

Effective IP Strategy to Drive Innovation in the Financial Services Sector

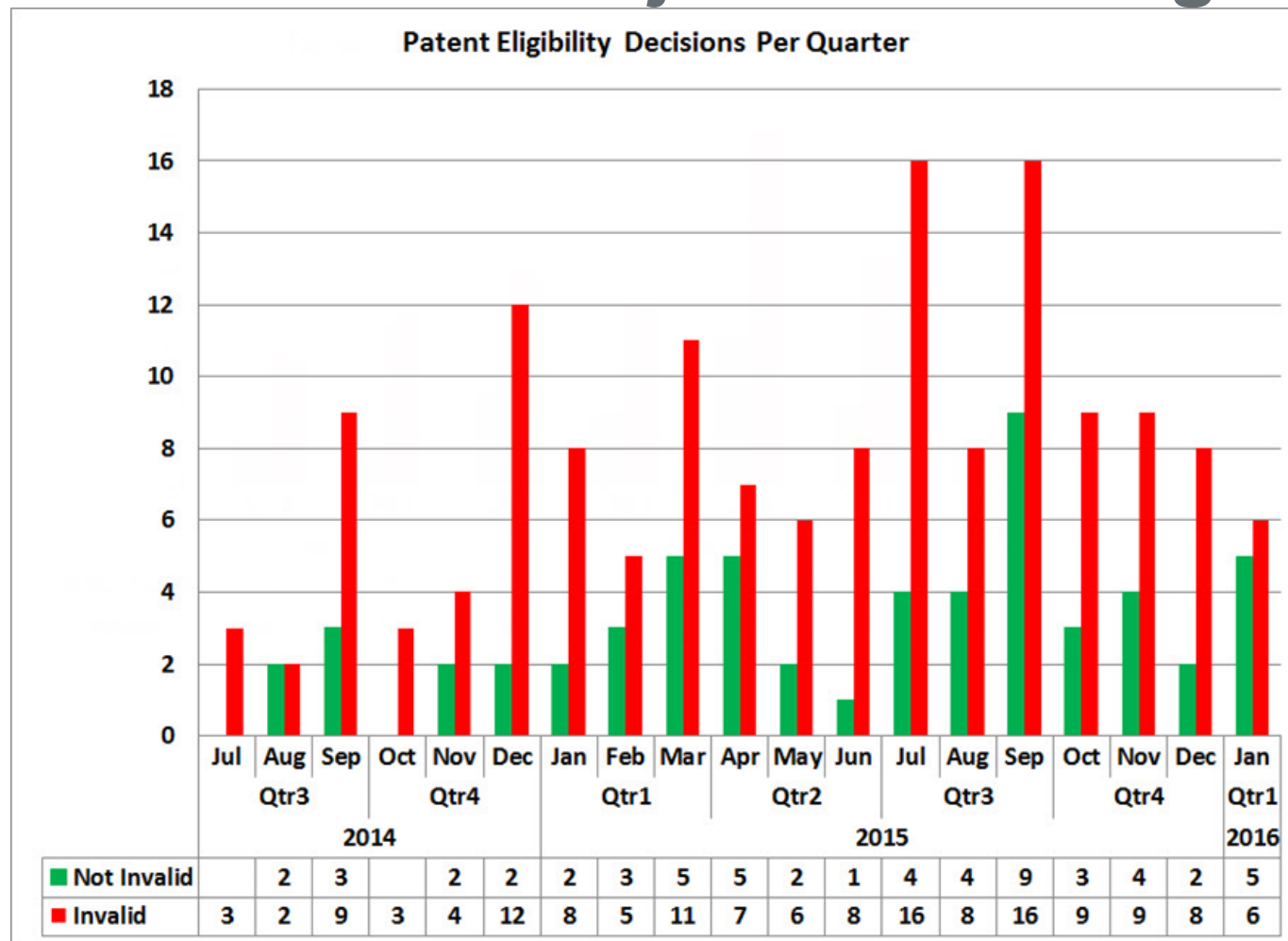
Wednesday, March 9, 2016

Live tweet using #IPOZMTFinTech

#ALICESTORM – Patent Applications

- Business method patents have been hit the hardest
 - Financial services: Over 85% rejection rate
- Impact of *Alice* felt in other domains as well
 - Especially software and medical diagnostics patents

