

Patent 'Troll' Tactics Spread

By ASHBY JONES

Technology companies used to condemn what critics call "patent trolls," ventures that profit from innovations they themselves often had no hand in creating. Now, some of those companies are taking pages from the trolls' playbooks.

To bring in extra cash, some big names in the tech industry are spinning off their patents into separate entities, with the aim of pressuring other companies to license the technology and suing when they can't reach deals. Others are selling their patents to so-called nonpracticing entities, a less derisive term for trolls. Broadly speaking, NPEs buy up troves of patents not to develop products with them, but to make money through licensing and litigation.



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Drew Kelly for The Wall Street Journal

RPX Corp, CEO John Amster said his company chose to "focus on buying patents purely for the sake of defending operating businesses."

"The strategy has exploded in the past five years, alongside the rise of the large NPEs," said Robin Feldman, a law professor and a patent-law expert at the University of California, Hastings. "There's definitely some irony to it."

Many companies are loath to talk publicly about their licensing strategies. And because they aren't required to disclose their patent holdings, calculating the potential value of a company's patent strategy can be difficult.

But according to Ms. Feldman, the success of some of the larger NPEs, including Intellectual Ventures Management LLC and Acacia Research Corp., has shown tech companies there is big money at stake. Revenue at Acacia, based in Orange County, Calif., totaled nearly \$100 million in the first quarter of 2012 alone.

Some large technology companies, including [International Business Machines Corp.](#), [IBM](#), -1.44% have made efforts to "monetize" their patent portfolios for at least the past decade, mostly through licensing.

But only recently have companies turned to more elaborate methods, such as sales and spinoffs, with the goal of turning patents into dollars.

Last year, five companies—[Apple Inc.](#), [AAPL](#), +0.84%[Microsoft Corp.](#), [MSFT](#), -1.21%[Research In Motion Ltd.](#),

[RIMM](#)_-3.21%[Ericsson](#) Inc., [ERIC](#)_-0.11% and [Sony](#) Corp. [SNE](#)_-1.93%—spent a combined \$4.5 billion to buy up more than 6,000 patents from the bankruptcy estate of Nortel Networks Corp. Rather than divvy up all the patents, the companies tucked about 4,000 of them into a venture called Rockstar Consortium. The venture, according to its chief executive, John Veschi, is in the early stages of licensing talks with several companies.

"It used to be that patents were viewed as trophies given to smart people with clever inventions," said Mr. Veschi. "But that is no longer the case. Your strategy might be to sell, it might be to license. But just to sit on them is not responsible if you have shareholders."

Spokeswomen for Apple, Microsoft and Sony declined to comment. RIM and Ericsson didn't respond to requests for comment.

In 2009, [Micron Technology](#) Inc. [MU](#)_-2.83% sold some 4,200 patents to Round Rock Research LLC, a venture founded by John Desmarais, a well-regarded patent lawyer. Using the Micron portfolio, Round Rock has since reached licensing deals with several companies, and has filed a handful of lawsuits.

Micron didn't respond to a request for comment. Mr. Desmarais declined to comment.

In 2010, digital watermarking company [Digimarc](#) Corp., [DMRC](#)_+0.86% sold the right to market and license much of its patent portfolio to Intellectual Ventures. In exchange, Intellectual Ventures agreed to pay the company \$36 million, plus 20% of the profits it made on Digimarc's patent portfolio.

Bruce Davis, Digimarc's chief executive, said it is too soon to know just how lucrative the deal will be, but that he has been "very pleased" with it so far.

In April, Intellectual Ventures agreed to buy an undisclosed number of patents from chip maker [Cypress Semiconductor](#) Corp. [CY](#)_-1.53% Terms of the deal weren't disclosed.

A spokesman for Cypress declined to comment. A spokeswoman for Intellectual Ventures declined to comment on the Digimarc and Cypress deals.

Not all the recent patent deals have offense in mind. Last month, chip supplier [Qualcomm](#) Inc. [QCOM](#)_-0.60% said it planned to create a separate unit, called Qualcomm Technologies Inc., largely to protect its patent-licensing business from lawsuits.

Meanwhile, the NPE industry itself is maturing. Ten years ago, according to legal experts, the industry consisted of only one significant player: Intellectual Ventures, a Bellevue, Wash., company co-founded by former Microsoft chief technology officer Nathan Myhrvold.

Today, other ventures, with slightly different business models, have pieces of the market. Within the industry, Acacia is considered among the most aggressive, often filing lawsuits after licensing talks break down. "Before this industry emerged, too many inventors and small patent holders were getting their rights steamrolled by big companies," said [Paul Ryan](#), Acacia's chief executive. "We're just leveling the playing field."

San Francisco-based [RPX](#) Corp. [RPXC](#)_+0.07% takes a novel approach. RPX, founded by a former Intellectual Ventures executive, markets itself as a "defensive" aggregator that helps companies protect themselves from patent lawsuits.

For an annual fee, RPX "subscribers," which include many large tech companies, can buy a blanket license to RPX's portfolio, thereby eliminating the risk and cost of getting sued.

"We're not like other aggregators," said John Amster, the company's chief executive and co-founder. "We've chosen to focus on buying patents purely for the sake of defending operating businesses."

The growth of the NPE industry, and the moves by companies to be more aggressive with their portfolios, has changed the debate over whether the NPEs hurt or help innovation.

Five years ago, the sides were relatively clear, with the NPEs on one and corporate American on the other, according to Michael Carrier, a professor and patent-law expert at Rutgers University School of Law in Camden, N.J. "These days, there isn't such a clear divide," said Mr. Carrier. "It's not just the big NPEs playing offense anymore."