

Marathon Patent Group, Inc.  
Form S-3/A  
October 06, 2017

**AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON OCTOBER 6 , 2017**

**REGISTRATION NO. 333-220438**

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Amendment No. 1**

**FORM S-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**MARATHON PATENT GROUP, INC.**

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of incorporation or organization)

01-0949984

I.R.S. Employer Identification Number

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11100 Santa Monica Blvd., Ste. 380

Los Angeles, CA 90025

(703) 232-1701

(Address, including zip code, and telephone number, including area code of registrant's principal executive offices)

11100 Santa Monica Blvd., Ste. 380

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Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box: [ ]

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If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
 (Do not check if a smaller reporting company) Emerging growth company

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per share(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee(2)
Common Stock, par value \$0.0001 per share	7,394,000	\$ 0.415	\$3,068,510	\$ 355.64 *

\* Previously paid.

(1) Pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement shall be deemed to cover an indeterminate number of additional securities to be offered as a result of stock splits, stock dividends or similar transactions. The shares may be offered for resale by the selling stockholders pursuant to the shelf prospectus contained herein.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(c) under the Securities Act, based on an average of the high and low reported sales prices of the registrant's shares of common stock, as reported on the NASDAQ Global Market on September 11, 2017 of \$0.44 and \$0.39 , respectively.

**The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

The information in this prospectus is not complete and may be changed. The selling stockholders may not sell these securities under this prospectus until the registration statement of which it is a part and filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**PRELIMINARY PROSPECTUS, SUBJECT TO COMPLETION, DATED OCTOBER 6, 2017**

**MARATHON PATENT GROUP INC.**

7,394,000 Shares of Common Stock

This prospectus relates to the resale of up to 7,394,000 shares of common stock of Marathon Patent Group, Inc. (the “**Company**”) by the selling stockholders, of which (i) 6,596,000 shares are issuable upon conversion of certain 5% convertible promissory notes issued by the Company in August, 2017, in a private placement of \$3,623,700 of 5% convertible promissory notes and five-year warrants to purchase shares of common stock of the Company (the “**Common Stock**”) and (ii) 798,000 shares were issued in exchange for warrants to purchase 760,000 shares of Common stock, pursuant to an exchange agreement, dated July 17, 2017, by and between the Company and CVI Investments, Inc. (“**CVI**”), who purchased the warrants in the Company’s April offering.

The selling stockholders may sell common stock from time to time in the principal market on which the stock is traded at the prevailing market price or in negotiated transactions.

We will not receive any of the proceeds from the sale of common stock by the selling stockholders. We will pay the expenses of registering these shares.

**Investing in our common stock involves a high degree of risk. You should consider carefully the risk factors beginning on page 3 of this prospectus before purchasing any of the shares offered by this prospectus.**

Our common stock is listed on the NASDAQ Capital Market under the symbol “MARA”.

The last reported sale price of our common stock on the NASDAQ Capital Market on October 4, 2017 was \$0.43 per share .

**We may amend or supplement this prospectus from time to time by filing amendments or supplements as required. You should read the entire prospectus and any amendments or supplements carefully before you make your investment decision.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

**The date of this prospectus is \_\_\_\_\_, 2017.**

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You may only rely on the information contained in this prospectus or that we have referred you to. We have not authorized anyone to provide you with different information. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities other than the common stock offered by this prospectus. This prospectus does not constitute an offer to sell or a solicitation of an offer to buy any common stock in any circumstances in which such offer or solicitation is unlawful. Neither the delivery of this prospectus nor any sale made in connection with this prospectus shall, under any circumstances, create any implication that there has been no change in our affairs since the date of this prospectus or that the information contained by reference to this prospectus is correct as of any time after its date.

## SUMMARY

This summary highlights information contained elsewhere in this prospectus. You should read the entire prospectus carefully, including the section entitled “Risk Factors” before deciding to invest in our common stock. The terms “Marathon,” the “Company,” “we,” “our” or “us” in this prospectus refer to Marathon Patent Group, Inc. and its wholly-owned subsidiaries, unless the context suggests otherwise.