#ALICESTORM -- U.S. District Court Decisions re Subject Matter Eligibility



Source: www.bilskiblog.com by Robert B. Sachs of Fenwick & West

#ALICESTORM -- § 101 Appeals

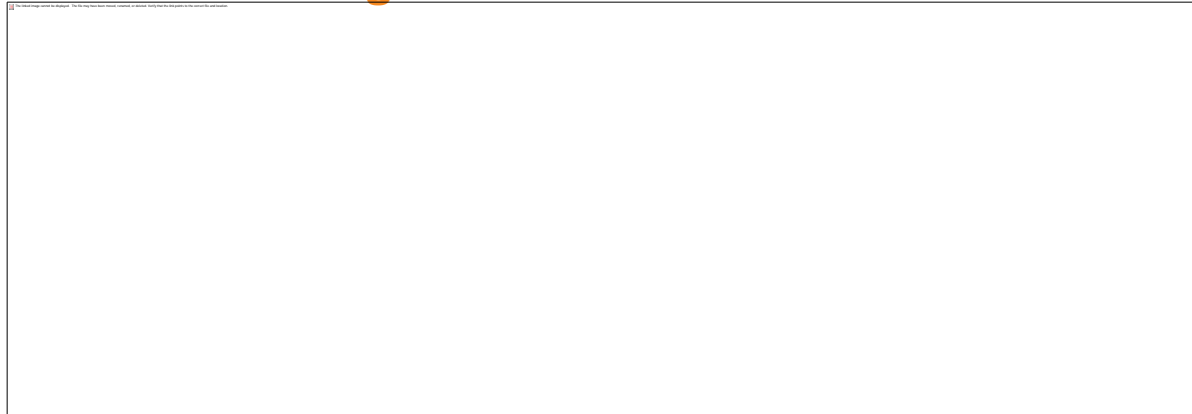


- **One** appeal has found the claims to be patent-eligible
 - *DDR Holdings v. Hotels.com* (Fed. Cir. 2014)
- Claims were found ineligible in 22 other appeals
- Two pending appeals to watch:
 - ***McRO, Inc. DBA Planet Blue*** – Methods for animating lip-synch & facial expression of 3D characters
 - ***Enfish v. Microsoft*** – Two patents relating to an object oriented database structure

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IP strategy provides both defensive and offensive business advantages

As a Shield

Defend against disruption

- Confirm freedom to operate
- Negotiate with your own “trading cards”

