

The IP world is not for the weak minded

Interview with Peter Vanderheyden

Vice president, global intellectual property, LexisNexis

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In a world now awash with free information it is easy to forget that there are still many companies out there making a good business from selling data, not least traditional online services like [Dialog](#), [LexisNexis](#), [Questel](#), and [STN International](#).

The *raison d'être* of these proprietary online services — which pre-date the Internet, and started out as dialup services — has always been heavily focused on selling value-added data at premium rates, primarily to businesses, research libraries, and large legal firms. And the jewel in the crown of these services was always the patent databases that they offer — not least because they were able to sell access to them at very attractive rates.

Evidently, the patent information market is still considered a good business to be in: Last month [LexisNexis](#) (a division of publishing behemoth [Reed Elsevier](#)) launched a new web-based patent product called [TotalPatent](#). This is not so much a patent database, as a collection of patent databases. As LexisNexis boasts, TotalPatent is, "the world's largest collection of searchable full-text and bibliographic patent databases".

More precisely, TotalPatent offers access to around 60 million patent documents from 22 of the world's largest patent authorities. It also includes content from [500 scholarly journals](#) published by LexisNexis' sister company [Elsevier](#), a number of advanced analysis tools like [PatentOptimizer](#), and machine translation capabilities. For this, customers pay an annual subscription charge of \$2,000 per user.

But it would be wrong to suggest that all is dandy in the value-added patent information market. Like most providers of proprietary information, paid-for patent information services face increasing competition from [free sources](#) on the Web, including the [Google Patent Service](#), and an ever growing quantity of free data provided by the world's major patent offices (PTOs).

In fact, PTOs first entered the electronic patent information business way back in the mid-1990s, when they started offering CDROM products of patent information. And with the arrival of the Web, they began providing patent information on the Internet for free. Since then their offering has constantly grown and expanded over time. Moreover, while initially providing just raw data, some PTOs have begun to offer value-added data as well, and so now directly compete with commercial providers. The [European Patent Office](#) (EPO), which runs the [esp@cenet](#) service, has been particularly aggressive in doing this.

Unsurprisingly, this was [controversial](#) from the beginning, with private vendors warning that if they continued to offer free information PTOs would force commercial providers out of the market, leaving the distribution of patent information in the hands of a small group of state monopolies.

Yet 12 years later, LexisNexis clearly believes there remains a healthy market for valued-added patent data. TotalPatent undoubtedly cost a considerable sum of money to develop — money LexisNexis would not have invested had it not been confident that it could recoup it, and make a healthy profit to boot.

Is LexisNexis living in cloud cuckoo-land, or is it rightly confident that valued-added patent information will remain a good furrow to plough — even in a world flooded with free information?

I have been curious about current thinking inside commercial information vendors for a while now. So when I was invited to talk about the launch of TotalPatent with [Peter Vanderheyden](#) — vice president of global intellectual property at LexisNexis — I took the opportunity of raising some of the wider issues with him as well.

Vanderheyden has been in the patent information business for ten years. Amongst other things, he was involved in the development of the first free patent information service to be launched on the Web — IBM's [Patent Server](#). This was released as a free service in 1997, but later re-engineered as a proprietary paid-for service called [Delphion](#), and eventually sold on to [Thomson's Derwent](#).

So what is Vanderheyden's take on the current environment for paid-for patent information services? While expressing confidence that the market remains a good one, he did not hide his irritation (anger even) at the activities of the EPO, and echoed the oft-repeated claim that this was threatening the viability of commercial providers. He also suggested that the EPO's actions had chilled innovation, and held back the development of new patent information services.

It is also clear that these are sensitive issues — as evidenced by LexisNexis' stipulation that I only publish the interview with Vanderheyden if I attach a statement indicating that his answers represent Vanderheyden's personal opinions alone, not the official position of LexisNexis, or its parent company, Reed Elsevier.

