Exhibit 2

Intellectual Ventures Becomes Patent Troll Public Enemy #1

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Yesterday Intellectual Ventures did what they said they would never do, but which so many feared they ultimately would do. After amassing one of the largest patent portfolios in the world, Intellectual Ventures unleashed three separate patent infringement litigations in the U.S. District Court of Delaware against companies in the software security; dynamic random access memory (DRAM) and Flash memory; and field-programmable gate array (FPGA) industries. While I do not begrudge any patent owner their day in court to seek redress for infringement, we really should at least notice the obvious hypocrisy of Intellectual Ventures, who for years said they were only amassing a defensive portfolio and had no interest in becoming what we all knew they could become; namely that most massive patent troll on the planet.

There is no doubt in my mind that eventually we will look back to December 8, 2010, as a pivotal day in the history of patents, patent law and patent litigation. It will almost certainly become a day of infamy, and there will be many who rightfully say "I told you so!"

"Over the years, Intellectual Ventures has successfully negotiated license agreements with some of the top technology companies in the world. However, some companies have chosen to ignore our requests for good faith negotiations and discussions," stated Melissa A. Finocchio, Chief Litigation Counsel, Intellectual Ventures. "Protecting our invention rights through these actions is the right choice for our investors, inventors and current licensees."

In the each of the complaints Intellectual Ventures explains that their "business includes purchasing inventions from individual inventors and institutions and then licensing the inventions to those who need them." They explain that through these presumably benevolent behaviors (at least that is how it seems to be cast) they allow inventors to reap financial rewards from their innovations. Regardless of whether it is benevolent or not, they explain that they have "purchased more than 30,000 patents and patent applications" and have "paid hundreds of millions of dollars to individual inventors for their inventions." Benevolent? Perhaps, but also lucrative. They state they have made $2 billion from licensing these acquired patent rights.

Presumably because they know that they will be characterized as a patent troll, and not wanting such a characterization, Intellectual Ventures explains that they also innovate. Specifically the complaints say: "Intellectual Ventures has a staff of scientists and engineers who develop ideas in a broad range of fields, including agriculture, computer hardware, life sciences, medical devices, semiconductors, and software." They claim to have invested millions of dollars developing these innovations and have filed hundreds of patent applications every year. Of course, the fact that they innovate doesn't make them a practicing entity. Intellectual Ventures is, in fact, a non-practicing entity. While that doesn't necessarily make them a patent troll, it would be naive not to notice that this does certainly change the dynamic of any licensing and litigation activities since the non-practicing entity largely cannot be a target, at least under current rules and laws.

In the **first complaint**, Intellectual Ventures alleges infringement of its patents by Check Point Software Technologies LTD., Check Point Software Technologies, Inc., McAfee, Inc., Symantec Corp., Trend Micro Incorporated, and Trend Micro, Inc. (USA). The patents in issue are U.S. Patent Nos. **5,987,610**; **6,073,142**; **6,460,050** and **7,506,155**. The patents in question here relate to software security.

In the **second complaint**, Intellectual Ventures alleges infringement of its patents by Altera Corporation, Microsemi Corporation and Lattice Semiconductor Corporation. The patents in issue are U.S. Patent Nos. **5,675,808**; **6,993,669**; **5,687,325**; **6,260,087** and **6,272,646**. The patents in question here relate to field-programmable gate array (FPGA) technologies.

In the **third complaint**, Intellectual Ventures alleges infringement of its patents by Hynix Semiconductor Inc., Hynix Semiconductor America, Inc., Elpida Memory, Inc. and Elpida Memory (USA) Inc. The patents in issue are U.S. Patent Nos. **6,373,753**; **6,462,998**; **6,455,937**; **7,444,563**; **5,581,513**; **5,598,374** and **5,583,822**. The patents in question here related to dynamic random access memory (DRAM) and Flash memory.

None of the complaints have any useful information about how or why Intellectual Ventures thinks the defendants are infringing, nor do they mention any claims that are allegedly being infringed. Rather, they assert ownership of the patents, explain in an extremely general way what they cover, typically by title and then allege that one or more claims of the patent are being infringed. This type of non-informing patent complaint is the rule, not the exception, particularly when patent trolls are involved. Unfortunately, the district courts and the Federal Circuit have yet to see fit to do anything to stop this nonsense associated with complaints that provide no useful information.

There is something exceptionally not right about a complaint that couldn't even result in a default judgment being awarded to the plaintiff. I'm not suggesting that the defendants won't answer the lawsuit, but if they decided not to answer the lawsuit the district court couldn't issue a default judgment on these complaints because it is impossible to infringe a patent, you infringe patent claims. Without any claims being identified as infringed, the plaintiff wouldn't have provided the district court with enough information for the judge to issue a default judgment in favor of the plaintiff. Yet the defendants will answer, none of the defendants will point that out, the issue will not be preserved and the game of cat and mouse will continue. Sickening really.

It seems to me that those big companies that are targets of patent trolls have a vested interest in being sued by patent trolls. There is a cozy relationship between those who sue and those who get sued, and without the patent trolls the defense teams would have no business and no jobs. Cynical I know, right up until you realize that the lead attorney representing Intellectual Ventures in the FGPA litigation is John Desmarais of Desmarais, LLP, who himself is a patent troll, having quit his extremely lucrative private practice less than 1 year ago to buy patents himself and become a patent troll, after spending time over the years defending companies against patent trolls. He is said to still work as an attorney, and even requires his clients to sign agreements having them waive any potential conflict of interest. I don't now

exactly how that works given that one can waive a potential conflict of interest, but cannot waive an actual conflict. So once Desmarais turns on those companies there will be an actual conflict and one fine ethical mess created all around.

There is no doubt that the patent troll industry, and the burgeoning defense industry brought on by their existence, are incestuous. If huge companies want to allow themselves to be targets for patent trolls who am I to get upset, right? I mean they obviously have licensing fees and large litigation damages already cooked into their prices since prices to consumers never go up no matter how many zeros are at the end of the check they pay and in front of the decimal point. What is concerning, however, is the increasing trend for patent trolls to go after hundreds of small companies in an attempt to extort money.

In some of the cases I have seen where patent trolls are going after smaller companies it is extremely clear that the defendants are not infringing and that absolutely no due diligence has been done by the patent troll. The burden is essentially placed on the troll target — the defendant to prove they are not infringing. Using the system for such a perversion is really unacceptable. Unfortunately, so many of the small businesses just want to settle or they join forces with the big businesses, figuring that the big businesses have the incentive to fight so they will just piggyback with them. If that is your strategy good luck! Prepare yourself for a case that will go on and on. Large companies have no incentive to end cases early, and they have the ability to pay the legal fees charged. If they haven't settled with the patent troll prior to lawsuit, and if they don't settle shortly after the complaint is filed, they are likely going to see it through to the end because they are actually infringing. So they have nothing to lose. Tethering yourself as a small business to large infringers in patent litigation is a recipe for disaster if you ask me.

