

# Intellectual **PROPERTY**

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## He's Back

Anthony Brown, the original patent troll, comes out of retirement with a new patent licensing firm. BY SUSAN HANSEN

THE IP BOUTIQUES THAT SURVIVED ■ TV NETWORKS BATTLE DIGITAL RIVALS

# He's Back

BY SUSAN HANSEN

*Anthony Brown was called the original patent troll when he ran TechSearch. Now he's trying to reestablish himself with a new nonpracticing entity, Cascades Ventures.*

Now that he's back in action, Cascades Ventures Inc. founder Anthony Brown has noticed some funny changes in the patent trolling business.

For one thing, says Brown, who was once dubbed the "original patent troll," the T-word doesn't get tossed around quite as frequently as it did a decade ago. Instead, the current lingo for companies like Cascades that specialize in securing patent licensing deals (as opposed to making actual products) is the more politically correct "nonpracticing entity" or NPE. What's more, says Brown, the patent licensing business has attracted a crowd. Back in 1998, when the former corporate partner at Jenner & Block launched his first licensing firm—TechSearch LLC—Brown pretty much had the field to himself, he recalls.

Now, he adds, not only are there a host of patent brokers running around, but increasingly, venture capital firms have spotted a profit-making opportunity. The result? A burgeoning new crop of well-financed NPEs have built up their own patent portfolios and joined the hunt for infringers. "It's become a big-money business," says Brown.

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PHOTOGRAPH BY SAVERIO TRUGLIA

Brown, who is based in the Chicago area, says that his plan for Cascades "is to be a boutique, not a factory."



In 2011 NPEs brought roughly 1,200 suits alleging infringement by more than 5,000 companies, according to the NPE watchdog group Patent Freedom. Indeed, Villanova University patent law professor and NPE expert Michael Risch contends that NPE litigation is now so common that “it’s basically seen as a fact of life.”

The patent enforcement business certainly paid off for Brown. In 2005 he sold TechSearch and parent company Global Patent Holdings to patent licensing giant Acacia Research Group for nearly \$27 million in cash and stock. For the next four years, a noncompete agreement kept him on the sidelines. But by early 2010, Brown was back in the game with



## Raymond Niro, Brown’s longtime counsel, says that his client must now compete in “a much more difficult environment.”

his newest licensing startup—Cascades, based in Northbrook, Illinois.

Brown, 65, can’t help but notice that a few of his current competitors used to be zealous defense counsel who fought against NPE suits. Former patent defense bar stars John Desmarais of Kirkland & Ellis and Matthew Powers of Weil, Gotshal & Manges, for example, each left their law firms to start patent licensing outfits. (Both Desmarais and Powers declined to comment.) Meanwhile, Peter Detkin, formerly an assistant general counsel at Intel Corporation, is now vice-chairman of Bellevue, Washington-based Intellectual Ventures, one of the country’s largest NPEs.

In Detkin’s case, Brown and his longtime outside counsel Raymond Niro contend that the irony is especially thick, given that back in his in-house days, Detkin was not just one of their fiercest foes. He popularized the term “patent troll” as part of the war of words over an ultimately unsuccessful 1999 infringement suit that TechSearch brought against Intel.

“[Detkin] is now one of the biggest trolls around,” says Niro of Chicago’s Niro Haller & Niro, with a laugh. (Detkin also declined to comment, but through an Intellectual Venture spokeswoman, he confirmed that he was the first to use the “troll” moniker in reference to TechSearch.)

Even when he had the field mostly to

himself, Brown says, finding the kinds of patents that were a good bet to generate sizable licensing fees wasn’t easy. Now that he has more competition, finding lucrative patents will be that much harder. So far, Cascades has a total portfolio of about five dozen patents—less than a third of his inventory at TechSearch. Brown insists he isn’t worried. “My plan is to be a boutique, not a factory,” Brown declares. By staying small, he says, he’s able to give hands-on attention to the inventors whose patents he licenses.

That said, Cascades has signaled that it will be just as aggressive on the patent enforcement and litigation front as its bigger peers. Over the past two years, it has sued more than a dozen major retailers and tech companies, alleging that they infringed key Cascades patents related to mobile phone apps. Moreover, Cascades recently escalated the battle against some alleged infringers with a novel antitrust suit that charges that patent aggregator RPX Inc. conspired with Dell Inc., Motorola Mobility Holdings Inc., and three other smartphone makers in an illegal boycott of Cascades’s licenses.

Still, whether Brown can even come close to matching TechSearch’s success (or the \$30 million in annual revenue the company and its affiliates generated at their peak) remains to be seen. Even Niro, his longtime lawyer, thinks that Brown’s latest licensing venture may not

pay off, given all the extra competition. “It’s become a much more difficult environment,” says Niro. “I think the jury’s still out.”

