



Does the US Litigation System Promote Software/Internet Innovation?

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The Bottom Line



The U.S. System is broken in many ways but it does, on the whole, protect software/Internet inventions.

Summary



- Software and Internet is rapidly moving.
- The U.S. system does not quickly protect innovation.
- The U.S. current legal framework sometimes promotes personal wealth at the expense of national wealth by empowering patent trolls
- Legitimate companies feel victimized at times by flaws in the U.S. System

The Difficulty of Software and Internet Patents



- Sometimes the U.S. patent system focuses too much on invention, but not innovation and discovery.
- Patent Damages are exceedingly difficult to value for software/Internet inventions, innovations and discoveries.
- Great people innovate/discover even when there is no financial reward through patent protection.

“The Congress shall have Power
...To promote the Progress of
Science and useful Arts, by
securing for limited Times to
Authors and **Inventors** the
exclusive Right to their respective
Writings and Discoveries”



Innovate vs. Invent

Innovation is the development of new customer value through solutions that meet new needs, unarticulated needs, or old customer and market needs in new ways. This is accomplished through different or more effective products, processes, services, technologies, or ideas that are readily available to markets, governments, and society.

An **invention** is a unique or novel device, method, composition or process. It may be an improvement upon a machine or product, or a new process for creating an object or a result.

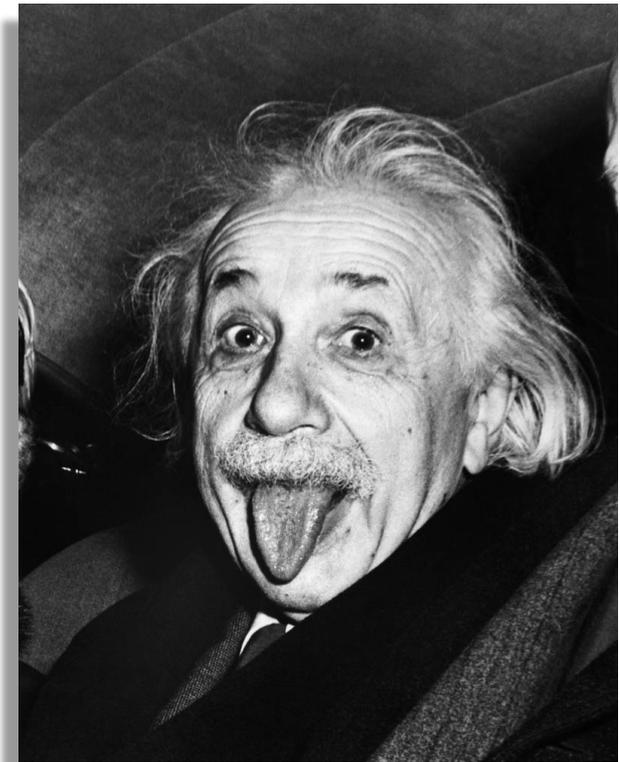
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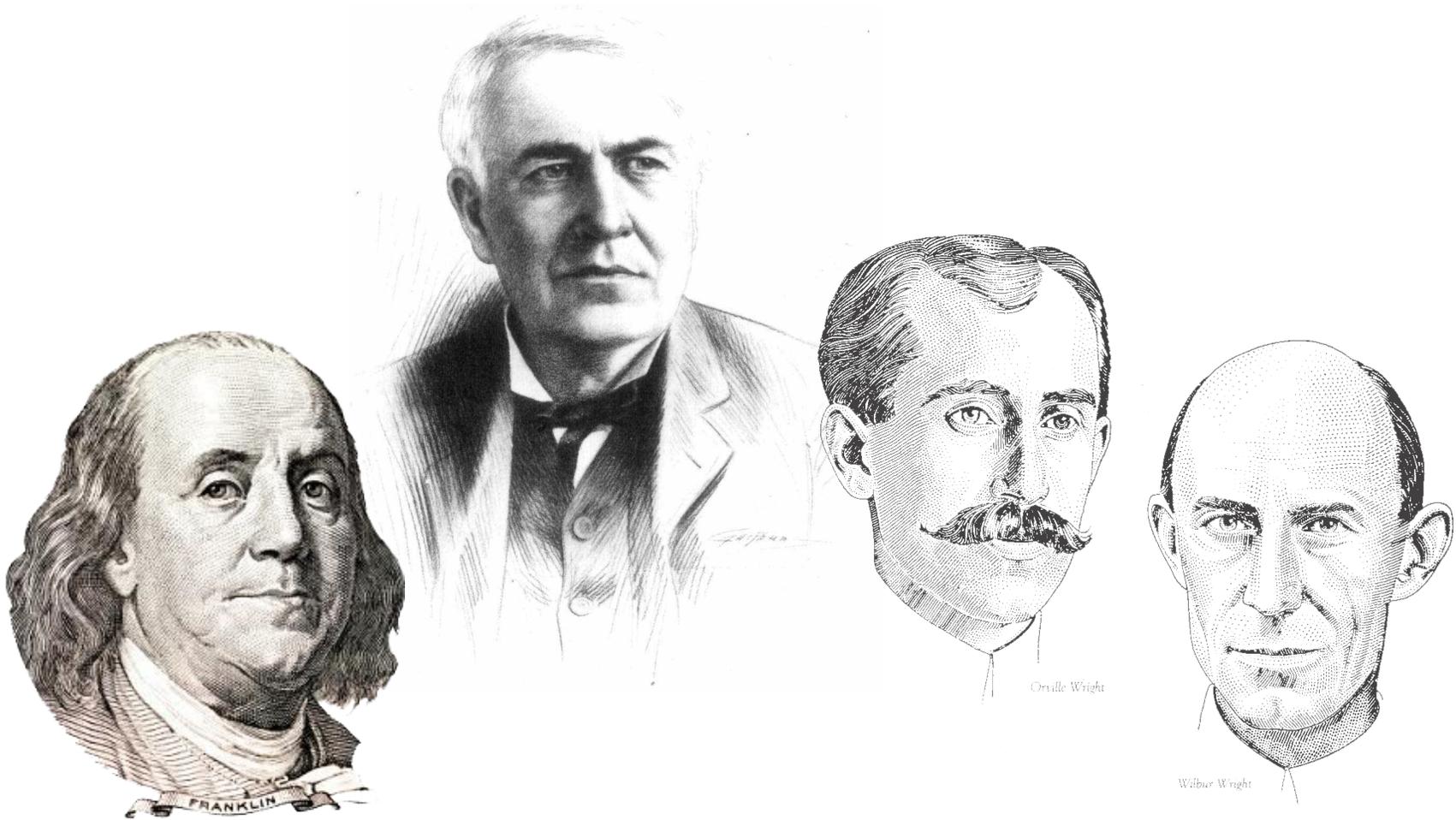
Not an inventor.

