

# ARE THE PATENT TROLLS GETTING HUNGRIER?

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The controversial term ‘patent troll’ is often used as a pejorative label for entities which accumulate patents with a view toward extracting licence revenues from alleged infringers. Other related expressions for these entities include ‘non-practising entity’ (NPE), ‘patent shark’, ‘non-manufacturing patentee’, ‘patent licensing company’, ‘patent dealer’, ‘patent marketer’, and ‘patent licensing company’, to name but a few.

The truth is, there is nothing unlawful about such activities, and the term has, too often, been expanded to mean any unpopular plaintiff. Patent trolls operate in much the same manner as other companies that protect and aggressively exploit their patent portfolios. Their focus, however, differs in that they seek monies from existing users, as opposed to concentrating upon and contributing to future technology innovations. Patent trolls have no intention of manufacturing or marketing the inventions covered by their patents. By their initiating patent infringement litigation and promptly offering relatively favourable licence terms to their targets, settlements are often reached early by defendants seeking to avoid the huge legal and manpower costs associated with litigation.

Until December 2010, there was a debate as to whether one of the largest of the NPEs, Intellectual Ventures (IV), was a patent troll. Founded in 2000 by Nathan Myhrvold and Edward Jung, respectively former Microsoft chief technology and architect officers, IV has aggregated some 35,000 patents and applications in diverse fields such as life sciences, medical devices, semiconductors and computer software. It holds the fifth-largest patent portfolio of any domestic US company, and is armed with billions of dollars from many large companies such as Apple, Google, Sony, Microsoft, Nokia, and SAP.

Until 2010, IV had not commenced a single patent suit. However, as reported in the January/February 2011 issue of *World Intellectual Property Review*, “the sleeping giant [IV] armed with [its] multibillion dollar war chest ... awakened with a roar”. It commenced three patent infringement lawsuits against nine defendants, including Symantec Corp, McAfee Inc, Trend Memory Inc, Hynix Semiconductor Inc, Altera Corp, Microsemi Corp, and Lattice Semiconductor Corp.

The year 2011 was a good one for IV in that it signed patent licensing deals with a host of companies including American Express, Samsung, HTC, RIM, Pantech, SAP, Micron and Wistron. On November 8, 2011, IV announced a patent agreement with LG Electronics.

Not every target of IV rushed to take a licence from it, forcing it to sue. On July 11, 2011, IV sued DRAM and Flash memory makers Hynix Semiconductor of Korea and Elpida Memory of Japan in the US District Court for the Western District of Seattle. Also joined as defendants accused of infringing patents covering various computer applications and devices

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are Acer, Adata Technology, Asustek Computer, Asus Computer, Dell, H-P, Kingston Technology, Logitech, Pantech Wireless, Best Buy and Wal-Mart.

On October 6, 2011, IV filed suit against Motorola in the US District Court of Delaware, alleging infringement of six IV patents by Motorola in products such as its Atrix, Photon 4G, Milestone, Triumph and Brute i680. Google, an investor in IV, is acquiring Motorola’s Mobility mobile phone division, thereby potentially placing it on both sides of this dispute. On October 26, 2011, it also filed a patent infringement suit against Nikon and its US and Japanese affiliates in the same court, alleging infringement of five patents relating to image editing, image sensor fabrication technology, touch screen methods, and a virtual reality camera.

On February 16, 2012, IV filed a patent lawsuit against AT&T, Sprint and T-Mobile, alleging infringement of 15 of its patents covering a variety of mobile technologies such as message transmission between mobile terminals, mobile service blocking, and network customer service access. As reported on February 16, 2012 by PCMAG.com, Melissa Finocchio, the chief litigation counsel of IV, said in a statement: “We previously attempted to discuss licensing options with each of these companies, but none was responsive.”

On September 16, 2011, President Obama signed the Leahy-Smith America Invents Act into law. Among the new law’s aims is the prevention of situations where large numbers of small defendants who have been sued decide that a token payoff is less trouble than mounting a defence. Accused infringers may not be joined as defendants in one action, based solely upon allegations that they each have infringed the patent(s) in suit. Plaintiffs must initiate a single filing for each individual defendant, thus increasing plaintiffs’ costs and making settlements more likely. ■

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