The Need To Reform The US Patent System
A Story of Unfair Invalidation for Patents Under Alice 101 Act

Ted Tsao, is a technology expert and has been an engineer and innovator since 1987. He is the founder and president of STT WebOS, Inc. in Freemont, CA, the company he founded in 2002.

STT WebOS focuses on products for cloud computing, which includes information sharing, IT operation, video and storage on-demand.

One of the first products Ted invented was a solution for a virtual video uplink system to assist servers for video on-demand, specifically to host and manage videos on servers. He applied for multiple patents for this in 2002 and he currently hold 46 patents for related technology products. All the patents secured were the result of hard work and extensive research and development.

In 2004 and 2005, Ted communicated with two senior managers at Yahoo in the hopes of persuading Yahoo to adapt a new web folder system by replacing Yahoo's Briefcase remote access online server. However, during this two-year period Ted was not able to advance his patented idea with Yahoo.

Several years later Ted learned that Yahoo was practicing his web folder system and infringing on his patents. Ted went to court to remedy the situation, but it only made matters worse. The patents in Yahoo case were invalidated by the District Court of San Jose, CA, with the terminology used as *"…being falsely identified as an Abstract Idea."* Wow! Ted has been fighting Yahoo since 2017.

The complete, detailed story of Ted's patent fight, in his own words, can be found below.

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Today, there is a big question as to whether the legal system for patents in the United States can truly protect inventors, entrepreneurs and small companies. This is especially the case for financially disadvantaged inventors and small companies.

The following is a true story which points out the many problems that exist in our legal system regarding the inability to protect patents, which are granted by our patent system for true inventions and ideas by individual inventors.

My name is Sheng Tai (Ted) Tsao. I am, an inventor ("ME"), and a citizen of the United States. I own a small business called TS Patents LLC ("TS Patent") in Freemont, CA, which licenses multiple patents issued, based on several inventions I made dating back to 2002. Specifically, the inventions have been used by numerous companies in the US and China. For example, the patents were licensed to a tech giant in Silicon Valley in 2016 after the tech giant recognized the importance of these technologies.

However, among these patents are **four patents**, identified in the case of TS Patents LLC v. Yahoo! Inc., No. 17-2625 (Fed. Cir. July 17, 2018), ("Yahoo Case"). These four patents in the Yahoo Case have been **declared invalid due to being falsely identified as an abstract idea under the Alice 101 Act in a decision** ("DECISION") from the district court of San Jose, California, which granted the motion for dismissal from Yahoo.

There is clear evidence that the DECISION has failed to practice the case laws established by either the Supreme Court or the Federal Circuit Court. This evidence shows that each patent in the Yahoo Case has improved computer functionalities by solving a specific problem occurring in a traditional technology area.

As a result, ME and TS Patent have **become victims and casualties of such unfair invalidation.** It is quite clear that with this DECISION there is bias and discrimination toward individual inventors and small companies. An unfair DECISION places huge financial burdens on financially disadvantaged inventors and small companies like mine.

The History of My Patents

Back in 2004 and 2005, ME communicated with two senior managers at Yahoo to suggest that the Yahoo Briefcase, an online remote access service, adapt a new web folder technology that would have obvious advantages over the Yahoo Briefcase. Yahoo Briefcase can only display two levels of a document structure and only provide a user operating it one level at a time. Therefore, many critical operations, e.g. moving or copying a file between folders, cannot be provided.

The new web folder technology I developed not only solved this problem in traditional remote access products, e.g. Yahoo Briefcase, but it also eliminated problems in the traditional hierarchical list-based file system. This would include management products, e.g. in Window Explorer of Microsoft, which is incapable of operating across the Internet due to its tremendous demand for computing power and network bandwidth.

The success of the R&D we conducted for the new web folder technology generated–patent number 9,280,547 in the Yahoo Case. In addition to the web folder '547 patent, there are also web

multitasking patent 8,799,473, and files and folders sharing patents 8,396,891 and 8,713,442 in the Yahoo Case.

The ‘473 patent solved the specific problem of a web browser becoming “blocked” after a user submits a request for accessing things on the Internet due to the browser having to wait for the completion of the request. The “blocking” problem renders the browser useless. The claims of ‘473 presented a solution that **eases the browser’s waiting period and therefore successfully led to the development of concurrent web-based multitasking.** In contrast, there was also an Ajax technology movement led by Google, started in 2005 and which lasted several years. Mimicking the ‘473 patent, the core of Ajax technology was solving the problem of web browsers becoming “blocked”.

