

NYTimes leads group defense in mobile patent suit

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This combination of Associated Press file photos shows the U.S. Patent and Trademark Office in Alexandria, Va., left, and The New York Times building in New York, right. The Times is leading the defense of a diverse group of companies that use technology they assumed was free: sending text messages with Web links to mobile phones. However, the technology was patented by inventor Richard J. Helferich, who filed an outline of how such a system would work with the U.S. Patent and Trademark Office in September 1997. Since 2008, his company has filed 23 suits against companies. (AP Photo/File)

The New York Times Co. is girding for a legal battle that many larger organizations have avoided. The Times is leading the defense of a diverse group of companies that use technology they assumed was free: sending text messages with Web links to mobile phones.

The technology was patented by inventor Richard J. Helferich, who filed an outline of how such a system would work with the U.S. [Patent](#) and Trademark Office in September 1997. He was granted several patents on the method, giving him the right to sue companies that use it without permission.

Since 2008, his company, Helferich [Patent Licensing](#), has filed 23 suits against companies ranging from [Best Buy](#) Co. to the [National Basketball Association](#), claiming they are infringing on his intellectual property.

HPL offers companies the chance to settle by paying a one-time fee of \$750,000. Many companies gladly pay, rather than getting bogged down in a court fight that could cost millions. Roughly 100 companies have settled with HPL already, it says, including Apple Inc., The [Walt Disney Co.](#) and McDonald's Corp.

The Times' general counsel, Kenneth Richieri, says he wants to prevent Helferich's patents from becoming a burden on activities that are commonplace in the digital age.

"In some ways, it's a tax for being on the Internet," Richieri said. "Millions and millions of dollars collectively is going out of the pockets of people who earned it to people who, in my opinion, didn't do anything."

If the Times loses, it's likely it will have to pay more than the \$750,000 that HPL initially sought to continue using the technology. The Times has used it to alert readers by mobile phone of breaking news or [severe weather](#).

Steven Lisa, a registered patent attorney who represents HPL, would not comment on the specifics of any settlements.

The U.S. [patent system](#) is designed to protect inventors and allow them to profit from their ideas. Where would General Electric be without legal protection for [Thomas Edison](#)'s light bulb? What might have become of AT&T if competitors had been free to copy Alexander Graham Bell's telephone? The patent office views its role as vital to the growth of the U.S. economy, and last year, it issued around 245,000 patents.

HPL's cases, however, fit into a controversial category. Opponents point out that HPL doesn't make products or provide services. They say it simply uses patents to seek licensing fees from others who actually do business. Critics label such

companies "patent trolls".

"You really have to wonder what contribution they are making to our economy or our society, or if it's just a drain," said Jason Schultz, director of the Samuelson Law, Technology & Public Policy Clinic at the University of California, Berkeley.

Patent trolling is legal. The patent office doesn't require inventors to put their ideas into action.

In 2011, entities like HPL sued 5,073 companies in the U.S. for infringing on patents that they either got on their own or acquired. That was more than double the number in 2009, according to PatentFreedom, a research organization that offers consulting advice for defendants in patent lawsuits.

PatentFreedom estimates the typical cost of a patent defense is \$1 million to \$5 million. Taking the low estimate, multiplied by the number of defendants, it sees such suits as a drag on the economy of more than \$5 billion a year.

"Law firms are doing very well at this. Operating companies are not," says Daniel McCurdy, the founder of PatentFreedom.

The Times is fighting the case on two fronts: at the U.S. [Patent and Trademark Office](#) and in the courts. Beginning late last year, it filed a number of complaints with the patent office on grounds that the government issued the patents incorrectly. The Times' legal team notes, for instance, that Intel Corp. received a similar patent in February 1996, some 18 months before Helferich got his. A few of the complaints have initially been found in the Times' favor, according to the newspaper company's outside counsel, Brian Buroker, although HPL is appealing. The process could take 18 months to complete.

The Times is also fighting the case in the U.S. District Court in Chicago, where it argues HPL already receives licensing fees from cellphone manufacturers for the same technology and therefore shouldn't be allowed to double dip and charge content providers.

The Times is spearheading the defense of a group

that also includes CBS Corp., Comcast Corp.'s TV channels Bravo and G4 and J.C. Penney Co., according to court filings. HPL sued The [New York Times Co.](#) in July 2010; Bravo, G4 and CBS in October 2011 and J.C. Penney in December 2011.

The technology in dispute has become a key part of the companies' marketing campaigns. CBS texts followers to prompt them to visit its website for exclusive pictures and video to shows such as "Big Brother." Bravo sends messages to viewers' mobile phones to get them to participate in live online chats and polls. J.C. Penney lets shoppers with mobile phones know about sweepstakes and giveaways.

Although the lawsuits were filed separately, the defendants are saving money by sharing strategies and resources instead of fighting the lawsuits on their own. The lawsuit against the Times is scheduled to go through at least the middle of next year.

Some see the case as highlighting the need for patent reform.

Berkeley's Schultz says it should be easier for defendants to force the patent office to re-examine its past decisions on issuing patents, and easier for patents to be struck down in court. That way, patent holders would be less able to make a business out of extracting settlements by using the threat of costly litigation.

Some changes are coming. Last September, President Barack Obama signed into law the first major change in patent law in six decades. It is aimed at streamlining the patent process, reducing costly legal battles and giving the [patent office](#) more money to process applications in a timely fashion.

Certain parts of the law won't take effect until March, but a provision that took effect right away has made it more difficult for patent holders to name dozens of defendants in a single suit. That has led to a decreased number of companies sued. PatentFreedom estimates the number of defendants this year will fall to around 3,500.

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