### **About Marathon Patent Group, Inc.**

Marathon Patent Group, Inc. was incorporated in the State of Nevada on February 23, 2010 under the name “Verve Ventures, Inc.” On December 7, 2011, we changed our name to “American Strategic Minerals Corporation” and were engaged in exploration and potential development of uranium and vanadium minerals business. During June 2012, we

discontinued our minerals business and began to invest in real estate properties in Southern California. In October 2012, we discontinued our real estate business when our CEO joined the firm and we commenced our current business, at which time the Company's name was changed to Marathon Patent Group, Inc.



We acquire patents and patent rights from owners or other ventures and seek to monetize the value of the patents through litigation and licensing strategies, alone or with others. Part of our acquisition strategy is to acquire or invest in patents and patent rights that cover a wide-range of subject matter which allows us to seek the benefits of a diversified portfolio of assets in differing industries and countries. Generally, the patents and patent rights that we seek to acquire have large identifiable targets who are or have been using technology that we believe infringes our patents and patent rights. We generally monetize our portfolio of patents and patent rights by entering into license discussions, and if that is unsuccessful, initiating enforcement activities against any infringing parties with the objective of entering into comprehensive settlement and license agreements that may include the granting of non-exclusive retroactive and future rights to use the patented technology, a covenant not to sue, a release of the party from certain claims, the dismissal of any pending litigation and other terms. Our strategy has been developed with the expectation that it will result in a long-term, diversified revenue stream for the Company. As of October 4, 2017, on a consolidated basis and taking into account the execution of the First Amendment and Restructuring Agreement with DBD, as further described below, our operating subsidiaries owned 95 patents and had economic rights to over 10,000 additional patents, both of which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries.

Our principal office is located at 11100 Santa Monica Blvd., Suite 380, Los Angeles, CA 90025. Our telephone number is (703) 232-1701. Our internet address is [www.marathonpg.com](http://www.marathonpg.com). Information on our website is not incorporated into this report.

### **About This Offering**

This prospectus includes the resale of 7,394,000 shares of Common Stock, of which (i) 6,596,000 shares are issuable upon conversion of 5% convertible promissory notes (the “**Convertible Notes**”) sold in the Company’s private placement in August 2017 (the “**Private Placement**”) and (ii) 798,000 shares were issued in exchange for warrants to purchase 760,000 shares of Common stock (the “**Exchange Warrants**”), pursuant to an exchange agreement, dated July 17, 2017 (the “**Exchange Agreement**”), by and between the Company and CVI in the Company’s April 2017 offering (the “**Offering**”).

Pursuant to the Private Placement, the Company entered into separate unit purchase agreements (the “**Unit Purchase Agreement**”) with accredited investors (the “**Purchasers**”) providing for sale of \$5,500,000 of a total possible offering of up to \$5,500,000 of the Convertible Notes and five-year warrants (the “**Warrants**”) to purchase shares of the Company’s common stock (the “**Common Stock**”), at an exercise price of \$0.30 per share. The conversion price for the principal in connection with voluntary conversions shall be equal to the lesser of (i) \$0.20 per share, or (ii) the closing bid price of the Common Stock on the day prior to conversion of the Convertible Note; provided that such conversion price may not be less than \$0.10 per share, subject to adjustment as set forth therein.

The Convertible Notes bear interest at 5% per annum with interest payable in cash upon maturity or in connection with any voluntary or mandatory conversion. The Convertible Notes are convertible, in whole or in part, into shares of Common Stock at the option of the holder of the Convertible Note (the “**Noteholder**”), at any time and from time to time after the date of issuance and until the Convertible Note is no longer outstanding, subject to a 4.99% beneficial ownership limitation. Upon not less than 61 days’ prior notice to the Company, the Noteholder may increase the beneficial ownership limitation, provided that the beneficial ownership limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of the Convertible Note held by the Noteholder.