For me the experience was instructional. Having spent the last couple of years speaking to leaders from the various free and open movements I had formed the impression that there are now two very distinct cultures driving the so-called "information economy," and that an ever widening gulf separates these two cultures. Vanderheyden's answers to my questions appeared to confirm this.

What are these two cultures? On the one hand is the traditional corporate culture, and on the other what one might call a new culture of "[the commons](#)".

The former tends to be very narrowly focused on corporate missions, market opportunities, business strategies, and things like [cash cows](#), and "budget realities" — usually without any reference to wider society (other than acknowledging that that is where a company's customers come from). The latter, while not anti-business, tends to take a much broader view of the world, and of society, and is often deeply interested in ethical issues, and "the public good".

What this means in practice is that corporate culture views information is essentially an asset to be exploited for commercial gain, and those who subscribe to this culture assume therefore that the default position is that information should be treated as a product to be bought and sold. Those who subscribe to the culture of the commons, by contrast, believe that information is most useful when it is shared by as many people as possible, and used to promote social good. For them, therefore, the default position is one in which information is freely available to all.

That there has been a serious breakdown in communication between these two cultures first became apparent to me when I [interviewed](#) the founder of the [Free Software Movement](#), [Richard Stallman](#).

When I pointed out to him that companies lock up their content with digital rights management ([DRM](#)) technologies because in a digital environment information can be so easily copied (which reduces its value as a commercial product), Stallman snapped back that operating from purely selfish motives is no excuse for mistreating people. (Stallman, like many, [believes](#) that DRM is socially unacceptable, since it erodes both freedom and privacy).

He added, "There is this bizarre idea nowadays that all a person has to do to excuse nasty treatment of others is to say: 'I am just trying to make money.' As if making money were so admirable that it could justify absolutely anything. 'Oh, I punched him in the nose; but I am trying to make money, so let me do it.'"



Peter Vanderheyden

Please note that LexisNexis has requested that this statement is attached to the interview: ***"The following answers are provided by and represent the opinions of Peter Vanderheyden. They do not represent the official position of LexisNexis or Reed Elsevier in regard to broader market or business policies or practices."***

TotalPatent

RP: *Historically LexisNexis was only a minor player in the patent information business. Why did it decide to move seriously into patents only after the PTOs had begun to provide patent information on the Web?*

PV: LexisNexis' involvement in the patent information business predates the loading of patents on the web by the PTOs. In fact, LexisNexis was the very first organisation to offer online access to the full-text of US patents back in the early 1980s.

The decision, therefore, had nothing to do with the state of the offerings of the PTOs. Rather, it was a strategic decision to offer our customers a more comprehensive solution suite to address their primary needs. For our law firm clients it means offering deep

research and analytic offerings in one of the fastest growing practice areas. For our corporate clients it means helping the client protect what matters most to their enterprise.

RP: *Why specifically develop TotalPatent?*

PV: For the above reasons — and because our customers were asking for broader and deeper content in a single application that was integrated into their current workflow. Our customers can move directly from the other LexisNexis offerings to TotalPatent and from TotalPatent into the other offerings. While we've more than tripled the country collections available in full text we've also integrated high value tools like [PatentOptimizer](#) into the offering as well, so customers can go from extensive research to precision analysis of an application or granted patent.

So, we've delivered on the content and research needs while linking that offering into other related solutions in the context of their daily work.

RP: *Am I right in thinking that the base content in TotalPatent came from the full-text database [PatentWarehouse](#), which was [acquired](#) by LexisNexis when it bought [Univentio](#) in February 2005. If that's right, what's been added to create TotalPatent?*

PV: PatentWarehouse was actually an application (as opposed to content) of Univentio prior to the acquisition. That said, the content we acquired in the acquisition is the basis of our current extensive collection.

We've added considerably to our PDF collection and reprocessed nearly 50 million PDF records into compressed and searchable format. In addition, we took advantage of the development time for our own application by re-fabricating every patent record, field-by-field, into a high performance database to enable us to engage in continuous improvement of our data quality while embracing the fact that the content of a patent and information related to a given patent is continually changing.

