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Adapting To A Plaintiff-Side Mindset For Patent Monetization

By **Kate Tellez** (December 9, 2025, 5:45 PM EST)

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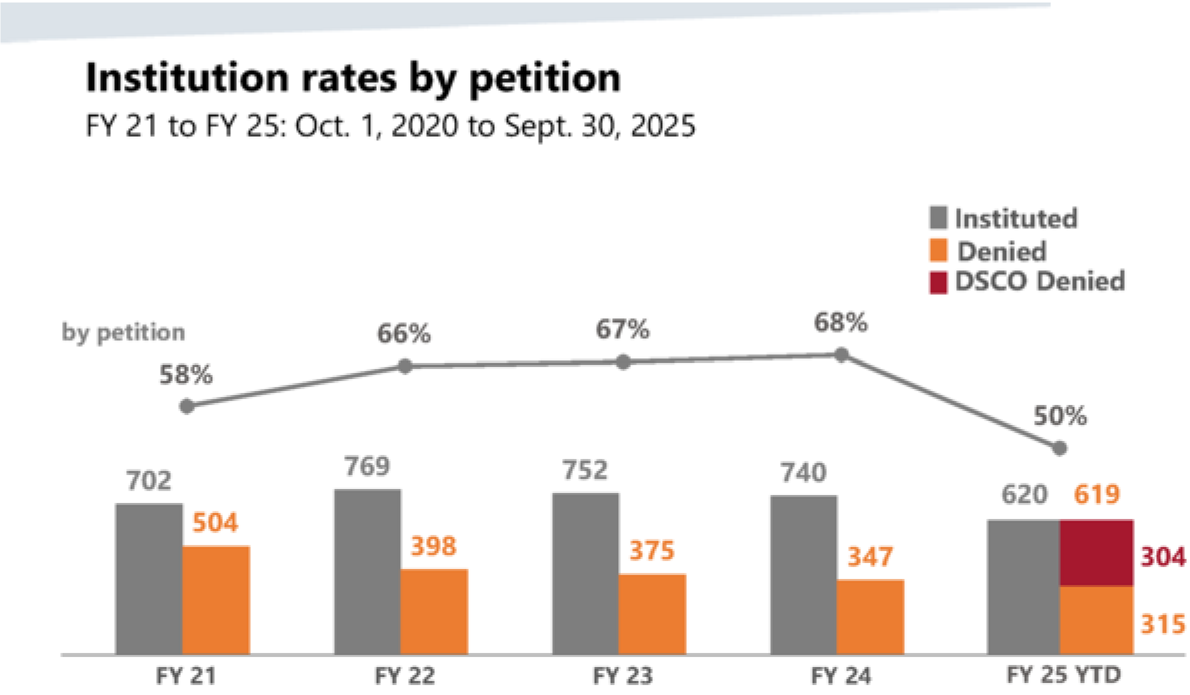
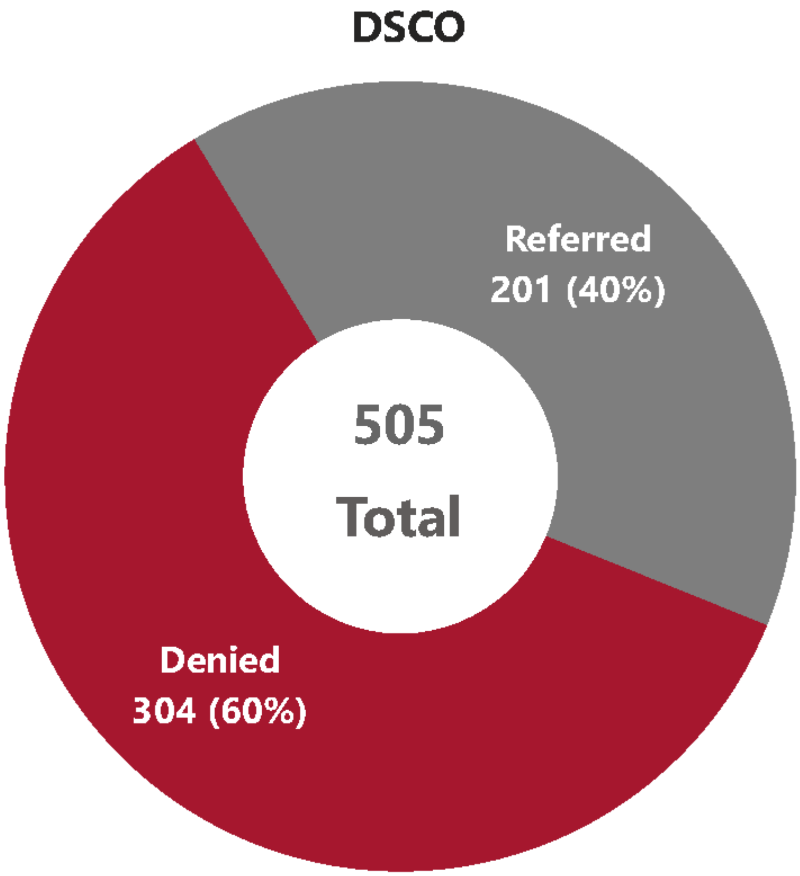
Now is a better time than ever to consider a patent monetization strategy. Corporate appetite for monetizing patents — as opposed to a purely defensive strategy — has recently combined with changes at the U.S. Patent and Trademark Office that reduce invalidity risk. That combination makes an attractive case for evaluating patent assets from a plaintiff-side mindset.