Pursuant to exchange agreements dated July 17, 2017, the Company and certain institutional investors and CVI (together with CVI, the “**Investors**”) agreed to exchange their warrants, including the Exchange Warrants, which were issued by the Company pursuant to purchase agreements in April, 2017 (the “**Purchase Agreements**”), for an aggregate of (i) 798,000 shares of Common Stock with CVI (the “**Exchange Shares**”) and (ii) 1,596,000 shares of restricted common stock of the Company with the other Investors (the “**Restricted Shares**”). The Company has relied upon the exemption from registration provided by Section 3(a)(9) under the Securities Act of 1933, in connection with the issuance of the Exchange Shares. As previously reported in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “**SEC**”) on October 2, 2017, the issuance of up to 2,394,000 shares of Common Stock pursuant to the Exchange Agreements was approved by the Company’s shareholders at a special meeting of the shareholders held by the Company on September 29, 2017. The Restricted Shares are not included in this registration statement.

The Company issued the Exchange Warrants registered in the name of each Investor to purchase an aggregate of 2,280,000 shares of Common Stock with each Exchange Warrant based upon the number of shares of Common Stock equal to 60% of such Investor’s subscription amount in the Offering. The Exchange Warrants are exercisable at a price of \$0.83 per share, subject to adjustment, and expire five years from the date of issuance. The holders may, subject to certain limitations, exercise the Exchange Warrants on a cashless basis. The Company is prohibited from effecting an exercise of any Exchange Warrant to the extent that, as a result of any such exercise, the holder would beneficially own more than 4.99% of the number of shares of Common Stock outstanding immediately after giving effect to the issuance of shares of common stock upon exercise of such Original Warrant.

Under the terms of the Exchange Agreements, each of the Investors agreed to waive (i) its rights under the Purchase Agreements, such that the Investor consents and agrees to any reverse or forward stock split undertaken by the Company since the date of the Purchase Agreements and (ii) any rights of the Investor under the Purchase Agreements with respect to any subsequent financing of the Company of convertible preferred stock described by the Company in its next proxy statement filed with the SEC (collectively, the “**Waivers**”). For the avoidance of doubt, the Waivers are irrevocably effective upon execution of the Exchange Agreements and will not be subject to the conditions to the closing set forth in the Exchange Agreements.

## Recent Developments

On August 3, 2017, the Company and certain of our operating subsidiaries (such subsidiaries, together with any future guarantor subsidiaries, and the Parent, the “**Company**”) entered into a First Amendment to Amended and Restated Revenue Sharing and Securities Purchase Agreement and Restructuring Agreement (the “**First Amendment and Restructuring Agreement**”) with DBD Credit Funding LLC (referred to as “**DBD**” or the “**Purchaser**”) to restructure and replace the obligations of the Company under that certain Amended and Restated Revenue Sharing and Securities Purchase Agreement (as it may be amended, restated, supplemented or otherwise modified from time to time, the “**Amended and Restated Agreement**”), dated January 10, 2017, which was originally entered into by the Company and DBD on January 29, 2015 (the “**Original Agreement**”).

Pursuant to the First Amendment and Restructuring Agreement, certain intellectual property owned by the Company (“**IP**”) and originally purchased by the Company from various parties (the “**Designated IP**”) is to be assigned to one or more newly created special purpose entity (the “**SPE**”) elected by DBD, which SPE is under the management and control of an affiliate of DBD (the “**IP Monetization Manager**”). All intellectual property owned by the Company that will not be assigned to one or more newly created special purpose entities shall be referred to as “Non-Designated IP.” The patents that are part of the Designated IP are referred to as the “Designated Patents”. Prior to the date of the restructuring, all Monetization Revenues arising from the Designated IP and Non-Designated IP shall be paid to an account that is under the sole and exclusive control of the Collateral Agent as the IP Monetization Manager. “**Monetization Revenues**” means the sum of amounts that the Company receives in cash or an amount equal to the fair market value of any in-kind payment the Company receives, prior to expenses, (i) from third parties in respect of the Company’s patents (the “**Patents**”); (ii) on account of any sale of products or services using the Patents; (iii) the development to order of any software or other products using the Patents, including royalty payments, license fees, settlement payments, judgments or other similar payments in respect of the Patents; and (iv) the purchase price or other amounts received in connection the sale of hardware or software with respect to the Patents, in each case as and when actually received by the Company.