Assess risk

- Litigation risk
- Business interruption risk
- Reputational risk

Mitigate risk

- Due diligence
- Scope/strength of indemnification
- Insurance

As a Sword

Support innovative culture

- Grow internal expertise and capability
- Capture new customers

Revenue opportunities

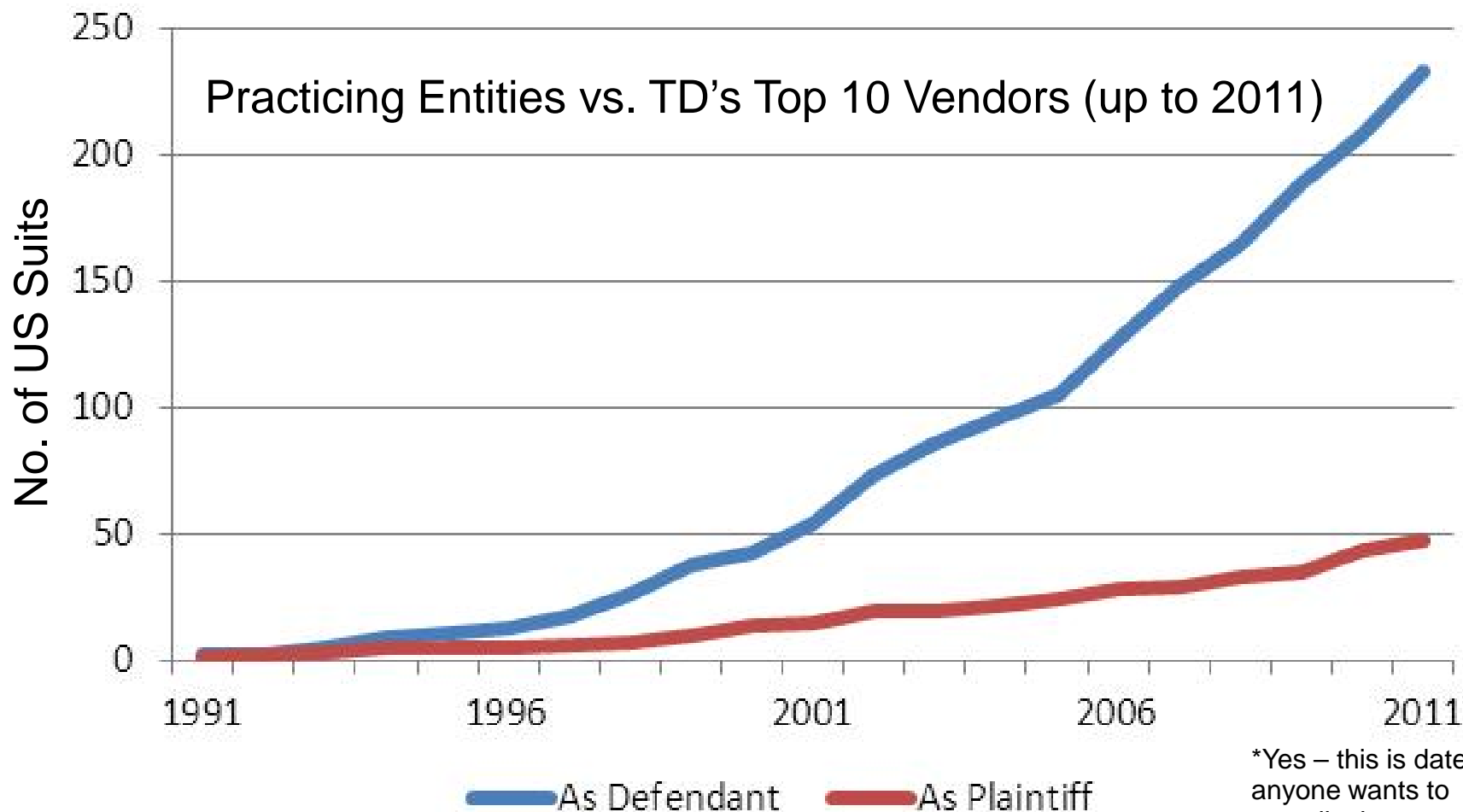
- Monetize and commercialize
- License
- Spinoff / sell assets

Go on the offensive

- Acquire and stake territory in a competitive space
- Pre-empt competitors from patenting

Business value is primary – IP must support business objectives




Vendor Patent Risk*



*Yes – this is dated. If anyone wants to compile the new data for free, let me know.

Patent Risk Matrix



	Trolls	Vendors	Competitors
Litigation Examples	DataTreasury v. TD et al. Phoenix Licensing v. TD	Accenture v. Guidewire FICO v. Actimize	Progressive v. Allstate & Liberty Mutual
Quantitative Risk	<ul style="list-style-type: none"> Cost of settlement - dependent on Troll type. Cost of litigation. 	<ul style="list-style-type: none"> Vendor transition and internal costs. Loss of leverage with plaintiff vendor. 	<ul style="list-style-type: none"> Damages going back 6 yrs and associated loss of future revenue re. enjoined product/service. Cost of litigation.
Qualitative Risk	<ul style="list-style-type: none"> Cdn - Operational and reputational risks resulting from enjoined product/service. US – injunctions unlikely. 	<ul style="list-style-type: none"> Operational and reputational risks resulting from enjoined Vendor product/service. 	<ul style="list-style-type: none"> Operational and reputational risks resulting from enjoined bank product/service.
Trending	 Volume and costs dropping	 Moderate volume growth	 Material US portfolios are being developed but not enforced – Cold War

