# Insight on Twitter IP Challenges

*Intellectual Property Analysis of Twitter, inc.*

*November 7, 2013*

***On the day of Twitter's IPO, it is important to note that in a SEC filing from November 4, 2013 Twitter disclosed that IBM has asserted three patents against the company.***[1]

IBM's current patent assertion against Twitter is not the first time the social media company has found itself the subject of infringement litigation. Twitter has been hit with multiple lawsuits in the past four years, but this foray by IBM is just the reconnaissance mission for a far larger struggle. By issuing the shot across the bow, IBM can test Twitter's strength and reactions for the larger IBM portfolio. This will set the stage for a much larger global enforcement and transaction once Twitter is flush with cash from its IPO.

## *Analysis*

Using our proprietary analytical systems, we looked at the Twitter's two issued patents and the assertion. We found that Twitter has more problems than just IBM to contend against.

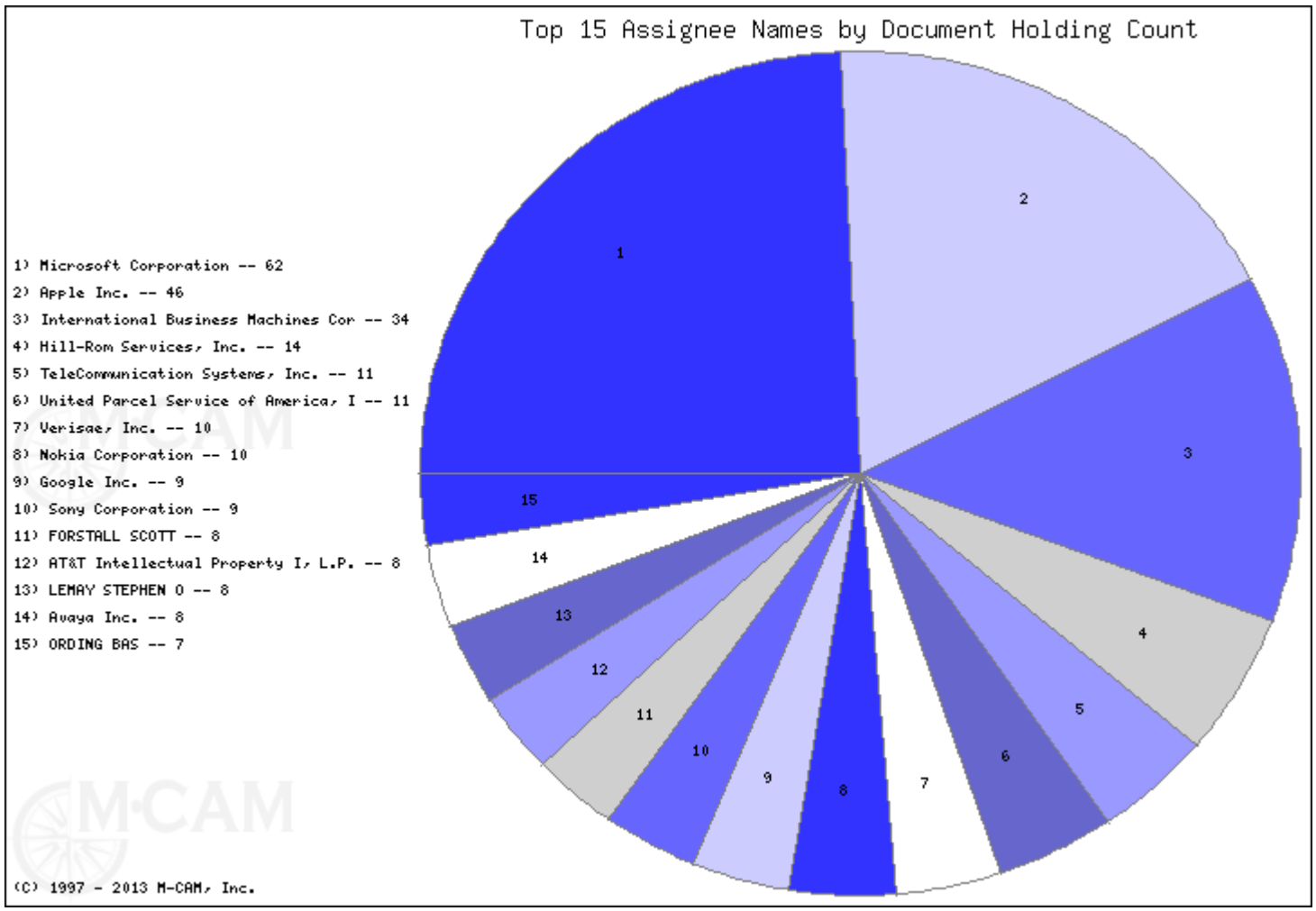
Below are the three IBM patents asserted against Twitter and Twitter's two issued patents.

