



## C-suite, investors spooked by value-based US patent fee proposal

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When patent licensing companies announce their earnings to stockholders, analysts often ask executives about why royalty revenue is up or down or what they expect from the market next quarter.

But an abnormal question about patent fees came up twice from separate analysts who asked the CEOs of InterDigital and Adeia about news from Washington DC that the Trump administration is pondering a new fee of 1% to 5% of the value of a patent. Some intellectual property business leaders are also fielding questions from their C-suites about the implications of the value-based patent fee, dubbed a “tariff” or “tax” on innovation.

One analyst asked on InterDigital’s 31 July earnings call: “Do you have anything built into your contract where you can pass that on?”

InterDigital CEO Liren Chen replied: “We actually don’t know any details. We are not exactly certain where it will go, so without any details for the proposal for IP, we don’t

think it's probably for us to comment. We are watching the situation pretty carefully, and we have a very healthy, open dialogue with key policymakers in Washington, DC."

Later, on 5 August, another analyst asked on Adeia's earnings call: "There has been commentary coming out of Washington a week or so ago about the taxation of intellectual property. I'm just wondering if you had any high-level thoughts on that."

"I'd say it is really speculation out of Washington," responded Paul Davis, CEO of Adeia. "Someone wanted to float an idea that came across. There's really not a lot of details. If and when there's more, we'll comment on it. Until that time, it's really not worth spending a lot of time on it, because it is hard to know what's really even being floated out there, given the lack of detail."

A spokesperson for InterDigital declined to comment, and an Adeia spokesperson did not respond to a request for comment before deadline.

Biotech stocks fell on the day that the Wall Street Journal published news about the value-based patent fee proposal. Investing.com **reported** that the SPDR S&P Biotech ETF dropped 1.1% drop following the report. The news had a notable impact on key players in the biotech industry, such as Pfizer, whose stock traded lower as investors evaluated the potential effects of increased patent-related expenses on future profitability.

Officials within the US Commerce Department are exploring the implementation of a **value-based patent fee** scheme in which patent owners would face annual charges ranging from 1% to 5% of their patent's assessed worth. Commerce Secretary Howard Lutnick reportedly backs the initiative, which supposedly could raise tens of billions. This marks a fundamental shift from the current tiered flat-fee patent maintenance fees.

### Current US patent maintenance fees

Renewal period	Amount
3.5 years	\$2,150
7.5 years	\$4,040
11.5 years	\$8,280

Source: [USPTO maintenance fees](#)

During a Licensing Executives Society webinar on 7 August, USPTO Acting Director Coke Morgan Stewart said that Lutnick wants a strong, reliable IP system, said a **news report**.

"His concern is that there are very large, well-funded companies in the United States and throughout the world that pay about \$2,000 to get a patent, and that patent gives the company the exclusive right to an invention that would-be worth billions of dollars," she said. "So he feels that there is a disconnect between paying \$2,000 to the

US government for an invention that could be worth, for that company, hundreds or millions or billions of dollars. He's very concerned about that disconnect."

Steward added that Lutnick also has concerns because a patent filing fee does not cover the full cost of examination; the USPTO recoups examination expenses via patent maintenance fees. Stewart commented: "Successful patent applicants pay four or five times the amount over the life of a patent for examination than an unsuccessful applicant, as the system uses patent maintenance fees to subsidise examination."

IAM understands from speaking with the IP leader of one major American patent-rich corporation that C-suite executives have a lot of questions about the proposal. Even the highest-level executives are setting aside time in their calendars to meet and discuss the patent fee. The IP leader's company has assigned a group of IP staff to research the issue, present findings to the C-suite and establish an official position.

The person says other major companies are collaborating with an advocacy organisation to take a position and issue an official statement. Conversations among them have revealed that the government did not consult with industry about the potential impact of the value-based patent fee. Most of them do not favour the proposal.

There is an expectation that some companies will be vocal in this discussion to communicate the concerns of industry. Fears are swirling that the patent fee will chill innovation by introducing excessive charges, penalising research and development companies for protecting their inventions with patents. IP heads are uncomfortable with the uncertainty that today's 1% patent value fee may increase year-by-year, so they cannot calculate the impact on the company's finances. Plus, there is uncertainty about the valuation and accounting methods for a patent portfolio, especially since its worth shifts over time depending upon how deeply a technology saturates a market.

Indeed, even for chief intellectual property officers, it is a struggle to value patent portfolios to show their C-suite executives the return-on-investment for patents. The calculation is the easiest when a company licenses or sells its patents for revenue; it can show how much the portfolio cost and how much it earned. But even in this scenario, patent licensors negotiate for their licensees to sign agreements for an entire portfolio – not an individual patent. For that reason, they cannot pinpoint exactly how much money one specific patent contributed to their licensing revenue. Likewise, many secondary market sales include a portfolio of assets that have been priced together.

The patent ROI mathematics is more difficult for most product companies that build and maintain patent portfolios that protect and defend their products. In technology fields, a multitude of patents protect just one product and apportioning a value to individual assets requires a complicated and subjective assessment of the benefits that one innovation brings to the whole product.

The only thing corporate leaders and IP chiefs can do for now is wait and see what happens to the value-based patent fee proposal.

“There are lots of questions,” our source says. “There could be unintended consequences across the industry if this proposal is put into effect.”



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