The patent troll litigation and defense industry has suddenly changed though with the Intellectual Ventures, the 1,600 pound gorilla, firing the shot that we knew would eventually come. The only question is how many more of their 30,000 patents will they seek to enforce, against who and whether those who are targets will finally see the merit in standing up and fighting in a way that sends a message to any other evil patent troll out there who seeks to bully defendants into paying on patents they don't infringe.

NOTE: Tip to the 271 Patent Blog. See **Intellectual Ventures Launches Massive Litigation Across 3 Industries**.

About the Author

Gene Quinn is a US Patent Attorney, law professor and the founder of **IPWatchdog.com**. He is also a principal lecturer in the **top patent bar review course in the nation**, which helps aspiring patent attorneys and patent agents prepare themselves to pass the patent bar exam. Gene's particular specialty as a patent attorney is in the area of strategic patent consulting, patent application drafting and patent prosecution. As an electrical engineer by training his practice primarily focuses on software, computers and Internet innovations, as well as electrical and mechanical devices. Gene has been quoted in the Wall Street Journal, the New York Times, the LA Times, CNN Money and various other newspapers and magazines worldwide.

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59 comments
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1. **Michael Risch December 9th, 2010 6:14 pm**

Without commenting on general point made here, I will note that patent complaints are quite often barebones, alleging that products infringe “one or more” claims of “one or more” patents. This is not an unusual complaint.

2. **Gene Quinn December 10th, 2010 10:41 am**

   Michael-

   I would, regretably, have to agree with you. I say regretable because you are 100% correct and because in my opinion it really shouldn’t be that way. It really bothers me that a complaint is deemed sufficient when it couldn’t even support a default judgment. Personally, I think there are plenty of people to blame for the troll problems, and perhaps the trolls themselves are the least faulty. What is wrong with recognizing a business opportunity without down side? Those who pay on specious patent claims or when there is not infringement are most to blame, the courts that refuse to enforce basic rules of fairness are next in line for blame, and last are the so-called bad actors. Yes, they are doing what is allowed by the developed rules of the game. What a mess if you ask me.

   Nonetheless, thanks for joining the debate. I hope you are well.

   -Gene

3. **Ian Gates December 10th, 2010 12:52 pm**

   I am not a litigator, but my understanding of FRCP 55 is that a default judgment may be entered upon a motion showing “a sum that can be made certain by computation.” I would think that Notice Pleading should have no bearing on whether a default judgment can be entered. The defendant has been served, they are aware of the complaint, and they should appear if they do not want a default judgment entered. That’s just part of doing business—sometimes you get sued, and you have to work within the system that we have established as fair in our country.

   The debate is a complicated one regarding non-practicing entities, but think of all the garage inventors with great ideas that are in no position to become entrepreneurs. They want to sell their technology to existing and healthy businesses. Is that wrong? Should they be required to raise millions of dollars in funding to build a manufacturing facility? Can we really distinguish between an individual and a company? Where would we draw the line? Number of employees? Sophistication of their leadership? I really know nothing of Intellectual Ventures, other than the headlines, so I cannot comment as to its behavior. I will say that I have yet to be convinced non-practicing entities are a bad thing and should be reined in.

4. Ron Hilton **December 10th, 2010 1:07 pm**

   I am less concerned about entities, practicing or not, that seek reasonable licensing terms for their IP than I am about those entities who deliberately sit on and refuse to license IP on reasonable terms in such as way as to harm technological progress and innovation, totally perverting the societal purpose of IP. For the latter, more vigorous antitrust enforcement is needed. The hurdle to bring an antitrust complaint is much higher than to bring an infringement complaint. They need to be on an equal footing in

order to counterbalance each other, whether that means lowering the bar for the antitrust, raising the bar for patent infringement, or something in the middle.

5. Blind Dogma **December 10th, 2010 1:26 pm**

   I am pretty sure that a "you **have** to share" mentality is the one outside of the societal purpose of IP.

   That "have to" zone happens once the term has expired. Until that point, the patentee can pick and choose – that is, after all, the whole point about 'excluding others", isn't it?

6. IANAE **December 10th, 2010 1:32 pm**

   I am pretty sure that a "you have to share" mentality is the one outside of the societal purpose of IP.

   I'm not so sure, if we understand "sharing" to encompass selling the invention yourself while excluding others. Healthy market competition between rival technologies in their infancy is bound to advance the useful arts, isn't it?

   The good news, I suppose, is that if you're one of "those entities" the court won't give you an injunction anyway, so you get to choose between (1) practicing your patent, (2) selling your patent, (3) negotiating a reasonable license, or (4) going through expensive litigation with an "infringement troll", risking your patent, and settling for up to treble a reasonable license.

7. **Gene Quinn December 10th, 2010 1:44 pm**

   Ian-

   I think Rule 55 even helps my argument. There is no way that a certain computation could be made without a definition of the property right that has allegedly been infringed. If a very narrow claim is the "one or more" that are infringed that could significantly impact damages. There is no way to know what the damages are by merely identifying the patent in question, which is all these complaints do.

   Certainly, a business should appear, but they should also be making this argument, and many others that don't seem to be made as a matter of course.

   -Gene

8. **Ian Gates December 10th, 2010 1:50 pm**

   Gene-

   Thanks for your comment. I was thinking that as long as the sum certain can be established in the Rule 55 motion, it doesn't matter what was set forth in the complaint. In reality, I would think it would be impossible to determine a sum certain absent discovery, which will never occur if the defendant doesn't appear. In short, entry of a default, and even grant of a default judgment, may not have any effect if the damages cannot be calculated. Any litigators care to chime in? Thanks.

-Ian

9. **Michael Risch December 10th, 2010 1:53 pm**

   Gene -

   While damages might be hard for a judge to calculate/grant, I don't think the complaint matters. If one defaults, the judge must assume that every claim of every patent is infringed. I'm just not getting your concern here. Many district court patent rules require claims charts fairly early on, so it's not like these folks won't have an idea of what is being alleged – at least no more uncertainty than anyone else faces in a patent suit.

