

2. PATENTLY ABSURD?

Acacia Research Group, Inc., a publicly held corporation (Nasdaq: ACTG), represents small companies and independent inventors who don't have the resources necessary to enforce their own patents. In the United States, a patent for an invention is a sort of monopoly, a limited property right granted by the federal government; like any other property right, its holder may sell it, license it, or even give it away. Acacia's website contains a long string of testimonials from happy patent-holding inventors who have benefitted from Acacia's efforts on their behalf to collect licensing fees, which Acacia shares 50/50 with the patent holders. This service, the company claims, encourages creativity and research by protecting and rewarding inventors exactly as the patent system was designed to do.

A few decades ago, the largest patent holding companies were also manufacturers who stockpiled hundreds or thousands of patents to protect themselves against competing firms in the same industry. Acacia Research does not produce anything or do any research—at least not the sort of research that leads to inventions—nor does it own all the patents it licenses. It merely bundles the patents into portfolios of closely related items. A patent license grants permission to use a patented process or product, and, rather than separately licensing a number of related patents, Acacia licenses entire portfolios for a single fee. Acacia claims to manage 250 portfolios, covering such areas as database access, online ad tracking, catheter insertions, and gemstone grading. It exists solely to manage the collection of fees from licensees (large companies with deep pockets that use its clients' patented technologies). Acacia's website lists numerous licensees, including Exxon, Dell, General Electric, Microsoft, Intel, and Sony.

Other patent-holding companies purchase patent portfolios for themselves (instead of just managing them), and aggressively pursue licensing agreements. On its website, Intellectual Ventures, Inc. (IV), a privately held corporation, claims to hold 70,000 patents, from which 40,000 are generating revenue. Critics accuse IV of identifying and aggressively going after small startup companies that unwittingly use patented technologies in their products without proper licensing and do not have the money to engage in a lengthy court battle over licensing fees. This practice is controversial and is pejoratively referred to as "patent trolling". Some call patent trolling a mafia-style shakedown.

Patent law has a long history of difficult interpretation, due to the complexity of reading, understanding, and applying patent claims, that is, the part of the patent that sets forth the scope of the monopoly granted to the patent holder. Patents may be granted either for a product or for a process, but modern technologies are so interconnected that separating out one process from another is not precise. Thus, patent disputes often must be resolved in court, and federal judges have nearly as much trouble making sense of patents as do laypersons. Because of this complexity in patent law, a patent troll needn't have a legitimate claim in order to be able frighten a small businessperson into just paying a licensing fee to be done with the matter. The murkiness of patents, combined with the fact that almost anything one does impinges on some patented process or other, creates opportunities for unscrupulous companies to buy up cheap patents and use the threat of litigation to scam small companies into paying licensing fees.

The state of Vermont has taken on what it perceives to be one of the more unscrupulous patent trolls by charging MPHJ Technology Investments, LLC, with violating the state's consumer

protection laws. The company allegedly threatened to sue small businesses that used any of several makes of email-capable scanners unless they paid a licensing fee of \$1,000 per employee for the right to use such technology. MPHJ claimed to own patents for certain processes involved in sending emails from any sort of scanning device, such as a home printer-scanner. Regardless of the merits of Vermont's case, MPHJ's approach of going after end users is highly unusual. Normally, the patent holder of a process would seek compensation from the maker of the machinery that uses that process. Thus any licensing fees would be built into the purchase price of the machine. MPHJ, instead of demanding large fees from scanner companies with legal departments, demands smaller fees from small businesses without legal departments. The Vermont case, therefore, while attacking illegal practices, does not get at the questionable aspects at the heart of the legal practice of patent trolling: it only addresses what Vermont alleges to be the deceptive claims MPHJ made in its threatening letters. Even if Vermont wins the case, the outcome won't affect companies that legally sell licenses to products they did not invent.

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Case from the 2014 Intercollegiate Ethics Bowl, Association for Practical and Professional Ethics
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