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Microsoft's Big Brains Spill Over Into Patent Firm

By John Letzing

Big technology companies like Microsoft Corp. (MSFT) tend to have a difficult relationship with firms that traffic in intellectual property, often fearing costly litigation if their innovations resemble anything found in those firms' patent portfolios.

But some of the software giant's key employees - including co-founder and Chairman Bill Gates - have developed a close bond with a high-profile intellectual property firm founded by former Microsoft executive Nathan Myhrvold.

Gates, Microsoft chief research and strategy officer Craig Mundie, senior vice president of research Rick Rashid and technical fellow Gary Flake are listed as inventors on a number of patent applications filed by an affiliate of Myhrvold's Intellectual Ventures, public records show. Microsoft co-founder and current Vulcan Inc. Chairman Paul Allen has also pitched in on Intellectual Ventures patent applications, according to records.

The participation of Microsoft's big thinkers in Intellectual Ventures' relentless patenting highlights the ability of large technology companies to function as intellectual property machines - with about as much interest in immediately selling products based on employee inventions as the so-called "patent trolls" that are often considered an enemy of the industry.

Microsoft spokesman Michael Marinello stressed that the employees brainstorming with Myhrvold's firm did so as "individuals." However, Intellectual Ventures spokeswoman Shelby Barnes described the firm's work with Microsoft staff as part of a broader push to collaborate more with outside inventors, including those employed in a variety of industries. The goal is to gather insights and "share best practices on inventing," Barnes said.

"IV is very interested in working with more companies who want to invest in the invention process," Barnes said, adding that while Microsoft has invested in Intellectual Ventures, the ability to cooperate with the firm isn't exclusive to financial backers.

Intellectual Ventures declined to make Myhrvold available to comment for this story.

The Microsoft Connection

Intellectual Ventures, as a so-called "non-practicing entity" that doesn't yet make or sell anything based on its inventions, has drawn some criticism. That's because non-practicing entities are often blamed for the rise in patent litigation, though Intellectual Ventures is now conducting a study with a Stanford University professor to better examine the contentious issue.

Intellectual Ventures' connection to Microsoft is natural. It was founded by Myhrvold in 2000 after he left Microsoft, and is based a short drive from the company's Redmond, Wash., headquarters.

While the firm has drawn attention for the impressive pedigree of its staff of ambitious inventors, it has also stirred concern over its growing arsenal of legally protected ideas. Some fear that arsenal could have a chilling effect on firms that hope to develop their own, similar concepts but may fear legal threats.

"Obviously it's brilliant, but there are a lot of questions about its market effect," said Barbara Caulfield, managing partner of the Silicon Valley office of law firm Dewey & LeBoeuf LLP.

Intellectual Ventures has amassed more than 20,000 patents through invention, acquisition and partnering with universities. It states on its Web site that, "While litigation is possible in any business, it is not a goal of IV."

Gates, Mundie, Flake and others are listed as inventors on patent applications filed by Intellectual Ventures affiliate Searete LLC, covering concepts such as determining behavioral influences on Internet users by gauging their interaction with others.

Allen has also helped generate a number of ideas included in Intellectual Ventures patent applications, according to public filings. The Microsoft co-founder has contributed to concepts including methods of seamlessly transferring calls among different devices, according to the filings.

"Mr. Allen remains an active inventor, as those patent applications show," said David Postman, a spokesman for Allen's firm. "But we won't talk about any details of the work."

Inventing 'Off To The Side'

Allen has a few different day jobs, such as serving as chairman of Charter Communications Inc. (CHTR), and as the owner of the Portland Trail Blazers basketball team.

Mundie's day job, meanwhile, involves responsibility for directing Microsoft's "technical strategy and long-term investments," according to the company's Web site. Flake's responsibilities include "bridging Microsoft Research and MSN," or Microsoft's online businesses, according to the site.

Hiring such impressive thinkers may inevitably mean that companies like Microsoft see employees' intellectual output patented by outside firms, especially as patents are increasingly coveted as an asset class.

"With the amount of research these companies do, their ability to come up with inventions that don't directly relate to their business is tremendous," said Ethan Horwitz, an attorney with King & Spalding LLP. If the inventing is "off to the side," Horwitz said, companies can hand over some costs of maintaining patents, and avoid the tedious process of having to enforce them legally.

"In some ways, it's a better way to go if they're not core inventions," Horwitz said.

Other prominent figures who have developed patents outside of their immediate employer include Vinton Cerf, the respected technologist who serves as Google Inc.'s (GOOG) chief Internet evangelist. Cerf contributed to computer networking concepts submitted for patenting by his former employer, the Corporation for National Research Initiatives, after he was hired by Google in 2005, records show.

And Danny Hillis, an esteemed inventor who serves as co-chairman of Applied Minds Inc., a firm that has designed products for companies including Northrop Grumman Corp. (NOC), has contributed to patent applications filed by Intellectual Ventures affiliate Searete, according to public records.

Partner Or Rival?

Intellectual Ventures intends to use its patents to foster spin-off companies, pull in licensing revenue and do "joint ventures with other companies," according to its Web site.

But it remains to be seen whether the firm will be able to dramatically expand its connections to inventors at outside companies in the future.

A spokesman for International Business Machines Corp. (IBM) declined to comment on the company's relationship with Intellectual Ventures. IBM regularly tops rivals in terms of winning patents, and pulls in hundreds of millions of dollars in revenue annually by licensing its intellectual property. The company's employees aren't generally allowed to produce patented inventions for outside firms, unless they fall well outside the scope of IBM's business.

IBM does partake, however, in the growing trend of "pooling" patents. For example, the company, along with Cisco Systems Inc. (CSCO), works with RPX Corp., a firm launched last year by former Intellectual Ventures executives that collects fees for licenses to its patents, and pledges in turn to not assert them in court.

Other organizations that accumulate patents include Allied Security Trust, which buys up patents, grants its members licenses to the patents to insulate them from lawsuits, and then sells them.

Allied Security Trust Chief Executive Dan McCurdy stressed the differences between his organization and Intellectual Ventures, which stockpiles patents in hopes of wringing financial value from them. Like others, McCurdy wonders if Intellectual Ventures can thrive without asserting its patents against reluctant licensees in court.

"They fully intend to make money," McCurdy said, "and if all you're doing is buying up patents you've got to make money somehow."