10. Bobby **December 10th, 2010 1:55 pm**

    @Blind Dogma
    The point is to encourage socially desirable behavior that might be otherwise discouraged by difficulty in getting a return on investment. This can still be accomplished even with statutory compulsory licensing, If certain patterns of behavior have heavy social costs and do very little to encourage research, then not providing protection for that behavior makes perfect sense.

11. Blind Dogma **December 10th, 2010 3:16 pm**

    Bobby,

    The point you wish to stress *has already been fulfilled* at the point of discussion of the post-grant-depends-on-who-owns-the-patent timeframe. As such, any additional societal behavior "encouragement" is ***necessarily*** ulra vires. This is not to say any such would be "bad", it just does not have a legal basis.

    This is basic Quid Pro Quo stuff here. I suspect that even you without a legal background could see that.

12. IANAE **December 10th, 2010 3:25 pm**

    As such, any additional societal behavior "encouragement" is necessarily ulra vires.

    Necessarily?

    If, as Bobby points out, people are making use of patents or copyrights to discourage research, *not* legislating that away is arguably ultra vires, because patents are only intra vires to promote progress in the useful arts.

13. Blind Dogma **December 10th, 2010 3:52 pm**

    Timing IANAE, timing.

    That and the Quid Pro Quo.

14. IANAE **December 10th, 2010 4:14 pm**

BD, perhaps you could explain yourself a little better. I could use the same nine words to support my own side in this particular debate, as long as I replace my name with yours.

15. Bobby **December 10th, 2010 4:25 pm**

@BD
You were speaking about the point of exclusion. The exclusion is the carrot, the fuel, or whatever metaphor you want to use for an economic incentive to encourage certain behavior. It is socially undesirable in and of itself, but the idea is that it has a net social benefit when granted to authors and inventors under appropriate terms. If a change to those terms regarding certain types of practices can reduce the harm more than it reduces the benefits (both relative to society), then it is going to be socially preferable.

So, let's say we've got a nice legally clear definition of patent trolling that does a fairly good job of minimizing effects on entities that are not malicious/bad actors. We conclusively determine that blocking this specific type of action would lead to faster scientific progress. What good reason would we have to not block this specific action defined as patent trolling?

16. Blind Dogma **December 10th, 2010 6:30 pm**

IANAE,

You could, but you would be wrong. This discussion has been undertaken (at least) once before, and has to do with the ***substantive*** requirements of obtaining a patent (timing) versus the nature of the patentee. Our law simply does not make that critical difference. Your "policy" leanings are well known and simply do not help you here. You ask "*Necessarily?*", and the undoubtable answer is "**Yes**".

The Quid Pro Quo simply doesn't change based on the status of the holder of the patent. Never has. Sure, exceptions do exist, such as the class of small entity, but that deals with degree, not kind. Once a patent has been granted, the patent itself does not care who holds it (again with the exception of small entity maintenance fees – simply not a ***substantive*** matter).

Bobby,

You are letting your ideology get in the way of your (non)understanding of how law actually works. Let's say you ***do*** come up with your conclusive determination.

So what?

Do you think that independent conclusive determination can immediately make a substantive change in the law? Maybe in fairy land, but not in the real world.

If you want to change terms – *any terms* – change the law. If you can get Congress to change the law to apply the conclusive determination, then I would be defending that position as the legally correct position.

As it is, that is not the law, and any such substantive changes by the courts to adhere to that policy would be ultra vires. Let me remind you of what the Supreme Court just

said in Bilski (albeit in regards to a different question, but the *policy* applies to this situation just as well:

"*Courts should not read into the patent laws limitations and conditions which the legislature has not expressed,*" 130 S. Ct. 3218, citing *Diamond v. Diehr*, 450 U.S. 175, 182.

The legislature *has* expressed that the patent grant has the characteristic of property – it can be bought and sold, and that alienability *cannot* be abridged by a policy-seeking court – no matter how much you may not like this answer, it is the answer you have to live with.

17. Bobby **December 10th, 2010 7:17 pm**

Hold your horses (and your needless insults), I didn't say that the law as it is now prevents the actions of IV, or that the courts were capable of changing that. This is more of a discussion about how the law SHOULD be instead of the details of what it currently is, and nobody said Congress shouldn't be the one to implement these changes. There is behavior within the patent system that is widely viewed as problematic and getting in the way of utilization of ideas, which is the ultimate goal of the patent system, so elimination of that behavior would be preferable.

18. Ron Hilton **December 10th, 2010 7:25 pm**

I don't think anyone is disputing the basic patent law or that IP Is in fact property. But antitrust law also exists, and places some restraints on property rights, including IP. An exclusive patent right may confer a competitive advantage on the holder, which is entirely proper. But when it is used to substantially eliminate free market competition, such that products and services to which the IP pertains are only available from one supplier or not available at all, then that likely constitutes an antitrust violation. Whether Intellectual Ventures is or becomes guilty of such remains to be seen. Anyway, those being the facts, I merely offer it as my _opinion_ that society would be better served if the threshold for antitrust litigation were more on a par with the threshold for IP infringement litigation.

19. Blind Dogma **December 10th, 2010 7:35 pm**

"*This is more of a discussion about how the law SHOULD be instead of the details of what it currently is*"

No, Bobby, this is *not* an idyylil jaunt into lovely-gee-the-world-is-perfect fantasy land. This is a discussion of how the law **is**, and how some would ride roughshod over that law with pure policy motives. The "encouragement of socially desirable behavior' doesn't happen in a vacuum. There are real world trade-offs to be made. If you want to explore fantasy law, play a fantasy game. When people mistake a "*have to share*" mentality with the real world, with the trade-offs of patent policy, I tend to throw an insult or two. Unfortunately there are those who think that such forced conscriptions are not only desired, but actually plausible. If my acerbic tongue serves to wake you up to what is actually going on, then both of us can be satisfied.

Time to grow up.

20. Bobby **December 10th, 2010 8:04 pm**

    Ideas for policy are often discussed here. Even ideas for non-IP policy are brought up on occasion. You don't get to dictate what other people mean in a discussion, and it seems that Ron and I were both speaking of how to address what is widely seen as a problem. Failure on your part to understand that doesn't change the conversation. Please don't put words in my mouth and I'll do my best to not put words in yours.

21. Blind Dogma **December 11th, 2010 9:13 am**

    There you go again saying that I am putting words in your mouth.

    Is that a standard line?
    Do you *not* have anything else to say?
    Something to say about the content I actually put up?

    Policy discussions *need* to be grounded in reality. Don't get mad at me just because I point out that you are not grounded as such. There is a very real danger to policy discussions that are not grounded in reality (especially by those who do not understand patent law) and that danger *should* be forcibly curbed.

