

Patenting the Blockchain

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Last year's spike in the valuation of bitcoin has much of the technology world focused on blockchain, the distributed database ledger technology behind bitcoin and many other cryptocurrencies. Lost behind the scenes, however, is a rush by some in the industry to patent inventions relating to the blockchain technology itself. These moves come with controversy in an industry known for its culture of open-source practices.

Patenting blockchain technology is catching on. According to a search of the Patent Office's database, there have been over 50 U.S. patents issued relating to blockchain technology, almost all of them issuing over the last few years. And there are many more such patents in the pipeline. A search of U.S. patent applications shows that there are well over 500 published patent applications relating to the technology, and there are likely many more pending unpublished applications in the space. While many of the patent filers appear to be smaller companies, interestingly, a significant number of the patent filers are from among the larger Fortune 500 companies, including from among the big banks.

Even more controversial is that non-practicing entities are now entering the blockchain patent race. Indeed, a recent blog post by Erich Spangenberg, one of the major players in patent monetization, recently announced that he is starting a company that is focused on hiring programmers, data scientists, and "patent wonks," with an apparent goal to brainstorm and patent inventions in the blockchain space. The general business goal would be to monetize these patents, i.e., to send out demand letters to operating companies to seek license payments, and if that fails, file lawsuits to enforce the patents.

And while software patents are much more difficult to get through the Patent Office these days, especially after the Supreme Court's 2014 ruling in *Alice v. CLS Bank* (finding that software that implements intermediated settlement services is ineligible for patenting), recent interpretations of the *Alice* case by the lower courts have indicated that patents directed to innovative database technologies that improve a network of computers may be patent eligible. As blockchain is at bottom a complex decentralized database system designed to track and store electronic transactions, many innovations in the space may very well be eligible for patenting.

These moves to patent blockchain technology will no doubt be frowned upon by those in the industry steeped in its open-source culture. As the blockchain industry evolves, however, it may find that it has to strike a balance on patents. Patents, of course, can be misused to deter legitimate business competition. But at the same time, the costs of such misuse must be balanced against the benefits of patent protection, including the benefit to innovative companies that use such patent protection to deter more powerful competitors from misappropriating their technology.

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