The ‘891 patent solved a problem in traditional sharing technology in which the system has to physically delete a file in order to stop sharing the file; consequently, the file cannot be re-shared unless it is expensively re-created. In addition, the ‘891 patent provides users the ability to un-post (withdraw) a posted message, file, or folder to prevent an improper (bad) message, file or folder from being widely exposed on the Internet.

The ‘442 patent shares a large part of the ‘891 patent. In addition, the ‘442 patent presents a solution of “virtual presentation” to the problem in traditional server-based sharing. With the virtual presentation, the files or folders do not need to be physically transferred to the server for said sharing; this tremendously reduces the data load on a network, e.g. reducing a data load for a very nested multi-leveled folder or a file with multi-Gig bytes.

All of the patents resulted from tremendous efforts and hard work by ME for R&D technologies on behalf of STT WebOS, Inc, (“STT”) which is the startup I founded in 2002.

The Consequence of the Court DECISION

The district court DECISION, made on 09/01/2017, is unfair because when a patent asserts technical improvements to a claimed computer network—asserted improvements grounded in historical facts—a district should not be permitted to invalidate a patent at the pleading stage. However, the DECISION was affirmed (invalidation) by the Federal Circuit on 07/17/2018 in response to an appeal filed by an attorney who represents ME and my company.

Frankly, financially disadvantaged inventors and small companies have often become victims of these unfair DECISIONS because they usually lack the resources to fight them legally.

Unfair to the Inventor or Small Company

It is quite clear that a financially disadvantaged inventor or small company has a significantly smaller chance for success in appealing on the legal front upon an unfair DECISION in our legal system, unless the inventor or small company hires a more experienced attorney at much higher costs than the inventor or small company can afford. Even if an inventor or small company is able to hire a more experienced attorney, there are still many procedural hurdles that may prevent success in litigation, e.g. timing issues, or record filing issues, and others that may diminish chances of success.

The worst nightmare to ME and TS Patent is that **the unfair DECISION killed the patents;** therefore, many potential licensees will stop ongoing negotiations for licensing with TS Patent. Consequently, ME and TS Patent must take the burden of a huge financial losses, while the technologies invented by ME are continually being practiced by the potential licensees for generating their own revenue.

Usually, the potential licensees are financially strong and can take advantage of fighting against proposed licensing based on the case law established by the unfair DECISION. It is almost hopeless for an inventor and small company to continue licensing efforts, even if they have other related patents that are still valid, unless they can find a very experienced attorney.

The situation could even worsen if an inventor becomes aged or retired. The inventor may have previously spent more than 10 years on R&D for the patented technologies and spent most all of his/her savings, including their 401K, on the creation and maintenance of the patents. **Now, due to an unfair DECISION, the aged inventor not only loses the rights to the patents, loses timing for fighting on legal front, loses more than 10 years of life for the R&D, but also loses all his/her savings invested in creating and maintaining the technologies and the patents;** the savings would otherwise have been resources for the inventor's retirement.

This is what has actually happened in the unfair DECISION of the Yahoo Case. In fact, the legal system for patents in the United States cannot truly protect financially disadvantaged individual inventors and small companies owned by the individual inventors. Contrastingly, the legal system for patents in the United States has encouraged a technology monopoly by technology giants who are financially strong and lack respect for inventions by financially disadvantaged INVENTORS or SMALL COMPANIES.

Undermining the Premise of the Patent System

According to the recent development of patent laws, the Federal Circuit continues to undermine the entire premise of the patent system when it made the decision indicating that something must be officially claimed in a patent to be used as prior art, meaning other disclosures could still be

patented later by another party. **If this is true, this further opens a door for financially strong companies to legally "steal" inventions of individual inventors or small companies.** Consequently, artificially "invalidated" patents of financially disadvantaged individual inventors or small companies may become intellectual property of financially stronger companies.

I am sharing this story **hoping that one day our legal system can be reformed** to protect financially disadvantaged individual inventors, small companies, and their inventions, keeping the spirit of invention alive among the masses and small companies in the US.

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