    I am truly sorry that you do not like being curbed. I am not sorry at all to curb your dangerous fantasies.

22. Bobby **December 11th, 2010 10:24 am**

    You were arguing about how the law is. That does't need to shape an argument of how the law could be. It's can be a helpful reference, but we might find a drastically different policy is better. Now, if you want to discuss the economics factors of the issue, that's fine. If you want to point out pitfalls and dangerous loopholes of a proposed policy change, that's fine. However, you are just saying that most 'patent trolls' are technically playing by the current rules, which isn't relevant if the proposal is to change the rules to limit harm, other than not being able to fix current problems retroactively.

23. Blind Dogma **December 11th, 2010 11:49 am**

    How does your last comment have anything to do with "putting words in your mouth"?

    How does your last comment have anything to do with your wishful policies not grounded in reality?

    You show a continued carelessness in your choice of words and arguments. Are you really surprised that I take issue with what you post?

    Please re-read my comment at 16 in its entirety, and do not be so quick to dismiss what I am saying just because you do not like what I am saying. What do you think the importance of the Supreme Court quote is? Why do you think that I included that particular quote? Pay attention to the points along the way. Ignorance of law is an impediment to most, but you glory in that ignorance. Naked and fanciful policy discussions like the "have-to-share" simply are not helpful. Talking about "changing the rules" while ignoring the reality of law helps no one.

I would separate your comments from Ron's on the basis that Ron is pointing out a substantive law that intersects the arena of Patent law and that your comments (again) lack any basis in actual law and operate out of pure wishful ideology.

I would be interested in Ron's understanding of *misuse* of patent rights as opposed to full use of patent rights. While understandably a nuanced subject, it would be a mistake to think that antitrust law abrogates a full use of patent rights.

24. Beth Hutchens **December 11th, 2010 1:36 pm**

    @Ron- that's an intriguing concept. Are you suggesting that a large portfolio of patents or copyrights isn't a problem in and of itself but becomes so when that portfolio is used in such a way that hinders the marketplace in some way? In that case, then, the complaint and the remedy for that would be governed by antitrust principles, rather than a purely patent or copyright theory? Very interesting thought. The more I think about it, the more I like it.

25. Bobby **December 11th, 2010 2:02 pm**

    The best vehicle for the rather vague changes I am speaking of is Congress passing legislation. There is no indication that Congress couldn't do this kind of change to prevent patents from being used in certain ways. The courts won't need to read into legislation something that isn't expressed if new legislation is passed that has the aforementioned limits already expressed.

26. Blind Dogma **December 11th, 2010 2:53 pm**

    Bobby,

    You take a step in the right direction. Note how your last comment reflects the thought in comment 16 (*If you can get Congress to change the law…*) .

    Beth,

    I notice that you feel free to call me out (on the other thread – **http://ipwatchdog.com/2010/12/08/copyright-trolls-the-meaner-stepsister-of-patent-trolls/id=13695/**), but choose to remain silent once I answer you. Should I take your silence as acquiescence? Or is it just difficult to talk while you are downing another glass of Kool-Aid?

27. Bobby **December 11th, 2010 3:26 pm**

    It's actually you that's taking a step in the right direction by no longer assuming I meant that the courts would be the way to implement such changes despite me not giving an indication that it was. My first post was merely trying to point out that you weren't getting that patents are a means to an end, and that unconditional exclusivity is by no means required in a patent system (not to be confused with OUR CURRENT patent system). Most of the rest of my posts were attempts to clarify your misreading and get you to acknowledge that better is better.

28. Blind Dogma **December 11th, 2010 4:34 pm**

I like how you think that I took a step in the right direction when I haven't moved (hence my reference to an earlier comment).

If it make you happy, we can go with that. Does that mean that you have actually read and agree with my points then?

29. Beth Hutchens **December 11th, 2010 4:44 pm**

@BD Bwaaa haaaa ha ha! Never! No, I just got busy doing other things and by the time I came back to the comments section, it had moved on, so I didn't see a point to conversational whiplash. But I'm working on a trademark article as we speak, so until next time, friend….

As for this forum, I just wanted to hear more of Ron's comments on the antitrust topic because I find it to be an interesting theory.

Btw- your Kool-Aid references are too funny! Thanks for keeping a smile on my face.

[[big red cartoon pitcher bursts through the wall]] "Oh, yeaaaaah!"

30. Bobby **December 11th, 2010 6:17 pm**

@BD
The problem was that you were disagreeing with something I didn't say. With a bit more explaining, you came closer to understanding what I said.

Perhaps I should repeat the basic argument in hopefully clear language.

1. The exclusion in patents is a means to an end, not an end unto itself. The end in this case being faster scientific progress than what would occur in the absence of such a system.
2. Having a useful idea NOT be utilized is not socially desirable, as is a failure for an idea to be utilized in a 'reasonable' manner.
3. Curbing said undesirable behavior is desirable, although care should be taken to try and focus specifically on the undesirable behavior with attempts to minimize effects on other behavior.
4. Legislation passed though Congress would be the primary vehicle for said changes.

On a bit of a tangent, the Diamond v. Diehr quote you mentioned has often struck me as a bit strange though. It's quite reasonable to suggest that Congress left 101 pretty open so they wouldn't have to pass a new law with every major technological change, so it seems like when it comes to what should be patentable subject matter, Congress was passing the buck to the courts, who decided to largely pass the buck back to Congress.

31. Ron Hilton **December 11th, 2010 6:31 pm**

As an entreprenuer I tend to view things in free market economic terms. My legal experience is limited to that of a part-time patent agent and founder of a company (PSI) that was sued by and countersued IBM (patent infringement and antitrust, respectively). My personal conclusion from that experience was that patent law and antitrust law provide a useful check and balance against each other. But it is far easier

to allege patent infringement than it is to make an antitrust case. While I would agree that private property rights deserve special protection, I think significant improvements are needed in patent quality to more fully justify it in the case of IP. I also believe that when the exercise of property rights inhibits innovation and the operation of the free market itself, an antitrust remedy is appropriate.

32. Beth Hutchens **December 11th, 2010 6:54 pm**

@Ron, I've always been interested in the intersection (read- collision course) of Antitrust and IP. I've found it's complex at best. May I ask as to the outcome of the antitrust allegations in your suit? I'm inclined to agree with your theory, but, admittedly, I'm no antitrust scholar. Do you know of any cases where the court analyzed an infringement suit with antitrust concepts?

