



Photos by Bob Thompson

Panelists with moderator Reo Carr, executive editor of the San Diego Business Journal

# Will the Battle to Stop Patent Trolls Harm Legitimate Businesses?

By EMMET PIERCE

A roundtable meeting to discuss the economic dangers posed by “patent trolls” was held recently by a group of San Diego County business executives and lawyers.

Patent trolls are companies that are formed solely to file lawsuits alleging patent infringement and collect licensing fees. These companies may acquire patents without the desire to actually develop products. They accounted for more than 2,000 U.S. patent infringement lawsuits in 2012, according to a report by *The New York Times*.

Signed into law in 2011, the federal Leahy-Smith American Invents Act made it illegal to file a single lawsuit alleging that numerous entities have infringed on a single patent. The idea was to discourage predatory lawsuits by preventing patent trolls from naming multiple, unrelated defendants in the same suit.

Some people who attended the *San Diego Business Journal’s* roundtable expressed concern that legislation aimed at further limiting patent trolls could end up harming legitimate businesses.

**Laurie Self**, vice president and counsel

for government affairs at **Qualcomm Inc.**, said there hasn’t been enough thoughtful consideration about what the unintended consequences of such legislation may be.

“We are trying to slow things down,” she said. “Let’s get it right.”

She added that most patent holders “are good actors who are trying to do the right thing.”

The U.S. Senate Judiciary Committee recently shelved a bill that would have made it harder for patent holders to file frivolous suits. The bill sought to require the losers of such lawsuits to pay the

court costs for both sides in disputes. Opponents had argued that the provision would have discouraged small inventors from defending patents against large, well-funded companies.

**John Scherling**, a lawyer for **Sughrue Mion PLLC** said having to pay the legal fees of both sides in a dispute over patent infringement could have a chilling effect on small businesses.

**James Butler**, vice president of legal affairs and intellectual property for **Sapphire Energy Inc.**, said new

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From left, panelists John Scherling, Sughrue Mion; Jim Butler, Sapphire Energy Inc.; Brian Frawley, LeapFrog Industries; and Han Chen, Kapyon Ventues LLC



Panelist Jonathan Muenkel, intellectual property lawyer



Panelist Antony Novom, Sughrue Mion PLLC

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federal regulations have made things more difficult for patent holders. **James DeZazzo**, corporate IP counsel for **Dart NeuroScience LLC**, said the current meaning of U.S. law regarding patents is poorly understood.

**Jonathan Muenkel**, an intellectual property lawyer, said federal laws can have unintended consequences.

Self said she expects a reintroduction of the shelved Senate patent bill in 2015.

Some roundtable participants said the America Invents Act had not been given enough time to prove that it works without adding more regulations.

**Joseph Schuman**, a senior manager for public affairs for Qualcomm, said a recent report from the Government Accountability Office said the act had made a positive difference.

**Han Chen**, managing director of **Kapyon Ventures LLC**, said the pace of innovation is moving faster than the U.S. patent system can react.

Butler said part of the problem is that the U.S. Patent and Trademark Office, the agency responsible for granting U.S. patents and registering trademarks, is poorly funded.

Today, many patent officials are pressured to approve or deny patents before they have a chance to study them properly, he said.

Most problems could be solved just by making the patent office better, Butler said.

Muenkel said the high cost of patent litigation gives large companies with big budgets an unfair advantage over small companies, when disputes go to court. Chen agreed.



From left, panelists Jonathan Muenkel, intellectual property lawyer; James DeZazzo, Dart NeuroScience LLC; Laurie Self and Joseph Schuman, both with Qualcomm Inc.

He said large firms sometimes act as patent trolls.

Self said Congress long has supported patent rights and resisted efforts to weaken them. Schuman pointed out that there has been controversy over the way patent laws are enforced for many years.

Having a reliable patent system historically has been a great economic benefit to the U.S., he added. Inventors come to

the U.S. in order to take out patents and protect their ideas, he stressed.

Roundtable moderator **Reo Carr**, executive editor at the San Diego Business Journal, asked what the patent law controversy means to the average person.

**Brian Frawley**, founder and COO of **LeapFrog Industries Inc.** in San Marcos, said the high cost of patent litigation makes it difficult for small companies,

such as his, to pursue patent protection. "Can I afford to play that game?" he asked.

Muenkel said it's worthwhile even for small businesses to invest in protecting their innovations by acquiring patents.

Self said it's important that people not lose faith in the patent system. If they do, she added, it could embolden some companies to infringe on existing patents.

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