

Automotive News[®]

FEBRUARY 16, 2015

'Patent trolls' target automakers, and Ford Motor is fighting back

Gabe Nelson
gnelson@crain.com

Ford Motor Co. was sued for patent infringement more than a dozen times between 2012 and 2014, but not by jilted suppliers or rival automakers.

It was the "patent trolls."

These outfits, also known as patent assertion companies, don't make products. Instead, they buy patents and file lawsuits to allege misuse of intellectual property, winning billions of dollars in licensing fees and court judgments.

They have been a consistent thorn in the side of technology companies since the 1990s. And the auto industry is their newest target.

Patent assertion companies filed 107 lawsuits against automakers and suppliers in 2014, up from 17 in 2009, according to RPX Corp., which bills itself as a defender against trolls.

Now Ford is pushing back. The company told *Automotive News* that it recently inked a contract with RPX, which has spent nearly \$1 billion amassing a portfolio of patents that could otherwise pose a threat to members such as Intel Corp., Microsoft Corp. and Samsung Electronics Co.

"We take the protection and licensing of patented innovations very seriously," a Ford spokesman wrote in an email. "And as many smart businesses are doing, we are taking proactive steps to protect against those seeking patent infringement litigation."

RPX members pay an average of \$1.5 million annually for access to a shared portfolio of patents. Most of the portfolio is geared toward information technology, but RPX plans to add automotive patents.

"At the end of the day it's a cost, it's highly unpredictable, and because it's highly unpredictable, it's a lot more of a distraction than it should be," John Amster, the CEO of RPX, said in an interview last week.

To its practitioners, patent assertion is merely the exercise of a legal right. Patents are an asset, they argue, and asserting patent rights is no different from buying a parcel of land and collecting rent on it.

But defending against a patent lawsuit can cost an automaker millions of dollars, and losing in court can cost significantly more.

In 2011, Hyundai was ordered to pay \$11.5 million in damages to a company called Clear With Computers, which claimed Hyundai had violated its patent on a method of designing customized booklets for prospective customers.

A year earlier, Toyota settled with a company called Paice LLC over a claim that the Toyota Prius' hybrid powertrain violated one of Paice's patents. Terms of the settlement were undisclosed, but earlier, a court had ordered Toyota to pay a \$5 million penalty and \$98 in royalties for every hybrid sold.

Ford's fight against patent challenges goes back more than a century. In 1895, New York attorney George Selden secured a patent on his idea for an automobile powered by an internal combustion engine.

Selden never built an automobile, but backed by a wealthy investor, he threatened to sue U.S. automakers.

Most of them paid royalties rather than go to court. The exception was Henry Ford, who prevailed in court by arguing Selden's patent was limited to two-stroke engines, not the four-stroke engines in his cars.