33. Ron Hilton **December 11th, 2010 9:26 pm**

IBM and PSI settled in 2008 with IBM acquiring PSI. I had left PSI the year before and so am not familiar with the final state of the litigation. One of PSI's channel partners, T3T, has continued with their own antitrust lawsuit against IBM. Also, the US DOJ and the EU have launched antitrust investigations of IBM, with PSI as 'exhibit A' so to speak. I hope that PSI technology may eventually be commercialized, but for now it is bottled up inside IBM. I have personally moved on and started a new mainframe software venture, PSC, which I hope may avoid the legal issues that PSI faced. You can google PSI or Platform Solutions, Inc. and find plenty of information about it. I agree that it is a complex issue. I don't think there's an easy answer. But I do think that antitrust needs to be more accessible as a tool to ensure free market competition, with a lower burden of proof as well as less draconian remedies. Right now it is kind of a "nuclear option" that is a very costly and riskly last resort. A frivolous allegation of antitrust (just making the accusation, let along bringing legal action) carries significant legal risk, but the same cannot be said for frivolous patent infringement suits. The bar should probably be set a little higher for patent infringement and much lower for antitrust.

34. Beth Hutchens **December 12th, 2010 10:24 am**

Thanks so much for sharing, Ron. I think you really may be on to something there. You've certainly given me something to think about.

35. step back **December 12th, 2010 1:57 pm**

Now there you go again Gene, using an emotionally, viscerally charged and compound phrase, "**Patent Troll**" for the purpose of allegedly instigating rational discussion.

However, until we can all come to clear terms on what the T-word means, we can never come to any clear vision as to whether those accused of being the T-word are bad actors or simply actors behaving as all moral actors in the patent world behave.

I can picture a kitten standing over an issued patent and thinking to itself: Me have patent, now what to do wiff it?

36. Blind Dogma **December 12th, 2010 2:53 pm**

Bobby,

As a quick aside, since you have not answered:
Does that mean that you have actually read and agree with my points then?

Now let's be clear – I have always been clear about what I disagree with. That stance has not changed or moved. It also *may not* be totally focused on you (oh, how highly you think of your own lack of legal knowledge – like I said – you glory in your ignorance).

For the fun of it, let's address your most recent post on its own merits(?), because there is plenty for you to learn here.

Your point 1) starts off quite pointless and ends in error. Any "means/ends" discussion tends to bog down in the philosophical underpinnings of using that argument and the "policy" driver of unwarranted judicial activism. Suffice to say, the means/end dichotomy is brought up in order to discount one aspect that is just not liked, but that aspect is fully valid. The error portion of your statement one has to do with the "faster" statement. Just as clearly that "faster" is *one* aspect of "promote", it is by no means the only legal aspect that must be recognized. This penchant for "faster" is traceable to an elitist view of patents that can be traced to what I call the Douglas Factor, after the famous anti-patent Supreme Court Justice that would hold that patents should be reserved for Noble-level advancements. This is a favorite position of anti-patent folk. Unfortunately (for you), this is a false position. It took an act of Congress to explicitly make this point, but it is incontrovertible that such did take place. One only has to review the work of one of the architects of the 1952 Act to see that this elitism was expressly denied. Judge Rich (in ironically one of the works quoted by Justice Stevens in the *Bilski* decision, expresses that patents are ***not*** limited to such "vertical" advances, but apply as well to "horizontal" advances. In other words, inventions that provide lateral and novel ways of doing things are equally deserving of patents. Scientific progress is funny that way, as seemingly dead end forays in one area may serve as a catalyst in a completely different area. Congress recognized this and thus sets the proper legal understanding – not the elitist view as you posit in your point one.

Your post-grant myopia also largely ignores other components of "promotion", which I have touched upon in the past. "*Your ideology blinds you to the fact that the Quid Pro Quo has already been met* at that stage of the patent process (post grant) and the public *deserves* no further Quo from the patent holder. Even in the case of a patent holder *fully embracing his legal right* and excluding everyone – promotion is achieved by the exchange already captured. The "ideas" that are off limits are *still* there to promote through design around and improvements on those "ideas." From a pure ideology standpoint you are demanding more than what is legally provided for and you show no legal basis for doing so. It simply isn't up to society to tell a patent holder what to do with his right. After the term, society can do whatever it wants. That's the deal.

Clearly, if you are looking at a means/end argument and you have the wrong end in mind, your already tenuous (if I may be so generous) *legal* argument is weakened. You do understand what "*ultra vires* means, correct?

Your point 2) is equally flat out wrong. As I have already suggested, you need to understand the legal doctrine behind the Quid Pro Quo that underlies our patent

system, as well as need to understand exactly what is entailed in the Patent Right itself (this has been addressed numerous times, but here's a hint – a patent does not give one the right to "**do**" – to make either the item or to make money from making the item – it is **critical** to understand that the patent right is purely a **negative** right). The patent system says nothing past the awarding of the right to exclude, save to allow free alienation of that right. For you to label this as a failure is pure ignorance, as the ability of the inventor to dictate what happens with his invention **during the term of his right** is a feature, not a bug with the system. The law here is starkly in contrast to the fantasy desires of such policy drivel of "must-share" – your non-acceptance of the plain legal truth notwithstanding. Quite starkly absent here too is just who's idea of "reasonable" you are invoking in your legally vacuous policy driven position. The law simply does not go there. The Supreme Court quote I referenced is *perfectly* apt here (and not some tangent) – It just isn't for the courts to refashion the patent deal as you may desire. What you want is a complete re-write based on your desired ideology that just doesn't have the legal legs to stand with and plainly ignores all of the legal history of what and why Congress has set in place.

Your point 3) rests on point 2) and thus fails in its substance. Sure, being careful is prudent, but you just have no basis for "going there" in the first place.

Your point 4) is incorrect in so much as Congress is not the "primary" vehicle, but the "proper" vehicle. Again, the Supreme Court quotes recognizes this. The fact that you consider that quote "tangential" shows how little you appreciate how law in the real world works. Both the degree and type of changes you want only belong in Congress and do not belong anywhere else.

Finally, you state " *It's quite reasonable to suggest*" when it is **not** quite reasonable to make the leap from a purposefully open system to a desire for the Courts to have such a critical say in writing law – such exhibits a glaring lack of understanding of how our Real World law and our Constitution operate. What you call the Supreme Court's "passing the buck back" is actually the Supreme Court following the way the law is supposed to work. You should pay attention and be less judgmental about what you do not understand. Clearly, your blindness to the real world is correlated with your dogma. I care not which causes which.

Since you are oblivious to such critical basics and build your arguments on such errant views, is it any wonder how you thus fail to see the danger in your approach? Ignorance of law is simply not a preferred path of changing the law. The only words I want to put in your mouth are the words "I understand". You first must acknowledge your ignorance before you can change that ignorance.