Low

Moderate

High

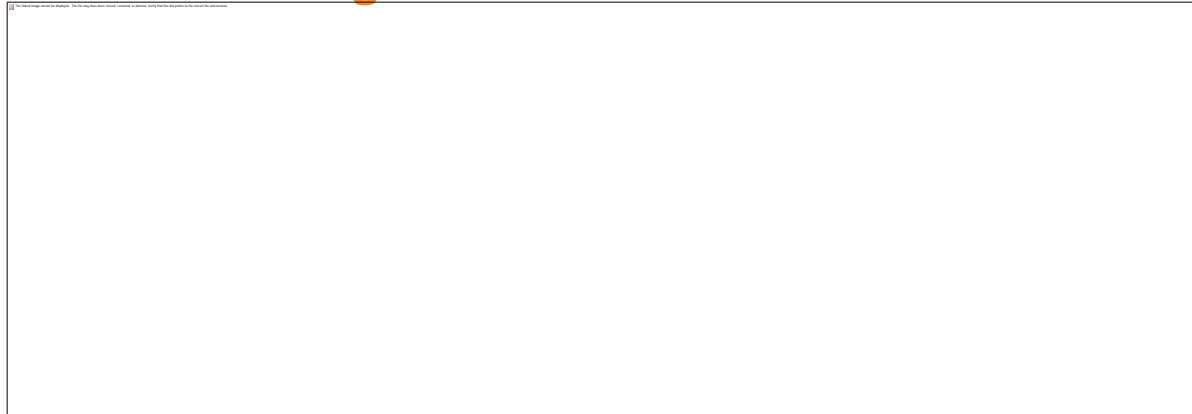
Legal costs and damages exposure in IP infringement actions is substantial

	United States	Canada
Remedies available	Preliminary and permanent injunctions (eBay reduced likelihood)	Preliminary (difficult to obtain) and permanent injunctions (obtainable)
Damages	Reasonable royalties (most common): calculated based on the amount that a hypothetical licensee is willing to pay while still earning a reasonable profit Compensatory damages: lost profits, price erosion	Compensatory damages (most common): calculated based on lost sales, reasonable royalty, intangible losses Accounting of profits: calculated based on the infringer's profits attributable to the patented invention
Maximum punitive damages	Up to three times the actual damages available in cases of willful infringement	No statutory multiplier available for willful infringement but punitive damages are (rarely) awarded if infringement is egregious
Jury trial available?	Yes – Juries have decided 67% of cases in the past five years Patent holders successful in 77% of jury trials in the past 10 years	No – trial by single non-specialist judge
Legal fees	Published ranges between \$2M - \$60M Median legal fees approx. \$5M with legal fees in Apple case \$60M	Unpublished ranges between \$0.5M to \$10M depending on size of case – far less expensive to try same case in Canada
Damages awards	High-water marks: Samsung - \$900M+; Apple - \$500M+ Median award approx. \$3M	Largest patent infringement damages ever awarded is approx. \$180M (pharma patent case won by McCarthy)

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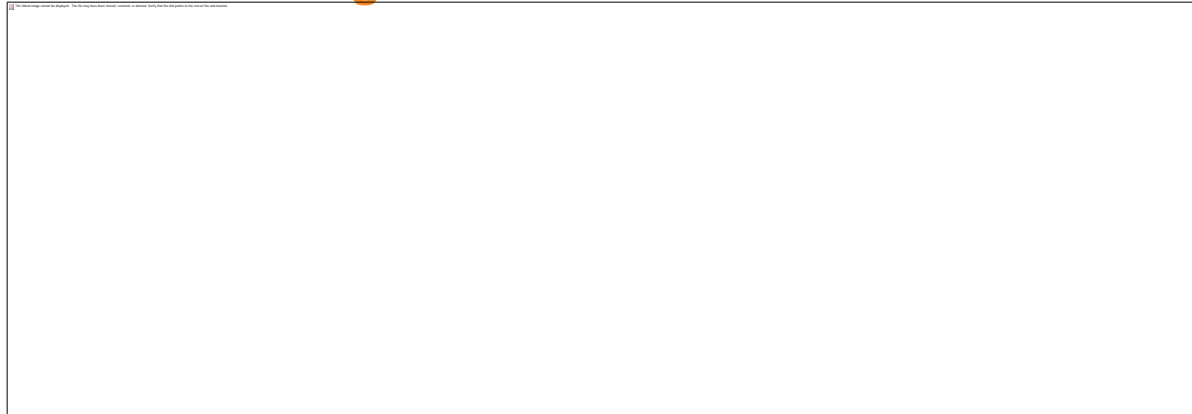
World Class Intellectual Property (IP) Strategy



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