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By [Michael Volker](#)

Patents - a New Asset Class? The World's First Patent Auction

This week I attended what was billed as "the world's first patent auction" according to its hosts, the Ocean Tomo Company. Based in Chicago, the Ocean Tomo group has six offices in the USA, and calls itself as "an integrated intellectual capital merchant banc" (their spelling). The company is closely held and runs a \$200 million fund that invests in companies based on their intellectual property (IP). A little over a year ago, they liquidated \$15.5 million in 39 web services patents in Commerce One's bankruptcy proceedings. That must have given them the impetus to run a broader patent auction. Is this the start of a new asset class?

Picture this: a crowded crystal chandelier ballroom in the lavish Ritz-Carlton hotel in San Francisco filled with hundreds of "suits", reporters and numerous organizers and hosts. There was an air of anticipation in the room as attendees were treated to a complimentary bar service and delicious hors d'oeuvres. What will patents estimated at \$1 to \$5 million in value actually sell for? On the podium sat the auctioneer, Charlie Ross from London, known for his posh antique car sales (he solicited \$4.5 million for a Duesenberg). I can just picture him sipping champagne at the post-auction party. Behind Charlie three large screens described each lot as it came up along with a screen showing the bidding action in US dollars with simultaneous translation to Pounds, Euros, Yen, and Swiss Francs. Speaking of Yen, I noticed a large contingent of Japanese folks at the event. By the way, "tomo" is Japanese for intelligent. The event's title sponsor was The Intellectual Property Bank Corporation (IPB) of Japan. IPB and others like it provide a new source of cash flow for companies. These bankers collateralize patents.

There were some 80 "lots" going on the block. Lots consisted of anywhere from one to several dozen patents in a family. Offerors ranged from small individual inventors to large corporations such as Kimberly-Clark and 3Com. Although I expected many universities to present some of their portfolios, only the University of California system, the University of Minnesota and Kansas State University through its commercialization arm, NISTAC were offering IP. Many well-known corporations such as Ford, Motorola, and Eaton Corp were prominently shown as patent holders but a closer look revealed that their patents were now assigned to companies such as NISTAC. Indeed, NISTAC alone was offering more than 20 lots. The aggregate estimates of value for all the offered patents ranged from around \$50 million to \$150 million. With respect to technologies, the patent lots covered electronic, communications, industrial, automotive, materials and a few bio/life applications. There was even one by fashion entrepreneur Andrea Rose titled, "System and Method for Fashion Shopping".

Once the bidding got going, the room went silent and many, I believe, were surprised at the lacklustre action. The first lot, offered by Kimberly-Clark was a "water-shrinkable film" valued up to \$500K. It sold for a mere \$2K. The next four sold for \$10K but the next three didn't sell at all. The auctioneer frequently reminded bidders that they could continue negotiations privately after the main event. After

only an hour and a half, it was all over. Very few bids were made and there was almost no competition among bidders. Many of the winning bids were absentee bids and many of the opening bids, especially high ones, were also absentee bids. A large number of patents valued at more than a million dollars sold for only ten thousand dollars. Indeed, ten thousand was a popular number with 13 selling at that price. To my chagrin, the auctioneer refused to allow bidding below \$2K for any lot and a couple were snapped up at that price - well below the cost of getting a patent. I would've paid a few bucks for some of the unwanted patents but I was too cheap to pay the extra thousand bucks for a bidder's paddle. After all, patents make for good window dressing and stimulating cocktail party conversations. Over 50 lots remained unsold because the high bid was below the reserve bid and a half dozen because not a single bid (at any price) was made. Aside from what may have transpired later, the floor auction itself produced only \$2.75 million in total sales. The highest sale was \$1.4 million for a single patent titled, "Method and apparatus for distribution of movies". Removing this one and the second placer at \$950K yields a per-patent average sale price just under \$17K.

The results must be a big disappointment to the organizers who stand to get 25% of sales (15% paid by the seller and a 10% premium paid by the lucky bidder). The unaccepted bids (i.e. those that didn't reach the reserve amounts) added up to over \$15 million. Let's hope that the after-market mitigated some of the immediate disappointments! Still, that would be a far cry from even the low estimates of value.

But that's OK, because this was, after all, the first such auction. As such, market efficiency is a big question mark. I'm sure that there are many prospective buyers out there who just didn't know about this event. And even for those that did, the process of doing some diligence on these patents is itself quite a task. What's a patent worth to someone in the trade or how many infringers (present and future) might there be that one can chase?

I used to think ideas were a dime a dozen and, to a certain extent, this auction bore that out. And, although the auction per se was a bit of a disappointment (depending on your perspective; the hosts called it a success), I found the seminars and exhibits portion very worthwhile and insightful. Obviously a lot of work went into the planning of this event.

So what's IP really worth? One very neat innovation in its own right is Ocean Tomo's creation of the IPQ - the Intellectual Property Quotient. Its values are akin to human IQ measurements. At a gala dinner the night before, some of the patent offerors were given awards for having achieved particularly brilliant IPQs. This is itself a patented software platform for objectively assessing patents. Alas, this patent was not on the auction block. Apparently, this tool was used in screening and selecting the offered patents from hundreds that were originally submitted.

The IP Valuation Workshop room was packed. Speaker Michael Lasinski of InteCap Corp noted that the licensing market was greater than \$150bn and growing at better than 25% per annum. Lasinski represents Fortune 500 firms looking for patents to buy. Much of the interest in protecting one's IP was driven by the 1991 judgment of U\$873 in favor of Polaroid Corp vs infringer Kodak. The recent out-of-court settlement of \$612.5 by RIM to NTP only serves to further fuel the IP legal game. As a side note, I can't resist mentioning that back in 1987 RIM, too, was just ideas and for peanuts I negotiated a 15% stake in the company!

Last year, IBM collected \$1.5bn from its licensees while Microsoft paid out \$1.4bn to its licensors. No wonder Nathan Myhrvold, Microsoft's former CTO, started up Intellectual Ventures to buy up patents (I spoke to an employee recently who told me that they were paying around U\$35K per patent - compare that to the auction). A patent holding company that is not in the business of directly commercializing its patents is pejoratively called a patent troll. Those offended by this term can call themselves a PLEC, short for "Patent Licensing and Enforcement Company", i.e. an invention clearinghouse of sorts.

Intrigued? Well, Ocean Tomo's second auction isn't far away. It'll take place in New York on October 25 & 26. Check www.oceantomo.com for details.

It's about TIME

SFU's TIME Centre in downtown Vancouver recently received support from **Western Diversification, NRC** and **Industry Canada** to expand its facilities and services for budding technology entrepreneurs seeking space and help to launch their ventures.

TIME is an acronym for **Technology, Innovation, Management, and Entrepreneurship**. It's more than just an incubator. Complete, ready-to-go furnished offices with high speed internet, servers, telephone and fax, printing, etc. are only the beginning.

[Telus New Ventures BC](#), the [Vancouver Enterprise Forum](#), the [VANTEC Angel Network](#) and [WUTIF Capital](#) all make TIME their home.

TIME's Business Centre (a little akin to an airport business lounge) is open to technology entrepreneurs and business people to use as a drop-in downtown office facility. Need to plug-in? Make some calls? Do some work? Hold a meeting? There are some great facilities for holding your company's AGM. Why hang out at MacDonald's when you can work productively at the TIME Centre? Drop by and check it out! It is located at SFU's downtown campus at 515 West Hastings St. You won't believe the price!

Check www.sfu.ca/time for info.

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