In addition, until the date of the restructuring pursuant to the First Amendment and Restructuring Agreement, the Company shall be responsible for the expenses associated with the maintenance, prosecution and enforcement of all of the Company’s intellectual property including the Designated IP and Non-Designated IP owned by the Company which is not to be transferred to the SPE, and for any expenses associated with the pursuit of monetization activities relating to both the Designated IP and the Non-Designated IP. From and after the date upon which the Restructuring

becomes effective (the “**Restructuring Effective Date**”), the SPE shall have sole responsibility for the expenses associated with the Designated IP and the Company shall have sole responsibility for the expenses associated with the Non-Designated IP.

The First Amendment and Restructuring Agreement (a) defers interest payments on the notes held by DBD from May 1, 2017 until the earlier to occur of (i) November 1, 2017 and (ii) the Restructuring Effective Date, and any accrued and unpaid interest as of the end of such deferral period shall be deemed a Cash Advance, and (b) lowers the Company’s minimum liquidity covenant, in each case to permit time for the Company to effect the Restructuring described above. Upon the Restructuring Effective Date, the Company’s note obligations to DBD will be extinguished and the Company will be relieved of any scheduled amortization (instead, payments to DBD will only be required out of Monetization Revenues).

As previously reported in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission (the “**SEC**”) on October 2, 2017, the First Amendment and Restructuring Agreement and the transactions contemplated therein, were approved by the Company’s shareholders at a special meeting of the shareholders held by the Company on September 29, 2017.

## **RISK FACTORS**

*There are numerous and varied risks, known and unknown, that may prevent us from achieving our goals. If any of these risks actually occur, our business, financial condition or results of operation may be materially adversely affected. In such case, the trading price of our Common Stock could decline and investors could lose all or part of their investment.*

### **Risks Related to Our Company**

*We may not be able to successfully monetize Non-Designated IP and thus we may fail to realize all of the anticipated benefits of such acquisitions.*

There is no assurance that we will be able to continue to successfully acquire, develop or monetize our patent portfolio. The acquisition of patents could fail to produce anticipated benefits or there could be other adverse effects that we do not currently foresee. Failure to successfully monetize our patents would have a material adverse effect on our business, financial condition and results of operations.

In addition, the acquisition of patent portfolios is subject to a number of risks, including, but not limited to the following:

There is a significant time lag between acquiring a patent portfolio and recognizing revenue from such patent asset. During such time lag, substantial amounts of costs are likely to be incurred that could have a negative effect on our results of operations, cash flows and financial position;

The monetization of a patent portfolio is a time consuming and expensive process that may disrupt our operations. If our monetization efforts are not successful, our results of operations could be harmed. In addition, we may not achieve anticipated synergies or other benefits from such acquisition; and

We may encounter unforeseen difficulties with our business or operations in the future that may deplete our capital resources more rapidly than anticipated. As a result, we may be required to obtain additional working capital in the future through public or private debt or equity financings, borrowings or otherwise. If we are required to raise additional working capital in the future, such financing may be unavailable to us on favorable terms, if at all, or may be dilutive to our existing stockholders. If we fail to obtain additional working capital, as and when needed, such failure could have a material adverse impact on our business, results of operations and financial condition.

Therefore, there is no assurance that the monetization of our patent portfolios will generate enough revenue to recoup our investment.

On August 3, 2017, the Company and certain of our operating subsidiaries (such subsidiaries, together with any future guarantor subsidiaries, and the Parent, the “**Company**”) entered into a First Amendment to Amended and Restated Revenue Sharing and Securities Purchase Agreement and Restructuring Agreement (the “**First Amendment and Restructuring Agreement**”) with DBD Credit Funding LLC (“**DBD**”) to restructure and replace the obligations of the Company under that certain Amended and Restated Revenue Sharing and Securities Purchase Agreement, dated January 10, 2017, which was originally entered into by the Company and DBD on January 29, 2015. Pursuant to the First Amendment and Restructuring Agreement, certain intellectual property owned by the Company (“**IP**”) and originally purchased by the Company from various parties (the “**Designated IP**”) is to be assigned to one or more newly created special purpose entity (the “**SPE**”) elected by DBD, which SPE is under the management and control of an affiliate of DBD. Once the Designated IP is assigned to the SPE, DBD will have full, direct control over the Patents under through the SPE structure. Of the Company’s sole remaining interest in the Designated IP, or the Monetization Revenues, 15% will be paid to the owner of the Designated IP to be contributed to the SPE. As a result, the Company’s Monetization Revenues will be reduced to 30% from 45%. Regardless of the success of the monetization of the Designated IP, the Company will have no control over, ownership of, or recourse to, the Designated IP. As a result, it may take longer to generate income off of the Patents.

