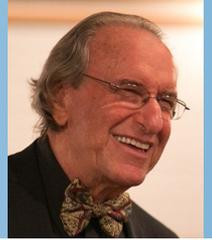


HIGH-TECH PATENT WARS: A NEW FRONT

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On December 8, 2010, high-tech companies learned that a previously sleeping giant armed with a multibillion dollar war chest and tens of thousands of patents had awakened with a roar. Intellectual Ventures LLC, based in Bellevue, Washington, commenced three patent infringement lawsuits against nine defendants. In one suit, Intellectual Ventures sued security software companies Symantec Corp, McAfee Inc, Trend Micro Inc and Check Point Software Technologies Ltd. In a second, it sued computer DRAM and flash memory chipmakers Elpida Memory Inc and Hynix Semiconductor Inc. Its third suit named field-programmable gate array semiconductor makers Altera Corp, Lattice Semiconductor Corp and Microsemi Corp.

Founded in 2000 by Nathan Myhrvold and Edward Jung, former Microsoft chief technology and architect officers, Intellectual Ventures has accumulated more than 30,000 patents, patent applications and licence assets. Until now, it hasn't brought a single patent infringement suit against accused infringers. Its business model has been to extract value from the patent rights, which the firm files itself, buys from patent rights owners and licenses to others. Its patent rights cover inventions in fields as diverse as agriculture, computer hardware, life sciences, medical devices, semiconductors and computer software. Its investors include well-known names such as Microsoft, Intel, Google, eBay, Nvidia, Cisco Systems Inc and Charles River Ventures. Some of these investors are believed to have sought a shield from litigation, by virtue of their investments. Intellectual Ventures claims to have earned nearly \$2 billion by licensing patents to some of the world's most innovative and successful technology companies. Such licensees are active in the fields of computer equipment, software, semiconductor devices and a host of other high-tech areas. It also claims to have created a network of more than 3,000 inventors worldwide and has paid individual inventors hundreds of millions of dollars for their inventions.

Because Intellectual Ventures has never brought suit before, many in the intellectual property community have not labelled the company with the pejorative term 'patent troll'. However, that distinction may now have evaporated. To some, the term patent troll has come to mean an aggressive and opportunistic company with no intention of manufacturing or marketing the patented invention that commences lawsuits in the hope of extracting early victories through nuisance-value settlements. They may attack vulnerable companies that do not have the resources to adequately defend themselves or they may attack an entire industry at once. The unpredictability associated with patent jury trials often encourages the targets of trolls to agree to such settlements. Such trolls are actually at a disadvantage in court proceedings that do not settle since they are unable to pursue lost profits through manufacture and sales, and the powerful

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weapon of an automatic injunction has been curtailed by the US Supreme Court's decision in *eBay Inc. v MercExchange, LLC*.

Unlike many lawsuits filed by patent trolls in the US District Court for the Eastern District of Texas, Intellectual Ventures filed these three suits in the District of Delaware, the location named by many corporations as their place of incorporation. According to the *The Wall Street Journal*, of its more than 700 employees, Intellectual Ventures has hired 20 percent as engineers and scientists, and more than 20 percent are lawyers. The latter figure, plus the litigation, will likely fuel the debate within technology circles about the role of patents and firms formed purely to monetise them.

Founder Nathan Myhrvold is reported by *Fortune Magazine* to have a master's degree in geophysics and space physics from UCLA, a PhD in theoretical and mathematical physics, and a master's degree in mathematical economics from Princeton University. He has gained a reputation as a paleontologist, a prize-winning photographer and a gourmet chef.

The size of Intellectual Ventures' patent portfolio, the stature of its investors, the number of attorneys it employs, and the technical nature and scope of inventions it has accumulated promise to make the company feared throughout high-tech circles. Now that the company has jumped into the patent infringement litigation game, it will most certainly be labelled a troll, and there will be forces and attorneys assembled to defend targets of claims that refuse to cave in to its demands.

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