37. Bobby **December 12th, 2010 5:08 pm**

1. Measuring technological progress is very complicated, and this is made more complicated because the way a patent system put focus in different areas. Something similar has happened with copyright and authors of books, in that there is at least somewhat of a documented relative shift towards favoring fiction over non-fiction in countries that had copyright. The social value of these is hard to compare and highly subjective. However, the difficulty in measuring this does not change the fact that faster progress is still the ultimate goal. If we could clearly get all of the same progress without the patent system without needing exclusion and without something else that is

not socially undesirable on roughly equal or greater levels, then we would be idiots to continues using such a system.

2. You are speaking about the legal requirements when this an economic statement, and the economic statement is almost completely self-evident. Now, unless you have some additional evidence to the contrary, Congress is fully capable of passing patent legislation that would require compulsory licensing of patents just as certain copyrightable works, musical recordings in particular, are subject to statutory compulsory licensing, so the law not doing it now doesn't mean the law can't do it. You can say that it's a bad idea, but that doesn't mean it couldn't happen, which means your claims of me being ignorant of the law are unfounded.

4. That was just me trying to be be technically correct. Certain aspects of a new law MAY be shaped by interpretation of the courts, which would mean that Congress is not the ONLY vehicle. If, for example, 'reasonable' licensing is not explicitly defined, than courts may shape the specifics of what a 'reasonable' license is.

By 'on a tangent,' I meant that the part about me discussing the quote was not at all related to the discussion at hand. It was an independent statement that I felt like mentioning that I found odd. It seems to me that SCOTUS read a limitation that wasn't expressed by Congress in Benson and Flook, although if you have different explanation for this, it might be interesting.

38. Blind Dogma **December 12th, 2010 7:59 pm**

Bobby,

None of your comments actually address anything that I have said.

Your restatement of "faster progress" simply ignores the reality of the law. It is not for you to decide what the "ultimate" goal is. Congress has already decided – and that is the basis for the law. Your choice of applying ignorance to the other factors I listed is pure evidence that you refuse to abide by anything but your agenda. This also means that your statement in point 2 immediately above is also (plainly) incorrect.

By the way, your now claiming of an "*almost completely self-evident* economic statement also fails the sniff test. As Gene has pointed out numerous times – (and without dipping into the correlation-causation red herring), the objective economic evidence is convincingly in favor of strong patent systems. You have no basis for this new supposition of yours. Your mere restatement (again) of "*Congress is fully capable of passing patent legislation that would require compulsory licensing of patent*" misses the point that Congress would **not** do so – based on the history of law and the understanding of the Quid Pro Quo and the understanding of just what the patent right means. Once again, you are dealing with pure conjecture and think to yourself that because (quite literally) *anything* ***could*** happen, that your discussion is somehow validated. WAKE UP and stop deluding yourself. Ground yourself in some semblance of legal reality. Tomorrow through some unknown quantum fluctuations the moon could be transformed into green cheese. That event stands an equal chance with your views. Especially if people are vigilant *against* the pursuit of policy in ignorance of law.

The changes you want are not a mere shaping (which the courts can undertake) – thus the Supreme Court is directly on point (no matter how you choose to ignore it), and thus *your* point in four is simply incorrect for the subject at hand. And once again, your refusal to acknowledge legal reality is indicated by your *not* acknowledging the correctness of my position.

What single better word than "ignorance" is there for the actions you have taken? If I were to permit two words, then those would be Purposeful Ignorance.

Please, by all means continue to prove my position by posting more of the same as your current posts.

39. Bobby **December 12th, 2010 8:32 pm**

@BD
"Your restatement of "faster progress" simply ignores the reality of the law. It is not for you to decide what the "ultimate" goal is"
The constitution is quite clear on that. If the patent system couldn't remotely be considered to be promoting progress, it would not be constitutional. The fact that what constitutes progress is incredibly vague doesn't change that.

"Your mere restatement (again) of "Congress is fully capable of passing patent legislation that would require compulsory licensing of patent" misses the point that Congress would not do so – based on the history of law and the understanding of the Quid Pro Quo and the understanding of just what the patent right means."
There is an important difference between would not and could not. If Congress can do this and I'm talking about Congress doing it, then it's not an issue of legal ignorance. It might be just wishful thinking that it will happen, but so is hoping for any other policy change.

"By the way, your now claiming of an "almost completely self-evident economic statement also fails the sniff test. As Gene has pointed out numerous times – (and without dipping into the correlation-causation red herring), the objective economic evidence is convincingly in favor of strong patent systems."
I've seen quite a bit of evidence that suggests otherwise, but I'm not talking about the patent system as a whole. I'm saying that useful ideas not being used or not being widely is not socially desirable. You can argue that the value to patent holders of being able to sit on the patent gives enough extra value to patent holders to justify those social costs, but arguing that those social costs don't exist is ridiculous.

"The changes you want are not a mere shaping (which the courts can undertake) – thus the Supreme Court is directly on point (no matter how you choose to ignore it), and thus your point in four is simply incorrect for the subject at hand"
Please learn to read. I'm basically saying that Congress would do 99% of it and SCOTUS *might* do 1% under certain circumstances. If you can't grasp that relatively simple concept, then ignore it and replace 'primary' with 'only.' My apologies for trying to care about fine technicalities.

40. Blind Dogma **December 12th, 2010 9:29 pm**

"*The constitution is quite clear on that….The fact that what constitutes progress is incredibly vague doesn't change that.*"

That's why you should pay attention to what the Legislature considered when it passed the laws. See my comment on Judge Rich. That is also why simpletons who wish to change the law on pure policy drivers (without regard to the law) and who self-proclaim single factors (such as "faster") should be roundly chastised. See any of my comments regarding your views.

"*It might be just wishful thinking that it will happen, but so is hoping for any other policy change.*"

To equate your wishful thinking engaged with purposeful blind ignorance to "any other policy change" is probably one of the dumbest things you have said – not an easy feat.

"*but arguing that those social costs don't exist is ridiculous.*

There is a far cry from arguing "any"social costs to the stands that you propose. In fact, you will notice that I *never* said there was no social cost (who is putting words in whose mouths now?). What I did say (and which you continue to ignore) is that without an understanding of the legal background to the Quid Pro Quo and to what the patent right actually is, the arguments you use based on pure wishful thinking are dangerous and ungrounded in law and in reality. Congress *has* considered the social costs. As well as a host of other factors you choose to ignore. If I have the choice of putting my bet on the considerations of Congress or on your blind ignorant policy, I am pretty sure even you could figure out where that bet would be placed.

