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# Conn. Tech Company Takes On Industry Giants

## Priceline founder's patent litigation targets 100 companies

By MARIE P. GRADY

When it comes to patent infringement, a Stamford company has a message for Apple: There's no "app" for that.

The technology giant is among more than 100 defendants named in recent litigation filed by Walker Digital of Stamford, an information technology research company which has amassed more than 200 patents and was founded by the creator of Priceline.com.

The litigation accuses Apple, Walt Disney Co., the Weather Channel, Nielsen Co, Digimarc Corp., and TV Aura Mobile LLC of profiting from Walker Digital's patented technology via an iPad "app" that allows users to download more information about videos they are watching. For example, uers can view behind-the-scenes video on popular programs such as "Grey's Anatomy," on Disney-owned ABC, or the Weather Channel's "From the Edge."

The complaint is only one of 26 filed since November by Walker Digital targeting companies for infringement of a multitude of patents for various technologies, including eBay, Microsoft, Walmart, Amazon.com, Sony, Groupon, Facebook, Myspace Inc., Google and MapQuest. The litigation is unfolding in U.S. District Court in Delaware, at the same time the U.S. Supreme Court weighs Microsoft's request in another case to lower the standard by which patent infringement defendants can show that a patent is invalid.

Walker Digital Chief Executive Jon Ellenthal said in a prepared statement that the litigation was a last resort after the companies ignored Walker Digital's efforts to seek licensing fees for use of the technology. Founded in 1994, the company said its inventions are covered by more than 400 issued and pending U.S. and foreign patents and generate direct licensing revenue that exceeds $200 million.

Law Tribune File Photo

**Attorney Steven M. Coyle said in similar cases, companies sued for patent infringement often try to show that the technology in question wasn't original when the initial patent was granted.**

Contributed Photo

**Attorney Anne Barry said technological innovation can be a moving target as inventors try to secure patent rights.**

"At Walker Digital, we don't believe that less innovation or more litigation serves anyone's long-term interests," Ellenthal said. "However, the unwillingness of those companies using our property to enter into joint commercial agreements has forced us to take an action that we had hoped to avoid."

Some lawyers with expertise in patent law said the Walker Digital litigation represents one of the largest collective patent infringement legal actions in recent memory. While the companies have not yet filed a response to the complaints, likely defenses will include that the patents were invalid to begin with or that the use did not represent infringement.

"The burden of proving invalidity is on the accused infringer," said Steven M. Coyle, who litigates such cases for Cantor Colburn in Hartford.

While he would not comment on the specifics of the Walker Digital litigation, Coyle said defendants in similar cases will

generally try to dig up "prior art," or old patents, articles or products that pre-date the patent and were publicly sold or otherwise showed that the idea was not original when the patent was issued.

"If you're the defendant, you'd like to find prior art that was not already given to the United States Patent and Trademark Office," he said.

## Exhaustive Review

Anne Barry, a Cantor Colburn patent attorney with expertise in software, said technological innovation can be a moving target as inventors try to secure their rights. A patent is good for 20 years and is granted only after an exhaustive review of the idea's originality by a U.S. Patent Officer examiner with expertise in the field.

"Most of the time they have an idea hopefully about what's already out there. I think they do a relatively good job," she said of the government examiners.

In addition to to the iPad application claim, Apple is accused by Walker Digital in an April 11 complaint of ripping off patented technology for an iPhone with a GPS navigation feature. The company accuses companies such as Google and Microsoft in a separate suit of usurping its patented technology for a computer application that matcher's user data requests with advertisers and allows related ads to pop up on computer screens.

Dallas-based IP Navigation group is serving as Walker Digital's intellectual property adviser. On the IP Navigation company web site, founder and CEO Erich Spangenberg touts the fact that his aggressive pursuit of patent infringers has earned him the label "the most feared man in Silicon Valley."

Stamford intellectual property attorney Robert J. Hess said technology patent owners are increasingly cutting a wide swath with litigation. "This type of thing is done a lot," he said. "Where a large number of companies seem to be using the same kind of technology, there is a trend to basically sue all of them."

Hess said litigation and its attendant discovery process can serve as incentive to settle. "The litigation process is a tool for negotiation."

In the lightning fast world of technological innovation, there is little incentive for major companies such as Apple or Microsoft to seek patents of their own, one scholar said. In contrast, pharmaceutical companies are willing to spend 10 years of the 20-year patent waiting for government approvals to market a potentially profitable drug.

"Electronics, by and large, have a market by virtue of innovation, price and speed," said Geoffrey G. Dellenbaugh, associate clinical professor of law and supervising attorney at the Intellectual Property and Entrepreneurship Law Clinic at the University of Connecticut School of Law. "Software is probably obsolete in 10 years or even five."

He said companies such as Microsoft are more concerned with avoiding fights over the patents of other people than with applying for their own. "They're big; they don't need patent protection. They want to avoid being sued by a lot of other companies who are looking to collect money."

## Evidence Standard

Dellenbaugh said the U.S. Supreme Court has increasingly indicated that patents are not immune from challenges. In a case called *Microsoft v. i4i*, the court is weighing defendant Microsoft's argument that a defendant should only have to show a patent is invalid by a preponderance of the evidence, rather than the current clear and convincing evidence standard.

The case concerned technology that Microsoft has since removed from its Word software.

Dellenbaugh, whose expertise is in the pharmaceutical industry and the medical fields, is the named attorney on about 200 patents in 40 years of practice. The school's patent, copyright and trademark clinic offers assistance to small businesses for free, except for government application costs, and has done about 30 patent applications in the last three years as well as trademark and copyright registration.

He said patent litigation may be shaped for years to come once the Supreme Court decides on the Microsoft case.

"There's been a lot of talk that the current makeup of the Supreme Court is business friendly, but business friendly does not necessarily mean patent friendly." ■