

IPISC PATENT ENFORCEMENT POLICY FOR THE NATION OF SWEDEN

IPISC is being asked to design an U.S. patent enforcement insurance policy for the nation of Sweden. Currently, there are about 28,000 active U.S. patents that are of value to residents, corporations and governmental bodies of Sweden. While the final result of IPISC's efforts will be an aggregate Patent Enforcement Insurance Policy, to cover the costs of asserting any of Sweden's patents in U.S. federal courts (with extensions to foreign jurisdictions possible), there will be other valuable information and suggestions flowing from IPISC's analysis activities that will benefit Sweden. What follows is a description of these results and benefits:

- Swedish patent quality/value determination
- Cost effectiveness of U.S. patent law firms representing Swedish interests
- Fairness of U.S. Patent Office towards Swedish patent applicants
- Swedish R&D quality determination
- Impact of Swedish patent activities on job creation in Sweden
- Identification of Swedish patents eligible for debt financing for growth
- Formation of insurance-backed Swedish Technology Lending Bank
- Guidelines for more efficient acquisition of U.S. patents for Sweden

IPISC will provide the following multiple benefits, because they all flow from the key determination to optimally price the Enforcement policy – determining the quality of Swedish patents - patentkvalitet. Note: as one step in the policy preparation, a master list of such patents, plus others acquired by corporations in Sweden, will be compiled.

SWEDISH PATENT QUALITY/VALUE DETERMINATION

According to patent analysis experts, the majority of the issued patents are invalid, or having so little value, as to not be worth asserting or licensing. Patent trolls, such as Intellectual Ventures, when purchasing patents in bulk quantities, typically pay a flat fee of \$50,000 per patent, even if many of the patents have no value. An expectation that some patents are valuable is sufficient for the acquisition.

Given that the preliminary skirmishes in patent litigation easily cost over \$50,000, for the vast majority of patents, even if valid (novel, not obvious, etc.), they are not worth asserting in litigation because whatever monies might be awarded by the court will, on the average, be less than the acquisition cost of the patent plus the costs of litigation. And this is true for originally owned patents, which in some

cases, can cost upwards of \$50,000 to prosecute before one or more patent offices, especially if appeals are required, or post-grant review attacks are made.

To offer Sweden the best priced Patent Enforcement Insurance policy, IPISC be determining the approximate value of all Swedish patents, especially to filter out those patents of too little value to be worth asserting in litigation.

And while many factors are considered in these valuations, the most important factor is the validity of the patent in terms of its novelty, non-obviousness (i.e., significant inventive step) and enablement (does it fully teach the new invention?). Sadly, patent offices around the world are unable to keep up with the volume of patent applications submitted to them, and with insufficient resources, are forced to perform inadequate examinations of patent applications. Indeed, some patent offices such as the U.S. Patent Office have struggled for decades to deal with its quality problem, as documented in numerous studies by the U.S. General Accounting Office. See for example, a June 2016 GAO report, “*U.S. Patent Office Should Define Quality, Reassess Incentives and Improve Clarity*” (available at: <http://www.gao.gov/products/GAO-16-490>)

Thus, at the beginning of the policy calculations, IPISC will be spending much time analyzing the quality of Swedish patents, relying on the resources and skills of some of the best patent/technology analysts in the world. And with such patent quality information, IPISC will then calculate approximate values of Swedish patents to then be able to establish cost-effective insurance policy premiums and deductibles (“self insured retentions”).

This step is very costly and necessary. But once done, it makes determining the following benefits quite straightforward. Much of the following analysis, in model form, will also be made privately available to the Swedish government, for its analysts to make their own determinations. Examples of the type of detailed patent quality data, and interactive tools that can be made available, can be seen at:

www.global-patent-quality.com/statistics.html

COST EFFECTIVENESS OF U.S. PATENT LAW FIRMS REPRESENTING SWEDISH INTERESTS

One reason that an issued patent is of low quality has nothing to do with the invention, nor how the inventor/corporation prepared for the patent, but rather how their patent lawyers prosecuted the patent application before the patent office. Too often, patent lawyers make mistakes in the patent claims they prepare and prosecute for their clients, or make admissions in discussions with the patent office that decrease the value of any patent that issues.

Some of the checks on patent quality that IPISC will perform on Swedish patents are checks on the quality of the work done by their U.S. patent lawyers. IPISC will identify for the Swedish government those U.S. patent law firms that have been most cost-effective for Swedish patent applicants (to continue using), and those U.S. patent laws that have been the least-cost effective for Swedish patent applications (to stop using, and if desired, using the services of IPISC to seek rebates from such poor performing law firms for faulty work done in the past). Patent lawyers charge large amounts of money for their services – this definitely should create obligations of guaranteed quality.

FAIRNESS OF U.S. PATENT OFFICE TOWARDS SWEDISH PATENT APPLICANTS

One reason that an issued patent is of low quality has nothing to do with the invention, nor how the inventor/corporation prepared for the patent, but rather how well, or not, the patent examiner did his or her job. Many patent examiners in the U.S. are inexperienced in their technology areas, are not trained in the law, and/or do not have enough time or resources to do their jobs well. Mistakes are made that are not the fault of the patent applicant.