RP: *Can you give me the headline figures on the content available (number of documents etc.) in TotalPatent, and how that compares with competing services, both paid-for and free?*

PV: Whereas the majority of commercial and free services offer access to 5 or 6 full-text collections, TotalPatent will contain the full text from 22 of the world's larger patent issuing authorities; so that in addition to [US](#), [EP](#), [WO](#), [GB](#), [FR](#) and [DE](#), TotalPatent will include other European patent authorities such as the Netherlands, Switzerland, Belgium, Sweden, Spain and Italy.

TotalPatent will also comprise important English language authorities like Australia and Canada. And, of course, as well as offering access to documents in their original language, TotalPatent will contain English language machine translations.

As well as full-text TotalPatent will also include bibliographic content. Most of the existing services rely upon [INPADOC](#) (DocDB) for their bibliographic content. We have expanded

TotalPatent to include bibliographic records from over a dozen other authorities including Latin America, and Asia Pacific.

In terms of the number of documents, we expect TotalPatent to contain over 60 million records and of course, it is growing daily.

RP: *What about pricing?*

PV: Our annual subscription starts at around \$2,000 for a single seat and we discount accordingly for enterprise and site license deals on a deal-by-deal basis. That price includes unlimited access to the content, including machine translations as well as all features and functionality such as alerting, downloading and analytics. Customers can expect us to be competitive with other "for fee" services.

RP: *Who was TotalPatent designed for?*

PV: It was designed for all patent practitioners including law firms and corporate legal/R&D groups. Patents have global implications by their nature and technology crosses industries on an increasing basis so the product was built to address the primary needs of every patent practitioner.

Users will benefit from the broader content in full text, which is where the legal protection is defined and the technology is explained in detail. This will help reduce the chances that a practitioner will "miss" relevant [prior art](#) or other competitive information that could help influence important business, technical, and legal decisions.

Even simple things such as the compression of the PDFs can save considerable time for users when they need to download documents for future reference and work projects or cases.

Stormy waters

RP: *There has been a long-running controversy over obvious patents, over software patents, and over business method patents. How can TotalPatent help people navigate these stormy waters?*

PV: Excellent question. Obviousness is assessed on many points, including the availability of relevant prior art and the synergy of multiple pieces of prior art in combination. Since TotalPatent reveals the actual details of the invention in full-text this prior art becomes more manifest and the "obviousness" of an invention (or lack thereof) might be easier to establish one way or the other.

When it comes to obviousness and to reducing the number of applications on obvious technology or improvements to technology, the more access we can provide at a relevant (full text) level, the better everyone will be.

RP: Does TotalPatent have anything to offer Free and Open Source software developers? If so, what?

PV: I think so. Open source developers may be interested in the extensive content collection in order to research the "openness" or protection of ideas and concepts that they would like to develop in an open source environment.

RP: I would think that most Free and Open Source developers would feel that an annual subscription of \$2,000 for single-seat access to a patent information product is prohibitively expensive. Would you agree?

PV: It sounds like you're asking two very different questions. I answered the first which is simply — do we have anything to offer those people who develop Free or Open source software. The answer is yes.

The second question seems to be: Do you offer anything for free (presumably to any user)? The answer is no, we only offer a for-fee service.

But, we do offer access at \$250/month for occasional users so they don't have to pay the full year price for only periodic use.

If the user has a more consistent need then we offer the annual subscription price, which we feel offers exceptional value.

Changing patent landscape

RP: There have been three important developments in the patent landscape recently: [The Patent Reform Act 2007](#), the US Supreme Court ruling [KSR International Co. v. Teleflex Inc.](#), and changes [to the USPTO rules](#) limiting the number of claims that can be attached to a patent. What impact do you see these changes having on the world of patenting, and how can TotalPatent help address the issues arising?

