

Defending Oregon's Intellectual Property Through Deterrence

An important problem facing emerging enterprises is the risk that a larger competitor will infringe on valid intellectual property, knowing that the cost of prosecuting an IP infringement case is beyond the means of most startup companies. Partly for this reason, most angel and venture investors do not place much value on a startup's IP portfolio when considering an investment.

As part of its economic development strategy, the state of Oregon should consider forming an intellectual property prosecution fund for Oregon-based startups. The fund would substantially offset the startup's cost to prosecute a patent violation lawsuit against an infringing company.

If a startup company secured protection through the Oregon IP Protection Fund, it would be able to deter potential infringers, giving the startup an essential opportunity to gain scale. The deterrent power would make the IP portfolios of Oregon startups more attractive to angel and venture investors, leveraging additional private capital.

The key to generating a substantial social return is if the State of Oregon could use the fund to deter potential patent infringers from violating the Oregon startup's IP so that lawsuits would not take place. Effective deterrence requires 1) the ability to retaliate; 2) credible resolve to take action; and 3) public signaling of intent. If participation in the program allowed startups to do all three of these things, then the risk of infringement would go down. No other option including private insurance provides this capability to startups.

If the fund deterred potential competitors efficiently, thus avoiding expensive lawsuits, the insurance fund could retain paid in premiums and grow larger and over time phase out any need for public money. The fund or an associated state sponsored organization could possibly also command lower IP insurance rates in the private market for a spectrum of Oregon companies by pooling purchasing power.

The State of Oregon is in an excellent position to signal, with a big stick, the intent to defend the IP from a vetted group of startups. This type of innovative public-private initiative has the potential to get national media coverage, and every bit of PR would help signal Oregon's friendliness to startup companies. Entrepreneurs would be encouraged to consider Oregon as a location for their startup.

This fund represents an opportunity for the State of Oregon to boost its creative class. You could think of the Oregon IP Protection Fund as a mangrove swamp for the little fish as they get ready to swim with the sharks. What better way to invest in the creativity that has become a hallmark of our state?

Respectfully submitted,


Sam Pardue