| Document # | Title | Assignee Name | Priority | File | Issue |
|---|---|---|---|---|---|
| US 7,099,862 | Programmatic discovery of common contacts | International Business Machines Corporation | 2-Aug-01 | 2-Aug-01 | 29-Aug-06 |
| US 7,072,849 | Method for presenting advertising in an interactive service | International Business Machines Corporation | 15-Jul-88 | 26-Nov-93 | 4-Jul-06 |
| US 6,957,224 | Efficient retrieval of uniform resource locators | International Business Machines Corporation | 11-Sep-00 | 11-Sep-00 | 18-Oct-05 |
| US 8,448,084 | User interface mechanics | Twitter, Inc. | 8-Apr-10 | 8-Apr-10 | 21-May-13 |
| US 8,401,009 | Device independent message distribution platform | Twitter, Inc. | 23-Jul-07 | 22-Jul-08 | 19-Mar-13 |

[1] http://www.sec.gov/Archives/edgar/data/1418091/000119312513424260/d564001ds1a.htm

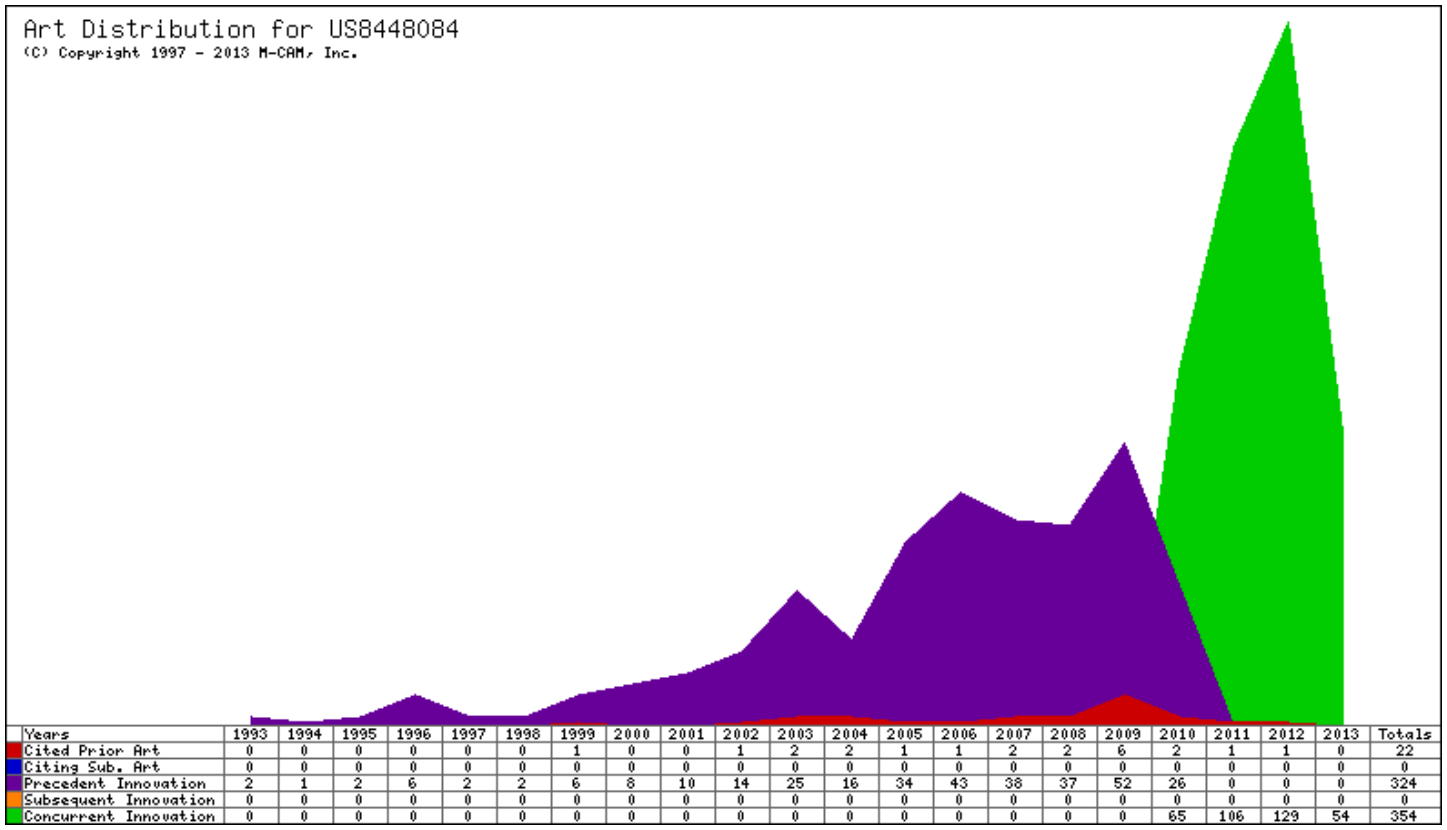
## *User Interface Technology Space*

The chart below shows other entities involved in the technology space of Twitter's US 8,448,084 patent. These entities are major players in this innovation space. As you can see entitles such as Microsoft and Apple hold a large amount of patents in the user interface space, and thus we find overlap in the issued patents.



# *Innovation Overlap*

The following graph shows the activity in the User Interface space since 1993.




| Years | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Totals |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Cited Prior Art | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 2 | 2 | 1 | 1 | 2 | 2 | 6 | 2 | 1 | 1 | 0 | 22 |
| Citing Sub. Art | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Precedent Innovation | 2 | 1 | 2 | 6 | 2 | 2 | 6 | 8 | 10 | 14 | 25 | 16 | 34 | 43 | 38 | 37 | 52 | 26 | 0 | 0 | 0 | 324 |
| Subsequent Innovation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Concurrent Innovation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 65 | 106 | 129 | 54 | 354 |

