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Cisco Calls Patent Trolls Racketeers

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By ASHBY JONES Nov. 11, 2012 8:39 p.m. ET

Cisco Systems Inc. has unveiled a new strategy for dealing with so-called patent trolls: accuse them of breaking the law.

The networking-equipment maker has captured the attention of patent experts and lawyers across the country by filing strongly worded legal claims against two companies that buy up patents and seek to make money from them through licensing and litigation.



Enlarge Image 'When someone runs a racket, we're going to make them liable for racketeering,' says Cisco's Mark Chandler. Brian L. Frank for The Wall Street Journal

Cisco's attempt to turn the tables on those companies, more formally known as "non-practicing entities," comes as Congress and the federal courts have largely failed to stem a wave of patent lawsuits that has roiled the technology industry.

Cisco's suit against Chicago-based Innovatio IP Ventures LLC targets a tactic that some NPEs have employed in recent years. Rather than allege that a big technology company has infringed one or more of their patents, Innovatio and other NPEs have gone after the tech company's customers.

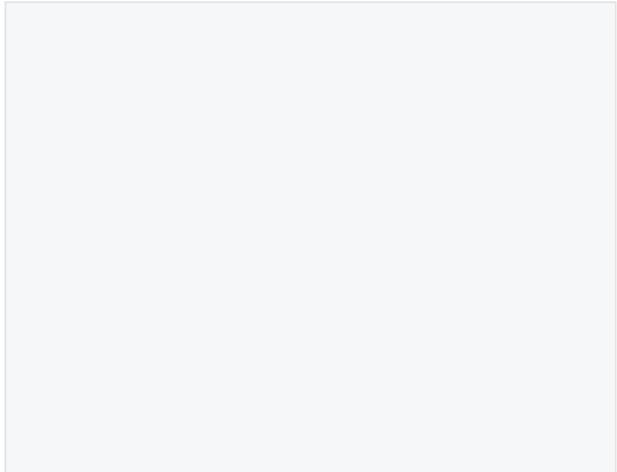
Cisco, which is based in San Jose, Calif., and co-plaintiffs Netgear Inc. and

Motorola Solutions Inc., claim that Innovatio has sent 8,000 "threatening" letters to coffee chains, hotels and other retailers using Wi-Fi equipment that includes the three companies' technologies.

Innovatio's tactics, Cisco argues in its lawsuit, are "misleading, fraudulent and unlawful." It says they effectively amount to an extortion scheme, and therefore violate federal antiracketeering laws.

Separately, Cisco claims that Ottawa-based Mosaid Technologies Inc. violated the same laws by allegedly paying witnesses for testimony and documents in order "to overcome fatal shortcomings" in patent-infringement claims it filed against Cisco in 2011 at the U.S. International Trade Commission.

"When someone runs a racket, we're going to make them liable for racketeering," said



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[Mark Chandler](#), Cisco's general counsel.

Innovatio said it "categorically" denies Cisco's allegations. "Cisco's claims are long on rhetoric and hyperbole and short on the facts and law," said Matthew McAndrews, a lawyer for Innovatio, in a statement. Mr. McAndrews said Innovatio this week will ask James F. Holderman, the federal judge overseeing the case, to dismiss the claims.

Mosaid said in a statement that Cisco's claims were "ridiculous," and accused Cisco of digging up allegations from a case the parties resolved earlier this year in order to raise new claims.

"Cisco is trying to use the racketeering label to create litigation and settlement leverage when its underlying case has no merit. This tactic...will not succeed," Mosaid said.

Patent experts and lawyers are watching the two cases closely. Rather than lodging their own claims, the strategy Cisco and other companies have typically used against NPEs has been to defend themselves when named as defendants or to pre-emptively ask a judge to declare either that a particular patent is invalid or that no infringement took place.

"A win by Cisco isn't necessarily going to stop the NPE industry in its tracks," said Ann Fort, a defense lawyer in Atlanta who isn't involved in the cases. "But it could halt some of the tactics used by NPEs, like going after companies' customers."

Their defenders say NPEs, which buy up troves of patents not to develop products with them, but to pursue licensing and litigation revenue, spur innovation by allowing inventors—ranging from university research labs that aren't interested in developing products to basement tinkerers—to get paid for their creations. They say the firms also help ensure that well-heeled tech companies don't profit unfairly from the work of others.

Either way, such firms are increasingly active in the courts. The proportion of patent lawsuits filed by NPEs has grown to 40% in 2011 from 22% in 2007, according to Lex Machina, an intellectual-property litigation, data and analytics company.

Some of the more recent suits target technology companies' customers. Patent experts say that approach is aimed at extracting dozens or hundreds of smaller settlements from companies that may lack the legal firepower to fight back.

"If Innovatio sues Cisco, Cisco knows how to handle its defense," said Colleen Chien, a law professor at Santa Clara University and a patent-law expert. "But if you're a coffee shop or hotel and aren't in the business of making Wi-Fi equipment, you're more likely going to settle" to avoid a lawsuit "than you are to fight a big, costly legal battle."

Innovatio argues that its tactics are completely legal: federal law lets a patent holder bring infringement claims against anyone who makes, sells, or uses a patent without permission.

Mr. McAndrews, Innovatio's lawyer, said the company simply "seeks to grant licenses...to those entities that derive the most immediate...benefit from infringing" Innovatio's patents. Those businesses, said Mr. McAndrews, are the hotels, restaurants and retailers that "configure and use" the particular Wi-Fi equipment made and sold by Cisco, Motorola and Netgear. Most of Innovatio's patents were purchased from or once owned by chip maker [Broadcom Corp.](#)

Cisco, on the other hand, claims that many of Innovatio's demands to the end users of Cisco's products have been fraudulent for a variety of reasons. In some instances, Cisco argues, the patents Innovatio was asserting had already expired. In others, says Cisco, the products already were covered by the licenses that Innovatio was looking to sell.

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"They're well aware that these people don't owe them any money," said Cisco's Mr. Chandler, who said he heard from 400 customers that had gotten notices from Innovatio. "This is nothing other than a shakedown."

Innovatio denies making fraudulent licensing requests or filing sham lawsuits.

To win in court, Cisco must prove not only that Innovatio's claims were bogus, but that Innovatio knew they were bogus, said Daniel Ravicher, a law professor at Cardozo School of Law in New York. "That's hard to do," he said. "I really don't think this is a tactic that's going to get very far."

But others have higher hopes for Cisco's approach. "Sometimes, lawsuits are about how much damage you can threaten in order to change behavior," said Robin Feldman, a law professor at the University of California's Hastings College of the Law and author of a recent book on patents. "At the very least, Cisco might get that. Or it could get a sympathetic judge or jury that takes Cisco's case and runs with it."

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Mike Goldberg

What a pleasure it will be to hear the Chief NPE Troll say to his wife (or girlfriend, or boyfriend) and children "I'm being sued for racketeering, just like a common criminal, and I will probably lose all my money and go to jail. But I know you will stay with me...."

Nov 12, 2012



John Estes

This issue is the patent office. If most patents were defensible, then the patent trolls would be dealing in legitimate properties and not the IP version of swampland.

Nov 12, 2012

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