*We presently rely upon the patent assets we acquire from other patent owners. If we are unable to monetize such assets and generate revenue and profit through those assets or by other means, there is a significant risk that our business would fail.*

When we commenced our current line of business in 2012, we acquired a portfolio of patent assets from Sampo IP, LLC (“**Sampo**”), a company affiliated with our Chief Executive Officer, Douglas Croxall, from which we have generated revenue from enforcement activities and for which we plan to continue to generate enforcement related revenue. On April 16, 2013, we acquired a patent from Mosaid Technologies Incorporated, a Canadian corporation. On April 22, 2013, we acquired a patent portfolio through a merger between our wholly-owned subsidiary, CyberFone Acquisition Corp., a Texas corporation and CyberFone Systems LLC, a Texas limited liability company (“**CyberFone Systems**”). In June 2013, in connection with the closing of a licensing agreement with Siemens Technology, we acquired a patent portfolio from that company. In September 2013, we acquired a portfolio from TeleCommunication Systems and an additional portfolio from Intergraph Corporation. In October 2013, we acquired a patent portfolio from TT IP, LLC. In December 2013 we engaged in three transactions: (i) in connection with a licensing agreement with Zhone, we acquired a portfolio of patents from that company; (ii) we acquired a patent portfolio from Delphi Technologies, Inc.; and (iii) in connection with a settlement and license agreement, we agreed to settle and release a defendant for past and future use of our patents, whereby the defendant agreed to assign and transfer two U.S. patents and rights to us. In May 2014, we acquired ownership rights of Dynamic Advances, LLC, a Texas limited liability company, IP Liquidity Ventures, LLC, a Delaware limited liability company and Sarif Biomedical, LLC, a Delaware limited liability company, all of which hold patent portfolios or contract rights to the revenue generated from patent portfolios. In June 2014, we acquired Selene Communication Technologies, LLC, which holds multiple patents in the search and network intrusion field. In August 2014, we acquired patents from Clouding IP LLC, with such patents related to network and data management technology. In September 2014, we acquired TLI Communications, which owns a single patent in the telecommunication field. In October 2014, we acquired three patent portfolios from MedTech Development, LLC, which owns medical technology patents. In June 2016, one of our subsidiaries, Munitech S.a.r.l. (“**Munitech**”), acquired two patent portfolios from Siemens covering W-CDMA and GSM cellular technology. In July 2016, one of our subsidiaries, Magnus GmbH (“**Magnus**”), acquired a patent portfolio from Siemens covering internet-of-things technology. In August 2016, we entered into two transactions. In the first, we acquired a patent portfolio from CPT IP Holdings, LLC covering battery technology and in the second, we entered into a Patent Funding and Exclusive License Agreement with a Fortune 50 company to monetize more than 10,000 patents in a single industry vertical. In September 2016, one of our subsidiaries, Motheye Technologies, LLC (“**Motheye**”), acquired a patent from Cirrex Systems, LLC, covering LED technology; however, in June 2017, following a decision by the Company not to enforce such patent, Motheye entered into an agreement whereby such patent held by the subsidiary was assigned back to Cirrex Systems, LLC. In September 2017, the Company sold Munitech, which included both its assets and its liabilities, in a private transaction to a third party.

We plan to generate revenues from our acquired patent portfolios. However, if our efforts to generate revenue from these assets fail, we will have incurred significant losses and may be unable to acquire additional assets. If this occurs, our business would likely fail.

*We have economic interests in patent portfolios that the Company does not control and the decision regarding the timing and amount of licenses are held by third parties, which could lead to outcomes materially different than*

*what the Company intended.*

The Company owns contract rights to two patent portfolios over which it does not exercise control and cannot determine when and if, and if so, for how much, the patent owner licenses the patents. This could lead to situations where we have dedicated resources, time and money to portfolios that, despite the best interests of the Company, provide little or no return on our investment. In these situations, the Company would record a loss on its investment and incur losses that contribute to the overall performance of the Company and could have a material adverse impact on its financial condition.



