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Boston University licensing deal validates RPX; debunks $29 billion patent troll myth

There are a couple of interesting aspects to **the recent announcement** that Boston University has settled patent infringement claims against a host of big name tech companies via a deal with RPX. The first is that the agreement provides an excellent validation of the services that the defensive aggregator offers. Instead of the university and each alleged infringer having to sit down to talk, Boston's representatives were able to get together with one group of negotiators in order to sort things out.

Because they had confidence in the RPX team, Microsoft, Amazon, Apple, Samsung et al were able to free personnel and resources for other things; while Boston staff did not have to go from meeting to meeting over an extended period and instead secured a pay-day just a few months after the university **originally launched its suits**. In that way, everyone saved a great deal of time and money: something that could well have been reflected in the final – undisclosed – amount of the licence that was agreed.

Although this was a settlement on behalf of a group of defendants, along with Intellectual Ventures RPX did something similar when it was closely involved in the purchase of a portfolio of patents **from Kodak for $525 million** at the end of 2012 – it represented its members in securing a deal that they all wanted, and did much of the heavy lifting for them. In the space of just over a year, therefore, the firm has publicly proved its effectiveness as a deliverer of results in both defensive and acquisition scenarios. That's a pretty decent sell when it comes to bringing in new clients, as well as retaining those that it already has.

The second aspect to this is the identity of the plaintiff: Boston University, an academic institution whose faculty clearly do a great deal of ground-breaking work in technologies that underpin products sold by many well-known businesses. Because it does not make products itself Boston University would also be classified as a "patent troll" by the authors of that highly influential paper "**The Direct Costs from NPE Disputes**"; the one that produced the oft-quoted claim that operating companies in the US suffered $29 billion of direct costs as a result of the activities of patent trolls in 2011 alone (just do a search for **patent trolls $29 billion** to see how many). As the authors of the report say in the abstract to their paper:

In the past, "non-practicing entities" (NPEs), popularly known as "patent trolls," have helped small inventors profit from their inventions. Is this true today or, given the unprecedented levels of NPE litigation, do NPEs reduce innovation incentives? Using a survey of defendants and a database of litigation, this paper estimates the direct costs to defendants arising from NPE patent assertions. We estimate that firms accrued $29 billion of direct costs in 2011. Moreover, although large firms accrued over half of direct costs, most of the defendants were small or medium-sized firms, indicating that NPEs are not just a problem for large firms.

Funnily enough, the authors of that study are **James Bessen** and **Michael Meurer**, both of whom are employed by Boston University. In this way, we can enjoy the delicious irony of two of the most prominent critics of patent trolls being paid by a patent troll.

In the real world, of course, no-one serious would claim that Boston University is a patent troll. There is no way that RPX

or the companies it was representing would have agreed a settlement if they had found any significant evidence that the relevant rights were not valid and/or did not cover the technologies cited. Boston University had a genuine case, pursued it and won. It is an NPE. However, for Bessen and Meurer all NPEs are “patent trolls”. If they thought otherwise, they would by now have publicly clarified their thinking and told all those using the $29 billion in relation to trolls that they are wrong to do so. But to get to that figure they made no attempt to examine different NPE motivations or the business models they use; preferring instead to lump everyone together (though even then it is highly probable that what they have come up with is **deeply flawed**).

So, in this way, Boston University’s recent settlement with RPX demonstrates the absurdity of the current “patent troll” debate in the US. It boils down to this: if you quote that $29 billion as a sum which trolls cost US companies in 2011 you would have to believe that Boston University is a troll. And if you believe that Boston University is a troll then you have to believe that high-quality patents which underpin popular products are not worthy of protection, unless their owners also make products themselves. And does anyone credible seriously believe that?

Sectors

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