"*My apologies for trying to care about fine technicalities.*"

Your apology would be considered much more sincere if you cared about the fine technicalities of legal reality – which I have tried to drum into your head. Let's start with the basics first. Wrap your head around the Quid Pro Quo and the Patent Right to begin with. To do that, you might have to let go of your errant philosophical agenda.

41. Bobby **December 12th, 2010 10:00 pm**

@BD
I said nothing about a single factor. I acknowledge that it's complex, which is part of why it's hard to get good scientific data on the overall effects of patents. However, if we can conclude that we can measure the effects of policy, and somehow quantify it, the better policy would be seen as advancing progress 'faster.' This is because technology in general tends to move from 'less advanced' to 'more advanced', so in a very broad sense it could be seen as getting to the same place in a different amount of time. If this concept is again too difficult for you to grasp, substitute faster with 'socially optimal value' in my previous posts.

Point 2 was that there are social costs to ideas that aren't being utilized. You replied to an undeniable economic argument with a claim that the current law doesn't really care. I am suggesting that the law could be changed to care. The likelihood of it changing is not a legal issue (the ability for it to be changed is, but you have not presented an actual legal challenge to it), and neither is what the best policy would be (it's an economic issue).

42. Ron Hilton **December 13th, 2010 12:00 am**

"The reasonable man adapts himself to the world; the unreasonable one persists in trying to adapt the world to himself. Therefore, all progress depends on the unreasonable man."
George Bernard Shaw

Which is not to say that unreasonableness guarantees progress; it's a necessary but not a sufficient condition. Change for its own sake seldom yields an improvement. But progress depends on change, and that applies not only to technology but to the law and society as well. So perhaps we can set aside the change vs. status quo discussion, and focus instead on what changes might be beneficial. I have proposed one, namely a better balance between patent law and antitrust law. Are there any other proposals?

43. Blind Dogma **December 13th, 2010 12:23 am**

Bobby,

"*If this concept is again too difficult for you to grasp,*"

Obviously, I am not the one who shows a **repeated inability** to grasp legal concepts (I am beginning to doubt that you are *purposely* doing so and I am beginning to think that you may not be *capable* of doing so). Your attempts at portraying me as somehow the clueless one are as laughable as your establishment of legal principles. Do you stop and consider how foolish you appear before you post, or do you just not care?

You are reduced to handwaiving and mumbles. ("*but you have not presented an actual legal challenge to it*" – do you realize how seriously inane that sounds? Would you even recognize a *legal* challenge? Do you simply not understand legal theory?). If you wish to articulate something plausible and worth discussing, stop ignoring the truths I present to you. Accept them and deal with them. At least *try* to fit your dogma into the real world.

44. Ron Hilton **December 13th, 2010 12:43 am**

Sounds reasonable


45. Jaimin Shah **December 13th, 2010 11:53 pm**

Gene,

You wrote:

"In some of the cases I have seen where patent trolls are going after smaller companies it is extremely clear that the defendants are not infringing and that absolutely no due diligence has been done by the patent troll. The burden is essentially placed on the troll target — the defendant to prove they are not infringing. Using the system for such a perversion is really unacceptable."

There is no way for a patent holder to confirm without fact discovery whether the claims could be asserted. This is perhaps one of the weaknesses of the United States litigation system. The Federal Rules of Civil Procedure should allow to the patent holder sufficient due diligence prior to the filing of a lawsuit. Right now, their only choice is to sue based on very limited knowledge or idea about what a particular company is doing.

46. **patent litigation December 14th, 2010 3:01 pm**

So much for the claims of any business entity that it is buying up patents for "defensive purposes only." Assuming that IV prevails (as I'm assuming it will), look for more patent clearinghouses (supposedly established to "protect" their clients from the dreaded patent trolls) to start using patent litigation to assertively attempt to monetize their newly-acquired IP assets.
http://www.ipdigit.eu/?p=552

47. Bobby **December 15th, 2010 4:52 pm**

@BD
The legal problems you've presented with my arguments here were with things I didn't claim, namely that the law as it is isn't the same as law that would be different and this is not an area where courts can change things. The only legal problem that could be presented with a change to patents not actively used is the constitutionality of said law, and even the most extreme change there (statutorily capped compulsory licensing) already exists within certain parts of copyright, which would suggest that it could be applied to patents as well. Whether or not such changes would be a good idea is an economic problem, and whether or not such changes are likely to occur is a political problem.

I attempt to explain things in a clear way, but you seem intent on not understanding what I'm actually saying and just hearing what you wish I said.

Also, going over Judge Rich's 'principles of patentability' again lead me to notice a few choice statements relevant to previous debates:

"To that end it is left to Congress to make, OR NOT TO MAKE, the laws in implementation of the authority granted"
This a pretty clear statement from someone you often cite as an authority that Congress does not have to make patent laws.

"One was to grant copyright to authors. The other was to grant patents to inventors.. Both involve rights to exclude and were recognized forms of lawful MONOPOLIES."
Judge Rich agrees that patents are monopolies, and uses 'monopoly' several other times in the article.

48. Blind Dogma **December 16th, 2010 12:23 am**

"*The only legal problem that could be presented with a change to patents not actively used is the constitutionality of said law,*"

Your muddling is so unclear that I cannot even hazard a guess as to what you are trying to say. Suffice it to say, it will not be anything on point or related to what I have been trying to teach you.

"*certain parts of copyright, which would suggest that it could be applied to patents as well*"

That's funny – Is the copyright "right" the same as the patent "right"? Oh wait, I have already asked you to understand the basics before you speak, and once again you insist on speaking in your ignorance and simply looking foolish – yet again. Do you stop and consider how foolish you appear before you post, or do you just not care?

"*you seem intent on not understanding what I'm actually saying*"

That not necessarily intentional Bobby – it is because you don't understand what you are actually saying. Again – you need to understand the basics first. And to understand the basics, you will need to let go of your dogma. Filtering anything you read through that mask of dogma only guarantees that you will post more of the same – groundless tripe.

Open your eyes and stop embarrassing yourself. If you wish to articulate something plausible and worth discussing, stop ignoring the truths I present to you. Accept them and deal with them. At least *try* to fit your dogma into the real world. And that means understanding that real world first – You have some serious work to do for yourself.

49. Bobby **December 16th, 2010 1:46 am**

"Your muddling is so unclear that I cannot even hazard a guess as to what you are trying to say. Suffice it to say, it will not be anything on point or related to what I have been trying to teach you."
I am talking about passing a law. The only reason Congress could not pass a law is because said law is unconstitutional. If said law is not unconstitutional, then Congress can pass that law.