***Failure to effectively manage our growth could place strains on our managerial, operational and financial resources and could adversely affect our business and operating results.***

Our growth has placed, and is expected to continue to place, a strain on our limited managerial, operational and financial resources and systems. Further, as our subsidiary companies' businesses grow, we will be required to continue to manage multiple relationships. Any further growth by us or our subsidiary companies, or an increase in the number of our strategic relationships, may place additional strain on our managerial, operational and financial resources and systems. Although we may not grow as we expect, if we fail to manage our growth effectively or to develop and expand our managerial, operational and financial resources and systems, our business and financial results would be materially harmed.

***We initiate legal proceedings against potentially infringing companies in the normal course of our business and we believe that extended litigation proceedings would be time-consuming and costly, which may adversely affect our financial condition and our ability to operate our business.***

To monetize our patent assets, we generally initiate legal proceedings against potential infringing companies, pursuant to which we may allege that such companies infringe on one or more of our patents. Our viability could be highly dependent on the outcome of the litigation, and there is a risk that we may be unable to achieve the results we desire from such litigation, which failure would substantially harm our business. In addition, the defendants in the litigations are likely to be much larger than us and have substantially more resources than we do, which could make our litigation efforts more difficult and impact the duration of the litigation which would require us to devote our limited financial, managerial and other resources to support litigation that may be disproportionate to the anticipated recovery.

We anticipate that these legal proceedings may continue for several years and may require significant expenditures for legal fees and other expenses. Disputes regarding the assertion of patents and other intellectual property rights are highly complex and technical. Once initiated, we may be forced to litigate against others to enforce or defend our patent rights or to determine the validity and scope of other party's patent rights. The defendants or other third parties involved in the lawsuits in which we are involved may allege defenses and/or file counterclaims or commence re-examination proceedings by patenting issuance authorities in an effort to avoid or limit liability and damages for patent infringement, or declare our patents to be invalid or non-infringed. If such defenses or counterclaims are successful, they may preclude our ability to derive monetization revenue from the patents we own. A negative outcome of any such litigation, or an outcome which affects one or more claims contained within any such litigation, could materially and adversely impact our business. Additionally, we anticipate that our legal fees and other expenses will be material and will negatively impact our financial condition and results of operations and may result in our inability to continue our business.

***Variability in intellectual property laws may adversely affect our intellectual property position.***

Intellectual property laws, and patent laws and regulations in particular, have been subject to significant variability either through administrative or legislative changes to such laws or regulations or changes or differences in judicial interpretation, and it is expected that such variability will continue to occur. Additionally, intellectual property laws and regulations differ among countries. Variations in the patent laws and regulations or in interpretations of patent laws and regulations in the United States and other countries may diminish the value of our intellectual property and may change the impact of third-party intellectual property on us. Accordingly, we cannot predict the scope of patents that may be granted to us, the extent to which we will be able to enforce our patents against third parties, or the extent to which third parties may be able to enforce their patents against us.

***We may seek to internally develop additional new inventions and intellectual property, which would take time and be costly. Moreover, the failure to obtain or maintain intellectual property rights for such inventions would lead to the loss of our investments in such activities.***

We may in the future seek to engage in commercial business ventures or seek internal development of new inventions or intellectual property. These activities would require significant amounts of financial, managerial and other resources and would take time to achieve. Such activities could also distract our management team from its present business initiatives, which could have a material and adverse effect on our business. There is also the risk that such initiatives may not yield any viable new business or revenue, inventions or technology, which would lead to a loss of our investment in such activities.

