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PERSPECTIVE

Many nonpracticing entities get a bad rap with ‘troll’ label

By Kari Barnes

“Nonpracticing entity,” or NPE — to anyone in technology, these words instill images of monsters lurking in the darkness waiting to extract their toll on the innocent and unsuspecting inventive entity. Recent media attention certainly does not help the image. But are these entities as bad as they are made out to be?

What if you are a small inventor that has come up with a ground breaking technology? You attempt to sell your technology in the market place to one or more large companies in the space. There is no interest. You want to see your invention distributed and used in the marketplace, but companies want to see an established customer base, distribution chain, established product manufacturing — anything more than what you have to offer.

Then your situation turns from difficult to impossible: You are faced with a large company competitor. Either the competitor stole the idea from one of your attempts at selling the invention, or they independently invented the technology. The large company competitor can beat you in the marketplace because the distribution channels are already established, the manufacturing facilities are ready, and the money to support manufacturing, sales and distribution is available for

faster adoption to obtain a higher market share.

You, the lonely inventor, have been left behind.

To one of these small companies, NPEs provide a market place for an IP portfolio that may otherwise not be easily monetized. NPEs can provide a buyer for a patent portfolio that may otherwise not be easy to find. The small company receives needed funds to launch their technology. Since NPEs are nonpracticing, the small company need not be concerned they will become competitors.

NPEs also provide a solution to one of the biggest conundrums of a small entity having a patent portfolio: Even if a competitor is in fact infringing the company’s IP portfolio, how does the company, with limited funds, defend itself? It is unlikely the small company has the ability, in time, money or experience to properly defend their market space. An NPE gives the small business the means to protect that space. Once the small business identifies one or more infringers, the interest by NPEs in their portfolio substantially increases. The small company can sell and license back their portfolio, thus realizing a portion of the value from the infringing activities. The NPE then takes on the litigation time, costs and uncertainty. Competitors get sued, and the small company gets a monetary gain. The NPE does

what the small company cannot do for itself.

Now back to you as the small inventor. When your attempts at selling your invention go unheeded by the likely adopters, you turn to an NPE. You get the funds you need to develop and commercialize your technology. With a license back, you have the ability to create a market and establish your market share. Essentially, you are able to get the product to the point of interest of one of the likely adopters. You also have options available to you. If you stay in the market, even if a competitor enters, you have a pit bull keeping the bullies out of the playground. The NPE can handle the legalities of asserting and enforcing your patent against others. This leaves you to focus on what is important to you anyway — getting your product on the market. The troll has come out of the shadows and became your guardian.

Inevitably, the discussion always turns to the frivolous suits in which patent trolls make frivolous claims against everyone just to extract the license fee because of the fear of extended and expensive litigation. Indeed, Wikipedia’s definition of “patent troll” is “a person or company that attempts to enforce patent rights against accused infringers far beyond the patent’s actual value or contribution to the prior art.” Unfortunately, all nonpracticing entities in the end

get lumped in as patent trolls, regardless of whether there is a legitimate infringement claim or not. Targeting the entire industry because of a few unscrupulous characters does not justify the current campaign against these entities. Sadly, every industry has those people that push the line and those that cross the line.

When the equation is reviewed in its entirety, an NPE equalizes some of the inequality against the small entity. When the small inventor or business behind an NPE is included, the entity is no longer a nonpracticing entity. Instead, the NPE is simply an outsourced extension or branch of a small business attempting to sell, commercialize or license their technology that they invented. NPEs permit small inventors to get part of the same benefits that the larger competitors have in effectively using their IP portfolio to defend themselves and generate a revenue stream.

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