

Patents Joining the Hot NFT Market?

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Jack Fonss and his consulting company, True Return Systems LLC, are auctioning U.S. Patent No. 10,025,797 ('797) on the NFT marketplace OpenSea. Bidding for the patent, which is believed to be the first auctioned as a non-fungible token (NFT), starts around USD \$7.5 million. An NFT is a unique unit of data that can be stored and tracked on a blockchain and bought or sold, and the technology has made a splash in the sports, music, and arts industries in recent months. While NFTs are generally viewed as digital collectables conferring few, if any, substantive rights in the underlying object, the NFT representing the '797 patent includes a self-executing contract that automatically grants the buyer all rights in the patent, including the right to sue for infringement. Others are entering the space as well, with the startup IPWe, working with IBM, announcing plans to represent patents as NFTs and store the digital records on a blockchain network. It believes this "tokenization" of patents will allow them to be more easily sold and that representing patents as NFTs is a critical next step to making transactions simpler and more cost-effective. Proponents believe an IP-focused NFT marketplace will provide another platform for owners to market their patents to potential licensees and may be particularly attractive to companies with large patent portfolios, like IBM, who want to license their inventions. Connecting blockchain to patents can also create more transparency in patent transactions, which are often an opaque process, said Ian McClure, the associate vice president for Research, Innovation and Economic Impact at the University of Kentucky. "Blockchain is a key element in helping IP transactions and management happen more efficiently," McClure said. Blockchain serves as a public ledger, where different users can verify information about the asset and, in effect, hold others accountable. Blockchain is also an immutable record, meaning that it generally can't be altered or changed. A blockchain-based patent data ledger could provide "a public, crowd-sourced database of information that helps us better understand and rely on the probabilities related to that patent," McClure added. That, in turn, could create "better predictability and better, or more, transactions."

The application of NFTs to patents is not without its skeptics. Some question the value of representing patents as NFTs, noting that the technology is somewhat duplicative with the patent office already keeping public records with patent assignment and other information. There are additional concerns that a public marketplace could spur additional lawsuits from non-practicing entities (NPEs). IPWe is run by Eric Spangenberg, who earned a reputation suing companies over tech patents, and some predict the marketplaces could create new libraries of patent assets for NPEs to shop from. NFTs can also provide opportunities for fractional ownership, where smaller investors purchase fractional pieces of the tokens, providing another way for NPEs to raise the capital necessary to assert their patents. Other uncertainties surrounding NFT patents in public marketplaces exist such as how public

platforms will handle confidentiality of transactions and royalty streams, which are often prized in patent transactions. There are also questions about whether fractional sales of NFTs could risk violating securities laws, and there are concerns about anti-money laundering regulations arising when patents are represented as NFTs in a marketplace.

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