Reinventing the Block: Strategic Intellectual Property Considerations for Blockchain Innovators

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In 2017, Bitcoin becomes a household name as its price skyrocketed in price to almost $20,000 per coin. The volatile price has since fallen by 65 percent but, along the way, the/{quote}blockchain,{quote} virtually synonymous with Bitcoin–innovation, is actually the cryptotechnology that underpins Bitcoin and other cryptocurrency work. It serves as an immaterial, distributed ledger, where blocks ("ledger entries") are only added to the chain ("the ledger") by consensus amongst distributed ("disjoint") parties ("miners") who verify a solved cryptologic problem related to the ledger entry.

Cryptocurrencies, although widely publicized, are not the only use cases for blockchain technology which can be applied to a broad range of industries to solve a myriad of use cases for blockchain technology, which can be broken down into a few fundamental roles of value, free from IP restrictions. But the graph below demonstrates that blockchain-specific innovation samples are seeking and obtaining patent protection. The search below was based on the terms blockchain, distributed ledger, cryptoquey, currency, transaction, and blockchain innovation such as supply chain management, digital rights management, identity protection, and fraud detection, and hardware-focused patents for acceleration of transaction times, and for blockchain-based smart devices or Internet of Things (IoT) devices.

Regarding trademarks, a review of the USPTO trademark database revealed (and not just unregistered) a great number of applications and registrations for goods and services described as "blockchain," and "digital ledger," and "cryptocurrency." In other words, not only are numerous companies freezing out technology with these terms, but they also have a very active interest in developing and marketing blockchain products and services.

Now, with all this being said, blockchain innovation typically involves software that brings blockchain’s immaterial, shared record of events into existing business processes to reduce friction where parties may not fully trust each other. Examples include supply chain management, customer identity management, and payment processing. From a patent perspective, enabling a U.S. patent can make it challenging to even know what may be eligible for patent protection. For example, an innovation that simply brings a distributed ledger into a shared business process is unlikely to be patentable. But blockchain innovations that improve upon existing technology to make it faster or more efficient, and brand new technologies, may be patentable.

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