Our systems found that while Twitter's patent was granted in 2013 and cited 22 patents, there was significant un-cited precedent and concurrent innovation in the innovation space. The purple represents the 324 instances of un-cited precedent innovations since 1993. The green represents the 354 instances of concurrent innovations.

A quick look at a sample of precedent innovation reveals major players who can and will attack the newly public company. Twitter's US 8,448,084 (the '084 patent) is for "User interface mechanics" and has a priority date of April 2010. Unfortunately, SAP's US 7,693,948, General Electric's US 7,633,392, Apple's US 7,530,026, Microsoft's US 7,665,028, and many others all predate Twitter's patent by far. Not to mention other patents which IBM did not assert against Twitter in this first round. These include, among many others, US 7,647,565 and US 7,624,358. Twitter's other newly issued patent is US 8,401,009 which is for a "Device independent message distribution platform". Its priority date is July 2007. IBM has a plethora of precedent art for this patent as well. These include US patents 7,337,213 and 7,475,119. Other precedent art includes Nortel Networks' US 7,035,923, Ericsson's US 5,822,700 and Microsoft's US 6,549,937.

# *Conclusion*

Twitter may need a significant amount of its IPO cash to defend itself against current and future litigation. Of the two patents Twitter has issued, there is enough precedent art to severely damage both properties. Now that Twitter has joined the big boys club of public companies, it needs to figure out how to hold its own in the arena.

**For a more detailed examination of the patents mentioned in this report, please contact us at** patentlyobvious@m-cam.com**.**

# *M·CAM's Patent Glossary*

Aligned Sector: The business sector in which the product(s) resulting from the patent(s) is currently or intended to be sold.

Applicant: The person or corporation that applies for a patent with the intent to use, manufacture or license the technology of the invention; under U.S. law, except in special situations, the applicant(s) must be the inventor(s).

