

Don't run before you can walk

It means operators rushing to market in the US have to be careful about exactly what innovations and functions they can offer to their customers, because the threat of legal actions is real. Marketmaker, for instance, was recently granted a patent with precedence from 2007 which the firm claims gives it ownership of the concept of a cash-out button. The core cash-out patents are US 10,115,157 and US 8,510,205.

In Butterly's own words: "Our IP is the click of a button with a method of offering an option to cash out." He claims that any execution of a cash-out button for a sports bet in the US is potentially an infringement of Marketmaker's IP. Butterly says his company is therefore offering to license out this IP, along with other Marketmaker software including licensee data pooling and a 'dashboarding' service.

"We have kicked off early-stage talks with a number of the most interesting companies in the space and hope to announce a marquee partner soon," he explains. "We believe that any company that can announce that they are the first company to legally offer cash-out IP to US players will have significant competitive advantage."

He may have a job on his hands, however. By some estimates, cash-out is already offered on some 20% of bets in New Jersey and some of the major sportsbooks, while Betfair Exchange (horseracing) continues to offer the function even after the patent was confirmed this year.

One source with knowledge of the US betting market suggested the patent was broad enough that it might be difficult to enforce; the concept originally protected back in 2007 is not necessarily a perfect analogue with the cash-out buttons of 2018. Either way, it could end up with Marketmaker resorting to the courts to enforce its patents. "There will certainly be patent lawsuits in the coming years, especially if there is a move towards an exchange platform," predicts sports law professor Ryan Rodenberg.

Butterly, for his part, rejects the idea he is a "patent troll," saying the patent originated from Marketmaker's attempt

to launch a betting exchange back in the early 2000s. The so-called Odds-futures exchange shut its doors in 2013 thanks to fierce market competition, as well as the significant cost to acquire and retain customers.

Wider ramifications

The patent issue is by no means limited to cash-out, though. One of the early winners in the IP battle appears to be platform provider GAN, which has successfully patented, enforced and now licenses the technology for linking land-based casino reward cards to online gambling accounts. As GAN CEO Dermot Smurfit puts it: "If any US casino wants to link their on-property reward programs to their online gambling websites they need to license our patent."

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■ Marc Butterly, Marketmaker

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GAN successfully defended the patent from a challenge from an unnamed US casino actor last year and has now licensed the patent 14 times in the US, including three times for real-money online gaming in New Jersey and Pennsylvania. Licensees to date include Station Casinos, Chickasaw Nation, MGM Resorts, Ocean Resort Casino and Parx Casino.

Thin end of the wedge

The two examples above could just be the 'tip of the iceberg' when it comes to patent litigation and enforcement according to John Holden, a sports law professor at Oklahoma State University.

"You are going to see this more and more," Holden says. "I'm sure there are lots of registered patents for betting

and gaming concepts that might seem common in Europe. There will be people who looked ahead and got in early." He points to an *ESPN* article from 2017 which highlighted Microsoft, Sony, Reuters and Wall Street financial firm Cantor Fitzgerald as either existing holders or applicants in the betting sphere.

A patent is reportedly on file, for example, for "systems and methods for enabling remote device users to wager on micro events of games." The patent, broadly read, could therefore apply to any number of 'super live' bets now gaining popularity among operators. Examples include 'who will win the next point in a tennis match?' or 'will a goal be scored in the next five minutes?'

Could such a patent therefore limit firms looking to offer US equivalents such as whether the next drive will end in a touchdown? Given the importance of in-play wagering, it could conceivably be a major drag on revenues. "This whole issue could cause major problems if firms are forced to start paying a litany of license fees for standard products," says Holden.

And the threat is not just on gambling-specific mechanisms either. "We could see a payments company take interest in the way gambling companies are dealing with deposits and withdrawals, for example, and patent some of the mechanisms or technology there," Holden says. "These are not just from patent trolls. A lot of these patent holders are major companies. This is just the tip of the iceberg."

For betting and gaming firms without key patents then, the US system could present major cost barriers in the future. Even for the patent holders who have had the foresight to stake their claim early, it could feasibly cost millions to actually enforce the patents. GAN raised £7.5m earlier this year, in part to be able to hire a law firm to protect its patent. If done successfully, though, licensing represents a "potentially high-margin incremental income stream," GAN said. Ultimately, it's an uncertain state of affairs for gambling operators and providers alike, and the only ones who seem certain to benefit are, as usual, the lawyers. ●