$E=mc^2$ is not an invention. It is a discovery.

Disruptive things may not be inventive.



Who is the greatest U.S. inventor?



The Innovation/Invention/Discovery Problem Creates Errors in Our System



- The U.S. current legal framework sometimes promotes personal wealth at the expense of national wealth by empowering patent trolls who can behave irresponsibly
- Legitimate companies feel victimized at times by flaws in the U.S. System
- Average time to trial is over 3 years.
- ITC gives itself very broad jurisdiction by its own choice and will give severe sanctions for minor infringements.

Patentable Subject Matter in China and U.S.



	U.S.	China
Business Method Patent	<ul style="list-style-type: none">• Having some type of practical application• “Machine or transformation?”	<ul style="list-style-type: none">• Pure business method is not patentable• Must be a combination of software and hardware• Not patentable if the hardware-software combination is not inventive (even though the business method is new)• Must satisfy the three conditions requirement
Software	<ul style="list-style-type: none">• Patentable after 1981• Very inconsistent court rules• Having a “practical application” (without any technical characteristics)	<ul style="list-style-type: none">• Combination with hardware• Constituting a technical solution<ul style="list-style-type: none">- Using technical means- Solving technical problem- Having technical effects• Properly drafted claims

Patent Enforcement in U.S.

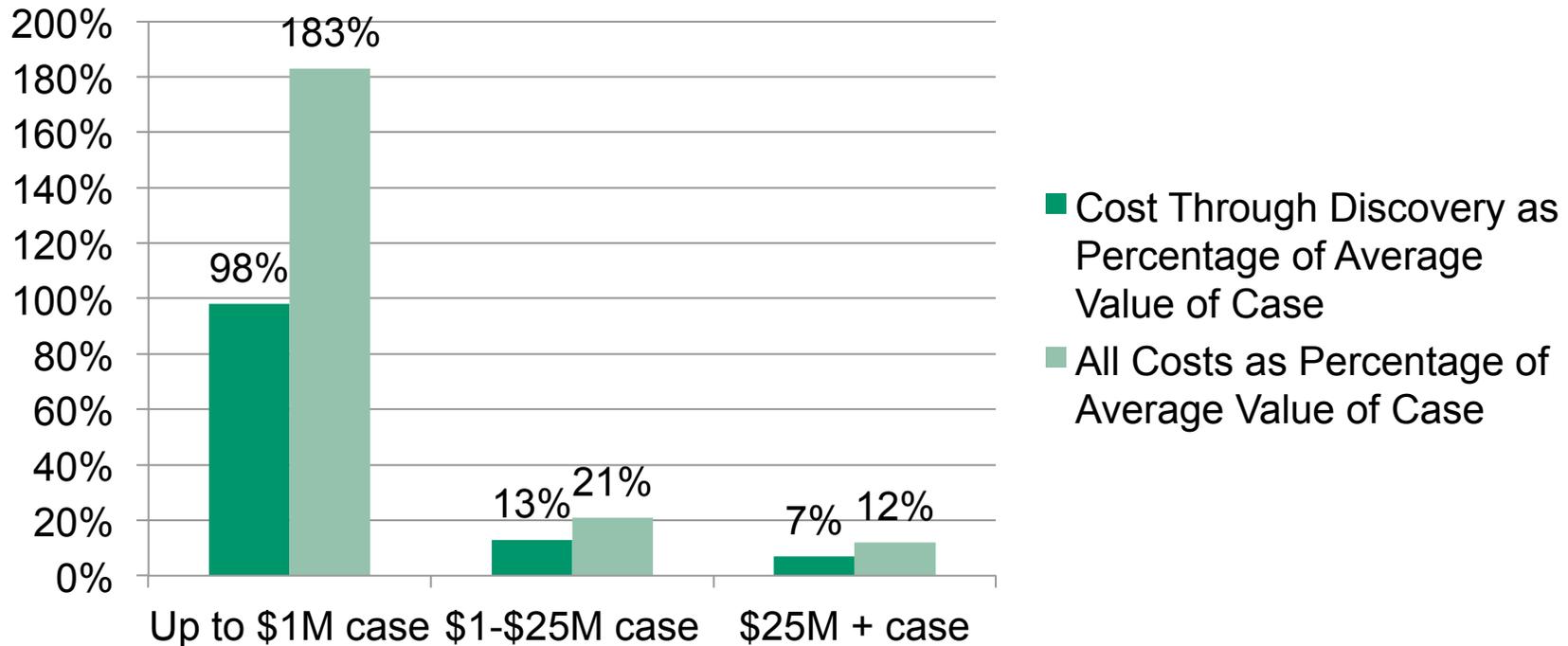


- Split Patent Litigation System?
 - » U.S. Court Actions
 - » ITC (sometimes)
 - » USPTO
- Heavy discovery costs
- Time to complete can be 3 years or more
- Litigation cost often driver of licensing, not the innovation

Per Party Cost in Patent Litigation



**Per Party Cost in Patent Litigation, as a Share of Value of Case
Based on AIPLA 2011 Annual Economic Survey Figures**



Source: Colleen Chien & Michael Guo, "Does The US Patent System Need a Small Claims Proceeding," April 2013 (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2249896).

Patent Enforcement in China



- Split Patent Litigation System
 - » Infringement determined by the court
 - » Invalidation proceeding heard initially by State Intellectual Property Office Patent Reexamination Board
 - » Courts often stay the infringement proceedings in design and utility model patent until invalidity proceedings completed
 - » Most invention patent infringement are not stayed.
- No discovery available
- Time to Complete (6-8 months - first instance)

Thank You!



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