Application: Complete papers submitted to the U. S. Patent and Trademark Office seeking a patent including oath, specification, claims, and drawings. This usually does not signify a Provisional Patent Application, but only a regular patent application.

Art: The established practice and public knowledge within a given field of technology. This also identifies a process or method used to produce a useful result. A term used in consideration of the problem of patentable novelty encompassing all that is known prior to the filing date of the application in the particular field of the invention.

Assignee: The person(s) or corporate body to whom the law grants or vests a patent right. This refers to the person or corporate entity that is identified as the receiver of an assignment.

Business Method Patent: A patent that controls the way a business process is undertaken. The issuance of these patents by the United States Patent and Trademark Office (USPTO) is new and controversial, since many allege that it is unfair to allow a patent on a way of doing business.

Citation: This may include patents or journal articles that the applicant or examiner deems relevant to a current application. A reference to legal authorities or a prior art documentation are examples of a citation.

Claim: The language in a patent application that defines the legal scope of the patent. Most patents have numerous claims. This is typically the single most important section in the application.

Concurrent Art: Concurrent art occurs when related patent applications are being examined by the USPTO at the same time. It is difficult for any company or inventor to know, at the time they file for a patent, whether a "related" patent application exists.

Filing Date: The date when a properly prepared application reaches the patent office in complete form.

Innovation Cycle: A description of the commercialization timeframe for the intellectual property.

Innovation Space: M·CAM's representation of the innovation(s) that occur before, during, and after the pending period of the subject patent. The innovation space is the first place to look for patents that are closely related to the subject patent and that may impact the defensibility of the subject patent or create opportunities for patent licensing.

Issue Date: Not to be confused with the filing date, which is the date the patent application was physically received by the U.S. Patent and Trademark Office. This is the date on which the patent actually issues.

Non-Aligned Sector: Any sector in which the patent can be used or sold, other than the sector for which the patent or resultant product was invented or intended.

Pod: A group of patents owned by a company that should be treated as a single unit of innovation (e.g., a certain group of patents that comprise a single product or multiple related products).

Prior Art: Any relevant patent that was issued before the patent being analyzed. If this previous patent was specifically mentioned in the new patent's application, the previous patent is referred to as "cited prior art". If it was NOT mentioned, then that previous patent is referred to as "uncited prior art".

Subsequent Art: Any patent that has a filing date with the USPTO that is after the issuance date of the subject patent. This subsequent art patent may or may not have cited (see "Citation" above) the subject patent. As subsequent art represents more recent innovation than the subject patent, it has great potential to shrink the market opportunity for the subject patent.

## *A Brief Primer on the Patent System*

In recent years, the importance of patents and intellectual property rights as an important variable in the marketplace has come to the forefront of the public consciousness as world leaders declare their country's lead in the innovation race. Damaging intellectual property litigation is becoming increasingly common across all industries. This is exacerbated when patent rights are granted for non-novel ideas. A vast amount of precedent innovation is unconsidered by patent-granting authorities in the creation of new IP rights. Patent granting authorities including the United States Patent and Trademark Office (USPTO), European Patent Office (EPO), Japanese Patent Office (JPO), Chinese State Intellectual Property Office (SIPO), Korean Intellectual Property Office (KIPO) and many others are constrained by the use of patent classification systems which are routinely circumvented by patent applicants.

There is a two-way social contract underlying the patent system. In the United States, patent terms are generally limited to 20 years from the date of application. By statutory intention, once a patent has expired, the patent holder loses the right to exclude others from fully utilizing any innovation described in the patent. A large number of patents enter the public domain when they are "abandoned" – when owners discontinue paying patent maintenance fees. Patents also only provide an exclusionary right in the country for which the patent is filed. As demonstrated by the Global Innovation Commons[2] (G.I.C.), using intellectual property available in the public domain eliminates the need to pay licensing fees on those innovations in countries where the patent was never registered, or worldwide, if abandoned.

Patently Obvious® is a weekly report focusing on select groups of patents in order to increase transparency in markets, addressing information asymmetries, and providing a more level playing field for all parties.



[2] http://www.globalinnovationcommons.org/