



Legal

## Patent Payday

Nathan Vardi 02.12.08, 6:00 AM ET

A \$41 million award won last week by a new breed of patent investor--backed by institutional money--should send shivers through American industry.

A federal jury in Marshall, Texas, found Ciba Vision, a Georgia-based eye care unit of Novartis, had non-willfully infringed on a patent issued in 1998 that covers a treatment for contact lens surfaces. The treatment described by U.S. Patent No. 5,712,327 makes it possible to wear contact lenses for long periods of time, and the jury found it had been used in Ciba Vision's Focus Night and Day and O2OPTix products.

Rembrandt IP Management, which holds the patent and won the case, is now moving to secure even bigger profits. "We are really gratified about the verdict," says Barry E. Ungar, chief litigation counsel at the firm. "The jury verdict validates our business model."

Based in Bala Cynwyd, Pa., the firm has raised \$150 million to purchase patents and sue companies it claims infringe on them. Other outfits backed by hedge funds and institutional money have employed similar strategies, like New York's Altitude Capital Partners, which has raised \$250 million. (See "[Patent Pirates](#)")

"I think the verdict is great," says Michael Cannata, a partner at Toronto's NW Patent Funding, an investor in patent litigation affiliated with Northwater Capital, a \$9 billion manager of funds of hedge funds. "It is just going to draw more awareness to the business of leveling the playing field in these David and Goliath battles."

But while Cannata and patent investors like Rembrandt claim to be protecting the rights of inventors, their detractors believe they are simply well-financed patent trolls--a derisive term used to describe companies with no operations other than suing big business over patents. Concern over the practice has reached Washington, D.C., where both the courts and lawmakers have been moving to protect corporate America from patent-related litigation.

The U.S. Senate is expected to vote on legislation later this month to diminish the amount of damages a patent lawsuit could yield in the future. The legislation, introduced by Democratic Sen. Patrick Leahy, is being pushed by large technology companies, including Microsoft and IBM. And the U.S. Supreme Court has in recent years been handing down rulings generally seen to be helpful to defendants in patent infringement cases, in one notable case severely limiting the ability of outfits that do not conduct actual business operations to assert patents in court.

But while some hedge funds and private equity groups are fighting against the patent reform crowd, Rembrandt seems to be paving the way around Washington's obstacles. Rembrandt, run by computer scientist Paul Schneck, was set up to purchase patents and sue big corporations. The firm has purchased 200 patents and has embarked on some 15 lawsuits, including one major case against Comcast, Time-Warner and other major cable- and broadcast-TV companies in federal court in Delaware.

To litigate against Ciba Vision, Rembrandt acquired a patent from husband and wife inventors Sing-Hsiung and Mei-Zyh Chang, in return for granting the Changs a net of 50% of the proceeds Rembrandt generates from the patent. A Rembrandt affiliate, Rembrandt Vision Technologies, then sued Ciba Vision and Bausch & Lomb in 2005.

In October 2007, on the eve of trial, Rembrandt made an audacious move that has the patent law world buzzing. Rembrandt divided and conquered its adversaries by striking a deal with Bausch & Lomb.

Terms of the Rembrandt-Bausch & Lomb deal have not been disclosed, but court documents suggest that part of the deal gives Bausch & Lomb the right to purchase either Rembrandt Vision Technologies or the patent for the purposes of getting an injunction against Ciba Vision to prevent it from selling contact lenses that infringe on Rembrandt's patent. Now that Rembrandt has won a patent infringement verdict, Bausch & Lomb, having switched sides in the case, may move against its marketplace competitor, Ciba Vision, and split proceeds generated from any injunction with Rembrandt.

The gambit may let Rembrandt get around the Supreme Court's ruling that has severely limited non-operating entities like Rembrandt from attaining injunctions in court. Court documents suggest Ciba Vision will challenge any Bausch & Lomb attempt to obtain an injunction. Both Ciba Vision and Bausch & Lomb refused to comment on the case.

"It's very creative stuff," says Ron Laurie, a managing director at Inflexion Point, an intellectual property/mergers and acquisitions advisory firm. "If it all works, Rembrandt is monetizing something that was otherwise worth nothing to them, so you have to give them credit."