Changes at the USPTO under the Trump administration have led the recent shift in perspective. The most recent Patent Trial and Appeal Board statistics for this year show overall trial institution rates by petition have fallen to 50% — a five-year low.[1]



Notably, that data is for fiscal year 2025, which includes Oct. 1, 2024, through Sept. 30, 2025, and thus includes petition decisions that predate the changes brought by the new administration. Even so, 60% of discretionary denials were granted over that same time period.[2]



"DSCO" is "Director Discretionary Considerations"

Recently, the USPTO announced that institution decisions will no longer be delegated to three-judge PTAB panels, and will instead be decided primarily by the director himself and in a summary fashion.[3] The letter referenced "a very high invalidation rate" and "extraordinarily high institution rates" at the PTAB.[4] Thus, although the letter was quite recent, the reduction in institutions seems likely to continue, if not decrease further.

That significant decrease in risk for patent owners at the PTAB — long-considered one of the major risks for a patent owner — coincides with increased interest in monetizing patent assets, even from corporate entities historically opposed to such activities or only interested in defensive patent practices.

For example, in 2022 Intel Corp. sold approximately 5,000 patent assets,[5] and in 2023 Blackberry sold approximately 32,000 patent assets for $170 million up front with additional downstream value.[6]

Those notable examples have seemingly paved way for a trend. Earlier this year, Burford Capital performed a patent monetization survey and found that "73% of in-house lawyers report that revenue from patent monetization has increased over the last 10 years," and "69% of in-house lawyers say their organizations have become more likely to monetize patents in the past decade."[7]

So what should you be thinking about if you are considering patent monetization and are new to the patent owner side of the patent litigation equation?

Many substantive patent issues such as ownership and standing, infringement and invalidity lend themselves to translating a fairly easily from a defense-side to a plaintiff-side mindset, whereas other issues will present with less familiarity to those new to the space. Below is a nonexhaustive list of considerations that you may wish to investigate further before embarking on and during patent monetization activities.

Monetization Type

There are, of course, many ways to monetize patents, and there is no one-size fits all strategy. For example, current patent owners can consider selling patents outright for a one-time fee, selling patents with some sort of back-end percentage, asserting the patents themselves, or even simply letting maintenance fees lapse and saving costs, as opposed to affirmative revenue generation.

What strategy is most suitable depends on a myriad of factors including timing — how soon and how guaranteed is the monetization in question — risk appetite, and reputational and other concerns.

Privilege and Work Product

The patent monetization context — and what specific type of monetization — drives the parties that will be involved. Litigation funders that provide third-party capital for the purchase of the patents or the litigation fees and costs and patent brokers are often involved in patent monetization transactions.

Thus, one can easily imagine scenarios where patent monetization communications involve a patent seller, a patent buyer, litigation counsel, prosecution counsel, a litigation funder and a broker.

Such a landscape is more complicated than a traditional patent owner and litigation counsel relationship or even a patent owner, litigation counsel and litigation funder relationship.

Privilege and work product risks can be increased in such a situation where the patent sale has not yet occurred or litigation plans are at a nascent stage, even if the sale is being conducted with an eye toward later litigation.

Situations where the communication is more of a business purpose as opposed to a legal purpose may also arise. It can be helpful to determine which communications and activities are in fact privileged or immune and how to maintain that status along the way, including via clarifying agreements and other precautions as needed. Overall, extra care should be taken to avoid unintended consequences such as waiver.

Economic Considerations

Even if you do not intend to assert the patent assets yourself, you'll likely need to consider how to justify the purchase price that you'd like to achieve, whether or not that price has any relation to any later assertion strategy.

If you are the party intending to file a lawsuit or campaign, you'll need to evaluate the potential to generate value against the cost to obtain that value. For example, what can you afford to spend, and what are you realistically expecting to generate from those efforts? If you intend to have a third-party source of funding for the monetization efforts, how much are they willing to commit?

Some scenarios may be better suited for a low-cost licensing campaign, while others may be better suited for a larger and more expensive litigation campaign. Where your situation falls on that scale depends on your goals and risk-appetite as much as it depends on the particular patents and targets involved.

But overall, the sooner you consider the economics of your situation, the better. Even very strong patents from an infringement and validity perspective may not be suited for patent monetization if exposure or collectability is not viable. And in an ultimate patent trial, often decided all at once by a jury, the issues of infringement, validity and damages certainly have significant overlap and can strongly influence each other.

All patent plaintiffs must ultimately weigh a complicated and extensive bundle of considerations in developing their strategy, and those considerations are potentially complicated further in the patent monetization context.

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[1] PTAB "FY25 End of Year Outcome Roundup", available at https://www.uspto.gov/sites/default/files/documents/Trial_StatsFY25_Q4.pdf.

[2] Id.

[3] Letter from USPTO Director John A. Squires dated October 17, 2025, available at https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf.

[4] Id.

[5] Robinison, Dan, "Intel hands over nearly 5,000 patents in deal with IP management outfit," available at https://www.theregister.com/2022/08/15/intel_patents_tahoe_research/.

[6] Blackberry March 21, 2023 Press Release, available at https://feeds.issuerdirect.com/news-release.html?newsid=8759629014236326&symbol=BB,BB:CA.

[7] Burford Capital 2025 "Patent monetization survey: In-house and law firm lawyers weigh in on generating revenue from corporate patent assets," available at https://feeds.issuerdirect.com/news-release.html?newsid=8759629014236326&symbol=BB,BB:CA.