Some of the checks on patent quality that IPISC will perform on Swedish patents will be checks on the quality of the work done by the U.S. patent examiners. IPISC will determine how fairly have Swedish patent applicants been treated by the U.S. Patent Office (for example, comparing their U.S. treatment with treatment at the European Patent Office), and if there have been any excesses, determine if there are any mechanisms under trade treaties to seek better service. Similar to patent lawyers, patent offices charge large fees for their services – this definitely should create obligations of guaranteed quality.

SWEDISH R&D QUALITY DETERMINATION

Assume that patents represent the most valuable innovations of a corporation's research and development activities (because patenting budgets are limited, so a corporation must choose what it thinks are the highest quality innovations upon which to seek patents). Then a measurement of the quality of a group of patents (those of a corporation, or a country) becomes a proxy for the measurement of the quality of the R&D that was the basis for the innovation that became the patent.

With the Swedish patent quality data that IPISC will be generating to determine the premiums for the Enforcement Insurance Policy, IPISC will also be able to offer to Sweden very valuable data with regards to R&D quality in Sweden. Examples of the type of detailed R&D quality data, and interactive tools that can be made available, can be seen at:

www.global-patent-quality.com/statistics.html

IMPACT OF SWEDISH PATENT ACTIVITIES ON JOB CREATION IN SWEDEN

Again, with ample amounts of data on Swedish patent quality, IPISC can add additional data to the analysis concerning Swedish job creation, to explore correlations between Swedish patents and Swedish job creation. While this part of the analysis contributes nothing to the insurance premium calculations, it will provide valuable data to the Swedish government.

Indeed, the financial media are increasingly writing articles expressing concerns about stagnating R&D, decreasing corporate productivities, both of which lead to less job creation. A well-written Wall Street Journal article on this concern is available at:

Why the economy doesn't roar anymore
<http://www.wsj.com/articles/why-the-economy-doesnt-roar-anymore-1476458742>

and

Welcome to a world without work – automation and globalisation are combining to create a world with a surfeit of labour and too little work
<https://www.theguardian.com/commentisfree/2016/oct/09/technological-revolution-sparks-social-unrest>

IDENTIFICATION OF SWEDISH PATENTS ELIGIBLE FOR DEBT FINANCING

IPISC also offers a Collateral Protection Insurance (CPI) policy, which allows high quality patents to be used as collateral for loans. The policy is not a financial guarantee, but rather ensures that the value of the patents (more than the loan amount) retain their value during the loan (so upon default, will have value to be resold to cancel the loan balance). This form of raising money can often be a more cost-effective way for a company to raise money, as opposed to equity-diluting new stock share issues, or relying on venture-capital/private-equity infusions that require that much control be given up by the inventors/founders.

As part of the patent quality analysis for the Enforcement policy calculations, IPISC will identify high quality Swedish patents that are eligible to be candidates for IPISC's CPI policy, for those patents that have good prospects for capturing market share, if manufacturing and sales and marketing are well supported.

FORMATION OF INSURANCE-BACKED SWEDISH TECHNOLOGY LENDING BANK

Swedish national pension funds suffer a problem shared by many pension funds around the world – low yields on an important asset – risk-free government bonds. In Sweden, all government bonds with less than 5-year terms offer negative interest rates, while the 10-year and 20-year bonds offer 0.5% to 1.0% yields (which typically are less than assumed estimated investment returns to maintain fund balance).

As IPISC identifies very valuable Swedish patents (whose value will be protected by IPISC's Enforcement policy), such patents will also be eligible for the above-mentioned CPI policy so that the patents can be used as collateral for bank loans to fund operations and expansion. IPISC's CPI policy is risk-free for the lending bank – if the loan default, the bank is paid the balance of the loan, and IPISC and its underwriters acquire title to the patents (to be sold to others).

This risk-free return opportunity creates an opportunity for Sweden's national pension funds. One or more pension funds can form a Nordic Technology Lending Bank (NTLB), which will only make loans backed by IPISC's CPI policy. Thus, the NTLB can obtain commercial-interest-rate returns on its loan – risk-free, while promoting new and expanded business and job creation.

Additionally, the NTLB can accept deposits from other financial institutions, such as pension funds in neighboring countries such as Norway and Finland. Since there is little need beyond having one such bank, if Sweden were to establish such a bank first, it could capture the bulk of profits for Swedish interests.

Even better, the first step for IPISC, when considering a set of patents to qualify for a CPI policy, is for IPISC to do a review of the patent portfolio. For Swedish patents, this will already have been done for the analysis to determine the premiums for the Enforcement policy.

GUIDELINES FOR MORE EFFICIENT ACQUISITION FOR U.S. PATENTS FOR SWEDEN

IPISC will prepare a set of guidelines for the Swedish government and Swedish inventors/corporations, on the best and worst practices that IPISC observes in Swedish patents. These guidelines can be shared across Sweden to help inventors and corporations prepare higher quality patent applications.