PV: These are all hot topics. You mention three developments. I would broadly categorise the first and third as having an impact on the whole prior art world. The second has a more immediate impact on obviousness which I expanded on above (and by definition is also related to prior art).

In the end, regardless of the final wording of The Patent Reform Act, there will need to be a much more diligent prior art search for every patent application. The debate rages about where this burden should be placed — on the government or on the applicant.

Again, the final outcome on where the burden is placed is less a concern of ours (we'll watch from the sidelines) as we're focusing on helping that party perform a more exhaustive search, with more precision, in less time. It's that simple.

The other part of the debate is the level of documentation required for prior art searching and in particular identifying the relevant paragraph or sentence in the prior art in relation to the [claim](#) language. This can be quite a burden to the responsible party.

We already have a tool called PatentOptimizer that can assist the user in making this connection and annotating prior art in relation to claims. This tool can be used separately (on free form patent applications) or within the full text view of a patent on TotalPatent.

So, we're thinking deeply about these developments and trying to stay just ahead of them in terms of understanding how they will impact customers, and how we can minimise that impact to help improve the overall quality of the patent system.

RP: *In any discussion about innovation today there seems to be two warring sides. On one side are the so-called IP maximalists, who believe that the best approach is always a proprietary one; on the other we have those who believe that innovation is best served through open systems and information sharing. As an employee of LexisNexis do you inevitably belong to the IP maximalist school?*

PV: By definition I don't think we belong to either. I don't believe the issue is as black and white as some like to paint it.

The fact is that there is a place for both, and it depends on corporate strategy relating to a given technology as well as social and user community demands and initiative. Proprietary protection is useful when heavy investments are being made that need a return (else why would anyone invest?).

The owner of the proprietary technology has to be convinced that their protected position will result in customers choosing to give them money for their offering. The beauty of today's world is that the user community now has a choice. If the owner of the technology is irrational in their expectations for yield the community can choose to band together to bypass them.

The protected position is of course an obstacle, but in the end many technologies can eventually be worked around if there is also some degree of flexibility in the expectations of utility and convenience.

I believe that companies that provide a good solution at a fair price will continue to be rewarded by customer loyalty, which will yield new innovations and better offerings. In those instances where private enterprise doesn't see sufficient value or is irrational in their expectations for return, the community can take alternative action.

For-fee or for-free?

RP: *Patent information itself is caught up in this debate, with PTOs making more and more patent information available for free, and constantly adding more value to that data. Patent information providers have been very critical of the PTOs in this regard. What's your take on*

the issue? How do you see this playing out in the future? Is there indeed a future for paid-for patent information?

PV: Making patent information available from the government is not a threat. Most PTOs fulfil their constitutional mandate to provide access to government information in a responsible way and we have no issue with that.

The only quasi-government organisation that really is extending itself beyond providing their own information to the public is the EPO [[European Patent Office](#)]. I do not fully understand their strategy but it can have a negative impact on the vendors in this space as I'm sure you could confirm unanimously in a vendor survey. I'm sure they feel they have an economic responsibility that is better fulfilled by providing access to "all" government patent data (including value added data and analytic tools for that matter), but I think their argument is weak given that there are more than a sufficient number of private players willing and actively providing this information to the public today.

Having been in this industry for over 10 years my sense is that the free services have become an impediment to the growth and development of more robust offerings and analytic capabilities from the private sector.

RP: *Why?*

PV: I think it's because the offering of free value added content and functions (i.e. beyond making available the information related to a given patent office) unnaturally disrupts the normal economic lifecycle of commercial products.

Every enduring company drives their products through a lifecycle that includes investment at the front end followed by a recovery period and eventually ends (with luck) in a cash cow situation. If not, the company will soon cease to exist.

The EPO by its actions may appear to be driving the commercial sector to higher levels of value but they also [disintermediate](#) value add by following or copying the private sector (or anticipating where they will go next) and disrupting this product life cycle such that the private sector never gets to that critical cash cow phase where they can generate cash for future investment.