"That's funny – Is the copyright "right" the same as the patent "right"?"
They are not identical, but both draw exclusion from the same clause. This is good evidence that a patent law that mimics this aspect of copyright law would be constitutional. You have provided zero evidence that it wouldn't be constitutional.

50. Blind Dogma **December 16th, 2010 7:37 am**

Bobby,

Before you get all excited about a "Constitutional" angle, you would be well advised (and repeatedly so) to understand the topic you are speaking about.

You have provided zero evidence of any such understanding. Rather…

See my earlier comments about being groundless.

51. Bobby **December 16th, 2010 7:55 am**

Any problems with such a proposed change enacted through legislation would be economic or political, not legal.

52. Blind Dogma **December 16th, 2010 11:28 am**

Any problems (being discussed) should be ground in actual understanding of the law – no matter if the effects are economic, political or legal. Otherwise, the pure conjecture is meaningless.

Understand the forum, Bobby, or as my good friend "Breadcrumbs" would say, know which dance floor you are on.

53. Ron Hilton **December 16th, 2010 12:10 pm**

After sifting out all of the gratuitous personal invective, I gather that BD opposes compulsory patent licensing. He also seems to believe that Congress has no legal power to implement it, but provides no evidence for that assertion. Unless and until BD has any further substantive points to make, I will continue to tune out his ad hominem rants and focus on the issues. Having said all that, and with the utmost respect for Bobby's opinion, I happen to share BD's opinion that compulsory licensing is probably not the way to go, whether or not it is constitutional or otherwise legally viable. I just think there are too many variables for a one-size-fits-all law. I would continue to suggest that it may be necessary to venture outside the domain of IP law (e.g. into competition law) to find a comprehensive legal solution, although there seems to be scant interest for that on this particular forum.

54. Blind Dogma **December 16th, 2010 1:00 pm**

"*He also seems to believe that Congress has no legal power to implement it, but provides no evidence for that assertion.*"

Ron, that would be a mistake. I have never said that Congress lacks the power to make law. Please read more carefully.

As for tuning out "my ad hominem rants", I would be fine with that if you also tune out "rants" based on pure speculation without a shred of grounding in law (which you appear to have utmost respect for).

Do we have a deal?

55. Bobby **December 16th, 2010 9:23 pm**

@Ron
I'm not necessarily saying that compulsory licensing is the way to go, or that if it used, that it should be used across the board. Different fields can be very different, and the ideal way to approach them is very different.

Pharmaceuticals, for example, are a very different game to an extent that trying to find a single policy that fits them and everything else could very well be a bad move. The investment or money and time required to get a pharmaceutical to the market is quite different, and independent discovery is rare and easy to notice. Of course, even within pharmaceuticals, the socially optimal logistics can be quite different for treatment of

contagious infectious diseases and say, congenital conditions, so further rules depending on classification may be a better policy.

I couldn't agree more that one-size-fits-all is often not the best idea, and what I was ultimately saying was that patent policies should be based on what works for society, even if it that means reigning in certain parts of a patent.

@BD
A different law does not need to be grounded in the current law in any way. You seem to be saying something like there being a problem with a law to change to a 10 year patent because we have 20 year patents. What the law optimally should be is based on what is best for society. If part of the patent system is broken or suboptimal, it ideally should be changed to address that problem.

56. Ron Hilton **December 17th, 2010 12:13 am**

Most of the time, the patent system works well in promoting innovation, and the free market works well in promoting economic prosperity. That's why I believe it's best to handle the exceptions on a case-by-case basis in the courts. A legislative approach runs the risk of either being overly simplistic (one-size-fits-all) or else growing to rival the tax code in complexity by trying to enumerate all possible exceptions (infectious diseases vs. congenital conditions vs. ??, … ad infinitum). That is why I would be more in of favor streamlining and improving the litigation process around IP law vs. competition law to handle the rare but damaging exceptional cases. Only if a particular type of problem arises repeatedly should the remedy be codified into law.

57. Bobby **December 17th, 2010 12:51 am**

Changes to patent litigation, competition law, and changes to the patent system altogether need not be exclusive. I can see problems with trying to be too specific in what is addressed, but I would say at the very least that pharmaceuticals are so different that addressing them properly within the same patent system as everything else without wrecking something is going to be nearly impossible. Milton Friedman, for example, is generally not a big fan of patents or other interferences with market forces, but sees enforcement of them in the US as okay because of how the FDA greatly raises the costs of getting a drug to the market.

In addition to these things, I would love to see some good independent studies conducted in order to determine what changes to our patent and copyright law would give us the best benefits. These are practical institutions, and we can at least to some extent scientifically determine what kinds of policies would work best.

58. Jaime **February 27th, 2011 12:18 am**

I guess the bottom line here is that someone has chosen to sell their patents and these people being good business people have purchased them. Patent Trolls or not, it is their right as it is my right to buy stock in Toyota, Ford, HP, MicroSoft, etc.

What else would you expect to be done by the purchasing of the patents. Let's review this now for those slow of thinking. YOu have a good idea. You don't want to do anything with it or can't.. I see potential in that idea. I offer you money for your idea. You take my money. I own your patent. Why on earth would I have purchased this

patent if not to make money from it, whether it is manufacturing, development of product or simply suing people after they've used it illegally.

This is why it is called IP and this is why it must be protected or sold or forgotten. If forgotten, don't forget forever as time runs out.

59. Ron Hilton **February 27th, 2011 11:35 am**

Jaime,

Of course you are correct. But suppose a very wealthy group or individual did a hostile takeover of Ford, with the sole purpose of shutting it down. For whatever reason. Maybe they think they are doing their part to reduce global warming by putting automobile companies out of business. Do they have that right? Or to put it in an IP context, suppose a garage inventor developed some new automotive technology, filed for a patent, and tried to license it to the major auto makers. They refuse or ignore the licensing request, since they were already in the process of implementing similar technology and know that the individual inventor lacks the resources to litigate. The hapless inventor eventually sells his patent to the wealthy environmental group. The group now sues all of the auto makers for infringement of the techology which by now is an integral part of all modern automobiles. Should they be allowed to shut down the entire automobile industry? Maybe, but I'm pretty sure that's not the effect the writers of the Constitution had in mind as "promoting progress in the useful arts." So I think there needs to be a way to handle extreme cases when the system breaks down. The only answer I have come up so far would be something based on antitrust theory, since it could be argued that the free market as a whole is being illegally manipulated by such an action.

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