In addition, even if we are able to internally develop new inventions, in order for those inventions to be viable and to compete effectively, we would need to develop and maintain, and we would be heavily reliant upon, a proprietary position with respect to such inventions and intellectual property. However, there are significant risks associated with any such intellectual property we may develop principally including the following:

- patent applications we may file may not result in issued patents or may take longer than we expect to result in issued patents;
- we may be subject to interference proceedings;
- we may be subject to opposition proceedings in the U.S. or foreign countries;
- any patents that are issued to us may not provide meaningful protection;
- we may not be able to develop additional proprietary technologies that are patentable;
- other companies may challenge patents issued to us;
- other companies may have independently developed and/or patented (or may in the future independently develop and patent) similar or alternative technologies, or duplicate our technologies;
- other companies may design around technologies we have developed; and
- enforcement of our patents would be complex, uncertain and very expensive.

We cannot be certain that patents will be issued as a result of any future patent applications, or that any of our patents, once issued, will provide us with adequate protection from competing products. For example, issued patents may be circumvented or challenged, declared invalid or unenforceable or narrowed in scope. In addition, since publication of discoveries in scientific or patent literature often lags behind actual discoveries, we cannot be certain that we will be the first to make our additional new inventions or to file patent applications covering those inventions. It is also possible that others may have or may obtain issued patents that could prevent us from commercializing our products or require us to obtain licenses requiring the payment of significant fees or royalties in order to enable us to conduct our business. As to those patents that we may acquire, our continued rights will depend on meeting any obligations to the seller and we may be unable to do so. Our failure to obtain or maintain intellectual property rights for our inventions would lead to the loss of our investments in such activities, which would have a material adverse effect on us.

Moreover, patent application delays could cause delays in recognizing revenue from our internally generated patents and could cause us to miss opportunities to license patents before other competing technologies are developed or introduced into the market.

***Our future success depends on our ability to expand our organization to match the growth of our activities.***

As our operations grow, the administrative demands upon us will grow, and our success will depend upon our ability to meet those demands. We are organized as a holding company, with numerous subsidiaries. Both the parent company and each of our subsidiaries require certain financial, managerial and other resources, which could create challenges to our ability to successfully manage our subsidiaries and operations and impact our ability to assure

compliance with our policies, practices and procedures. These demands include, but are not limited to, increased executive, accounting, management, legal services, staff support and general office services. We may need to hire additional qualified personnel to meet these demands, the cost and quality of which is dependent in part upon market factors outside of our control. Further, we will need to effectively manage the training and growth of our staff to maintain an efficient and effective workforce, and our failure to do so could adversely affect our business and operating results.

***Potential acquisitions may present risks, and we may be unable to achieve the financial or other goals intended at the time of any potential acquisition.***

Our future growth depends in part on our ability to acquire patented technologies, patent portfolios or companies holding such patented technologies and patent portfolios. Accordingly, we have engaged in acquisitions to expand our patent portfolios and we intend to continue to explore such acquisitions. Such acquisitions are subject to numerous risks, including, but not limited to the following:

our inability to enter into a definitive agreement with respect to any potential acquisition, or if we are able to enter into such agreement, our inability to consummate the potential acquisition;  
difficulty integrating the operations, technology and personnel of the acquired entity including achieving anticipated synergies;  
our inability to achieve the anticipated financial and other benefits of the specific acquisition;  
difficulty in maintaining controls, procedures and policies during the transition and monetization process;  
diversion of our management's attention from other business concerns; and  
failure of our due diligence process to identify significant issues, including issues with respect to patented technologies and patent portfolios and other legal and financial contingencies.

If we are unable to manage these risks effectively as part of any acquisition, our business could be adversely affected.

***Our revenues are unpredictable, and this may harm our financial condition.***

From November 12, 2012 to the present, our operating subsidiaries have executed our business strategy of acquiring patent portfolios and accompanying patent rights and monetizing the value of those assets. As of October 4, 2017, on a consolidated basis and taking into account the execution of the First Amendment and Restructuring Agreement with DBD, as further described below, our operating subsidiaries owned 95 patents and had economic rights to over 10,000 additional patents, both of which include U.S. patents and certain foreign counterparts, covering technologies used in a wide variety of industries. These acquisitions continue to expand and diversify our revenue generating opportunities. However, due to the nature of our patent monetization business and uncertainties regarding the amount and timing of the receipt of funds from the monetization of our patent assets resulting in part from uncertainties regarding the outcome of enforcement actions, rates of adoption of our patented technologies, outlook for the businesses for defendants, and certain other factors, our revenues may vary substantially from quarter to quarter, which could make our business difficult to manage, adversely affect our business and operating results, cause our quarterly results to fall below expectations and adversely affect the market price of our Common Stock.