In fact, they may interrupt the cycle before the private sector even recovers their investment. They do this not with funds "voluntarily" contributed by users but with fees mandated by laws.

RP: *You mean that where commercial providers are only able to operate for so long as their customers agree to pay for the information they provide, patent applicants have to pay if they want protection. Patent offices are then able to use that money to provide information services?*

PV: Yes. The end result is that the patent research market is really not substantially advanced from where it was in 2000-2002.

The private sector only invests "at their own risk" that the EPO eventually and perhaps quickly will copy their innovation or value add and eliminate the chance for economic recovery, thus slowing or eliminating the next investment by the private sector.

Contrary to the belief of some players, I don't believe that the EPO is doing this intentionally or out of a sinister motivation. I believe that they think they are acting in the best interest of the economic community that they represent.

I simply and respectfully disagree with the end result of their strategy. I think the public would be better served if the EPO invested their fees in improving patent quality and working with vendors to develop solutions that will benefit the world patent system.

***RP:** Peter, you started out working on a [free patent service](#) at IBM. This was later spun off as a paid-for service called [Delphion](#). I believe you then spent some time at [IP.com](#), which provides an alternative to patenting. Then you joined LexisNexis, and are now promoting a paid-for service. What's your personal take on the open versus proprietary discussion, both with regard to patent information and information in general?*

PV: Ahhh, you've been paying attention and remember the debate we both took part in at [Derwent](#) some 10 years ago!¹

The IBM system was motivated by the personal initiative of a few individuals coupled with the company interest in creating a "technology demonstration" project to prove the capabilities of IBM hardware, and more specifically software. As you recall, this was the first time patents were made available via the Internet. IBM did not have the intention of offering this as a free service for an extended period of time.

I got involved as a business person shortly after the project had made its point — i.e. large volumes of complex data could be enabled on a real-time access Internet system in a very useful way; and the question internally became "now what?"

We actually had a lot of users but no economic model since it was developed as a technology exercise and not as a business development project. So we created a business unit out of the project and immediately began the process of creating a "spin out" company (Delphion). The solution was not in line with IBM core strategies and needed an economic driver to sustain itself.

So, the development of Delphion is solid confirmation of my prior comments regarding economic endurance.

Time and place for public disclosure

¹ Vanderheyden spoke for the motion, "By the year 2005 Knowledge Management will supersede the requirement for an Information Professional." The motion was lost by 150 to 3 — no doubt because the audience consisted entirely of information professionals! I chaired the debate.

RP: *IP.Com is nevertheless interesting in the context of any discussion about free versus closed model isn't it? After all, by encouraging people to publish their inventions, rather than patent them, IP.com supports those who wish to share their inventions with the world, rather than make them proprietary.*

PV: That also is very much in line with the needs of the IP world. IP.com offers inventors the ability to [disclose their inventions](#) in order to protect their right to practice the art without the cost of patenting the invention. Of course, this includes giving up your exclusive rights to the invention.

In the end, economic decisions must be made since all companies have limited resources. In fact, some of the highest volume disclosers of technology are also the most aggressive patent holders. The two are complementary and this simple fact demonstrates that those with deliberate IP protection strategies leverage all tools at their disposal to optimise their protection based on economic expectations and budget realities.

Having a robust IP strategy will cause inventors to protect some inventions, disclose others so as to protect their right to practice by ensuring others don't patent the invention (and thus lock the true inventor out), or keeping an idea as a [trade secret](#). None of these choices are smarter or more economical than the other — it purely depends on the business strategy of the inventor or owner of the invention.

So, IP.com is another part of the IP protection equation. There is a time and place for public disclosure (and IP.com aims to make it affordable, economical and accessible), a time for proprietary protection, and a time for taking risk with a trade secret.

