” JGR Enterprises

### Auction of Internet Commerce Patents Draws Concern

By JOHN MARKOFF

Published: November 16, 2004

**S**AN FRANCISCO, Nov. 15 - More than three dozen patents said to cover key facets of Internet transactions will soon be auctioned off by [Commerce One](#), a bankrupt software company. But even before the sale, some technology executives and lawyers are worried that potential buyers might wield the patents in infringement lawsuits against companies that are engaged in online commerce, like [I.B.M.](#) and [Microsoft](#).

The 39 patents cover basic activities like using standardized electronic documents to automate the sale of goods and services over the Internet.



Ken Cedeno for The New York Times

Robert Glushko, one of the inventors, said he feared that some patent winners might use them to impede competition in online commerce.

## Auction Day (6 Dec 2004)

SAN FRANCISCO--A mysterious bidder paid **\$15.5 million** Monday in a bankruptcy court auction of dozens of Internet-related patents--and then rushed out of the courtroom.

“  
The worst-case scenario for the industry is that some companies are extorted to pay money for royalties they cannot afford, and it begins to affect business.  
Jason Bloomberg  
Senior analyst, ZapThink LLC  
”

JGR beat out seven other bidders, including two companies connected to Nathan Myhrvold, a former Microsoft executive who now runs *Intellectual Ventures*, a company that collects patents.

the patents at issue were *less* valuable to companies that actually produce Web services products than they were to firms that produce nothing but lawsuits and licensing threats. In other words, ***patents like these have become worth more as weapons than as protections for companies competing in the marketplace.***

May 2, 2005

### Secretive Buyer of Some E-Commerce Patents Turns Out to Be Novell

By [JOHN MARKOFF](#)

**S**AN FRANCISCO, May 1 - A Silicon Valley mystery has been solved.

The mystery involves a set of electronic commerce patents purchased, after heated bidding, in a dot-com bankruptcy auction by a Texas lawyer last December. They were acquired, it turns out, on behalf of the [Novell Corporation](#), the giant software and computer services company, a company official acknowledged on Friday.

Many executives in the computer industry and at Internet software and services firms had expressed concern that the patents could be used to extract payments from their companies.

## Actual Timeline [4]

- 2 May 2005: “Mystery buyer” of patents revealed to be front company for Novell
- 10 November 2005: Novell contributes patents to Open Invention Network, patent “commons” created to promote and protect open source innovation
- 2006: Many of the ideas in the patents are embodied in “Universal Business Language,” royalty-free OASIS standard for electronic commerce (using as starting point the Commerce One XML work contributed in 2002-2003 to UBL working group)

openinventionnetwork<sup>SM</sup>

### *Press Releases*

OPEN INVENTION NETWORK FORMED TO PROMOTE LINUX AND SPUR INNOVATION  
GLOBALLY THROUGH ACCESS TO KEY PATENTS

*Investors Include IBM, Novell, Philips, Red Hat, and Sony*

**New York (November 10, 2005)** - Open Invention Network (OIN), a company that has and will acquire patents and offer them royalty-free to promote Linux and spur innovation globally, was launched today with financial support from IBM, Novell, Philips, Red Hat, and Sony. The company, believed to be the first of its kind, is creating a new model where patents are openly shared in a collaborative environment and used to facilitate the advancement of applications for, and components of, the Linux operating system.

## Actual Timeline [5]

- 2005-2007: Denmark, Norway, Finland and other European governments mandate UBL for electronic business
- 2009 – Denmark reports several hundred million Euro savings from UBL-based invoicing
- 2009 – European Community projects (16 countries) creating UBL-based open public digital infrastructure
- 2009 - Chinese government endorses UBL
- 2015? – Billions and billions saved in electronic transactions and other applications ...

## Reflections

- The patent system did not seem important to us when we were inventing and deploying innovative technology
- We actively “gave away” the key ideas embodied in the patents
- The patents seemed critically important to us when they were treated as assets in a bankruptcy, because *in the wrong hands they would have undermined the goals for which we invented in the first place*
- Fortunately, the patents are now doing their job to enable and promote innovation
- *I make no claims about the applicability of these lessons to patents in pharmaceuticals, semiconductors, or other sectors not dominated by “business method” patents*