***Our patent monetization cycle is lengthy and costly, and our marketing, legal and administrative efforts may be unsuccessful.***

We expect significant marketing, legal and administrative expenses prior to generating revenue from monetization efforts. We will also spend considerable time and resources educating defendants on the benefits of a settlement, prior to or during litigation, that may include issuing a license to our patents and patent rights. As such, we may incur significant losses in any particular period before revenue streams commence.

If our efforts to convince defendants of the benefits of a settlement arrangement prior to litigation are unsuccessful, we may need to continue with the litigation process or other enforcement action to protect our patent rights and to realize revenue from those rights. We may also need to litigate to enforce the terms of existing license agreements, protect our trade secrets or determine the validity and scope of the proprietary rights of others. Enforcement proceedings are typically protracted and complex. The costs are typically substantial, and the outcomes are unpredictable. Enforcement actions will divert our managerial, technical, legal and financial resources from business operations.

***Our exposure to uncontrollable risks, including new legislation, court rulings or actions by the United States Patent and Trademark Office (“USPTO”), could adversely affect our activities including our revenues, expenses and results of operations.***

Our patent acquisition and monetization business is subject to numerous risks including new legislation, regulations and rules. If new legislation, regulations or rules are implemented either by Congress, the U.S. Patent and Trademark Office, the executive branch, or the courts, that impact the patent application process, the patent enforcement process, the rights of patent holders, or litigation practices, such changes could materially and negatively affect our revenue and expenses and, therefore, our results of operations and the overall success of our Company. On March 16, 2013 the Leahy-Smith America Invents Act or the America Invents Act became effective. The America Invents Act includes a number of significant changes to U.S. patent law. In general, the legislation attempts to address issues surrounding the enforceability of patents and the increase in patent litigation by, among other things, establishing new procedures for patent litigation. For example, the America Invents Act changes the way that parties may be joined in patent infringement actions, increasing the likelihood that such actions will need to be brought against individual allegedly-infringing parties by their respective individual actions or activities. In addition, the America Invents Act enacted a new inter-partes review, or IPR, process at the USPTO which can be used by defendants, and other individuals and entities, to separately challenge the validity of any patent. At this time, it is not clear what, if any, impact the America Invents Act will have on the operation of our patent monetization and enforcement business. However, the America Invents Act and its implementation could increase the uncertainties and costs surrounding the enforcement of our patented technologies, which could have a material adverse effect on our business and financial condition. Patents from nine of our portfolios are currently the subject of inter-partes reviews.

In addition, the U.S. Department of Justice, or the DOJ, has conducted reviews of the patent system to evaluate the impact of patent assertion entities on industries in which those patents relate. It is possible that the findings and recommendations of the DOJ could impact the ability to effectively monetize and enforce standards-essential patents and could increase the uncertainties and costs surrounding the enforcement of any such patented technologies. Also, the Federal Trade Commission, or FTC, has published its intent to initiate a proposed study under Section 6(b) of the Federal Trade Commission Act to evaluate the patent assertion practice and market impact of Patent Assertion Entities, or PAEs. The FTC's notice and request for public comment relating to the PAE study appeared in the Federal Register on October 3, 2013. The FTC solicited information from the Company regarding its portfolios and activities, and the Company complied with the FTC request for such information. The results of the PAE study by the FTC were provided to Congress and other agencies, such as the DOJ, who could take action, including legislative proposals, based on the results of the study.

Finally, new rules regarding the burden of proof in patent enforcement actions could substantially increase the cost of our enforcement actions and new standards or limitations on liability for patent infringement could negatively impact our revenue derived from such enforcement actions.

***The report of our independent registered public accounting firm expresses substantial doubt about the Company's ability to continue as a going concern.***

Our auditors have indicated in their report on the Company's financial statements for the fiscal year ended December 31, 2016 that conditions exist that raise substantial doubt about our ability to continue as a going concern due to our recurring losses from operations and substantial decline in our working capital. A "going concern" opinion could impair our ability to finance our operations through the sale of equity,