The IP world is not for the weak minded — it is for those who want to strategise, plan and execute aggressively for success.

RP: *Many argue that in the so-called knowledge economy information needs to be freely exchanged, and so any access barriers need to be removed, including price access barriers. This, for instance, is the debate surrounding the [Open Access](#) movement, where scholarly publishers like Elsevier are being told that they should charge to publish research papers, not charge readers to read them — thereby earning money for the service they provide, but maximising the number of people who can access the information. By analogy, one could argue that PTOs charge patent applicants a service fee for examining their patents, and then use some of that money to make the information freely available to everyone else. Google, meanwhile, is able to provide a free [patent service](#) because its business is funded by advertising revenues. That suggests that eventually perhaps all patent information should be free: can you see that happening?*

PV: Perhaps for casual users but not for the serious user. The simple provision of content, or the serving of content out of context is one thing, but the IP/patent world can only get so far if they have to piece it all together.

Google doesn't piece information together. It doesn't give you a lot of information about the relationship of one document to the next, or insight into the contents of a given document and how that might impact your workflow or decision-making process.

Even though Google does have an economic model to sustain them (advertising) they aren't seeing a need or desire to really dive into the complexity of documents and the interrelationships of documents or content (at least they have not demonstrated that they see this need).

Don't get me wrong: I'm not slamming Google. Last time I checked they were doing pretty good! They are very successful in what they do and the market they serve. My point is that users have varying demands for full function solutions that might include content while others (perhaps large volumes of "others") are quite happy with free access to massive amounts of content only.

The "fee" based business model on the other hand, does pursue the area of value add by connecting otherwise disparate content and by providing tools and analytics to facilitate customer workflow.

I am not arguing that there should only be one model (open vs. proprietary). Rather, it makes sense that some information which is created and edited for value and then made available "in context", and in relationship to other data, be done so under a "fee" based model. In this scenario the content is only one part of the value of the solution.

In other situations, where users create and donate information ad hoc and without any additional value add, it makes sense that this be "open."

In the end, users will decide. Even the most hard core open source or "free" proponents would have to agree that sorting through the mass of content one might get in a search or in surfing blogs takes considerable time and effort to assess and further effort to validate if one plans to base important decisions on that content. There are perhaps hidden costs (in productivity and overall work quality) that users may not be factoring into their equation.

Irresponsible

RP: *The argument is not just that you offer raw data for free, but that you adopt a business model that allows you to offer value-added data for free as well. And the proposition is that you can do so if — rather than charging an access fee — you seek revenues elsewhere. Indeed, this is precisely what LexisNexis' sister company Elsevier has started to experiment with, launching a new service called [OncologyStat](#) that [offers](#) value-added information for free. And, like Google, it plans to do this by earning money from advertising. Do you see this as a possible model for LexisNexis?*

PV: Wholesale conversion to a "free" model would seem irresponsible to me and would demonstrate a lack of appreciation for economic reality.

To "seek revenues elsewhere" assumes there is someplace else, or someone else, willing to pay. While advertising is a viable option it is not, as some suppose, a bottomless pit of abundant cash. It certainly has its place but if all "for fee" services went to an advertising model tomorrow I'm not sure they would reap similar economic benefits.

RP: You don't see LexisNexis ever adopting this model then?

PV: I would not propose making such a move. Further, given a choice, I believe most professionals would prefer their information and workflow tools "advertising free" so they can concentrate on the work at hand and not on trying to see through and around advertisements so they can continue their work. Further, serious users have to appreciate whether the system is optimised for advertisers (those who are paying for the system) or users.

Having said all that, I would not rule out any business model. I like to continuously assess our business models in relation to customer needs and investment requirements.

In the end, customers will vote with their dollars and increasingly with their own collective efforts if they cannot get what they want from their current providers. I welcome the challenge and believe that offering "must have" value added solutions built around the way our customers work will continue to create value that customers are willing to pay for.

RP: Thank you for speaking with me.

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