AFTER ACACIA BOUGHT TECH-Search, Brown took it easy for a few years, with multiple trips to Paris and London as well as to West Africa, where his son ran a teaching program. He also spent time hiking near a second home he owns in Telluride, Colorado. “It was nice. It also got extremely boring,” says Brown, who recalls worrying that his “brain was gonna turn to Jello.” He says he missed the intellectual charge that he got from working with inventors. He also figured that he still had enough contacts to make another patent-licensing start-up fly. When the noncompete agreement he signed with Acacia expired in 2009, he began gearing up to launch Cascades.

The first time Brown got into the licensing business—following a suggestion from a former tech company client at Jenner & Block—he turned to family and friends to raise the financing he needed to acquire his first patent portfolio and start TechSearch. But this time around, he’s drawing on his personal funds. Brown, who is Cascades’s only full-time employee, won’t say how much he’s put in so far, though he notes that rather than buying patents outright, he acquires exclusive licensing rights from patent holders, and splits the proceeds from the licensing deals that he strikes with them. He also doesn’t pay out of pocket for legal fees, since Niro Haller and Chicago’s Flaschbart & Greenspoon (Brown’s other go-to law firm) typically handle Cascades’s matters on contingency.

Not that Brown’s current caseload is anywhere near what it was in his TechSearch days. By the time of the sale to Acacia, Brown had amassed nearly three dozen different patent portfolios containing some 200 patents—and he and Niro had become well-known for dragging alleged infringers to court. TechSearch definitely drew the defense bar’s ire for the zealous enforcement campaign it mounted on behalf of one of its most infamous patents—the Remote Query Communication System (RQCS) patent, which issued in 1993 and covered the digital decompression process that enables the sharing of photo files. It also happened to be a technology that virtually every web-

site in the world used (and still uses).

When TechSearch's initial licensing demand letters went out in 1999, lawyers for the targeted companies railed that the patent was absurdly broad, and claimed that TechSearch was basically engaged in extortion. The criticism didn't deter TechSearch. By the time the firm and its lawyers were done, roughly three dozen companies—including Walgreen Co., United Air Lines Corporation, Caterpillar Inc., and Sears, Roebuck & Co.—were hit with infringement suits. At least four dozen companies ultimately surrendered to TechSearch's demand that they buy licenses for the RQCS patent. In the end, according to Brown, TechSearch collected about \$5 million in settlements or licensing fees.

"It was a racket," maintains Gregory Aharonian, publisher of the digital newsletter Internet Patent News, which issued some of the most scathing critiques of the RQCS patent. Aharonian says that he too wound up getting slapped with a TechSearch suit (later dismissed) alleging that his website infringed the patent. "It was a crap patent, and I insulted it, so they shut me up," says Aharonian.

Brown, who calls the RQCS patent "visionary," refuses to apologize for that patent or any other in TechSearch's inventory. In his view the inventors he represents have every right to licensing fees. And he contends that he's performing a valuable service by helping them collect. "No one said to Thomas Edison that he couldn't get royalties for light bulbs," says Brown. "That's the way the patent system works. Otherwise, what's the point?"

SO FAR, BROWN'S MAIN SUCCESS story at Cascades has been a pair of software patents developed by Boston-based entrepreneur Steve Gold, which cover a smartphone app that allows users to locate nearby retailers. Following the drill that he devised at TechSearch, Brown and his lawyers at Flaschbart & Greenspoon began identifying retailers that had developed store-mapping apps that Cascades believed were infringing Gold's software. And by early 2011, letters were in the mail demanding that those retailers pay up to \$250,000 for a five-year license for the privilege of using Gold's invention.

When the letter's recipients failed to meet those demands, Cascades began bringing suits. At press time seven companies—including Walgreen, Limited Brands Inc., Best Buy Co. Inc., and Exxon Mobil Corporation—had agreed to settlements. The remaining holdout was TravelCenters of America LLC, which filed for a declaratory judgment of noninfringement in August 2011. (Alan Fisch of Kaye Scholer, who is representing TravelCenters, declined to comment.)

Brown, though declining to provide a specific dollar amount for the settlements, seems pleased enough with Cascades's take so far. "We've been able to generate some momentum," he says. Gold says he's thrilled with Brown's efforts: "He's done exactly what he promised he would do."

BROWN ALSO HAS HIGH HOPES for more than three dozen patents that he's handling on behalf of Russian supercomputing pioneer Boris Babaian and his Moscow-based software company Elbrus International. Among the most promising is the so-called '750 patent, which covers an invention that makes it easier to install and use apps on Google's now ubiquitous Android mobile phone operating system. That patent is at the center of the antitrust case filed by Niro Haller in the Northern District of California this past March against RPX and smartphone makers Dell, Motorola, Samsung Electronics Co., HTC Corporation, and LG Electronics Inc.

As one of a new breed of "defensive patent aggregators," RPX acquires pat-

ents and licenses that it then shares for a fee with a network of roughly 100 member companies. In its complaint, Cascades claimed that RPX approached it about a potential licensing deal in 2010, and that the two parties eventually came close to striking a "high-seven-figure" deal for rights to the '750 patent, along with the rest of Cascades's patent portfolio. Given that Cascades was claiming that five of RPX's members—Dell, Motorola, Samsung, HTC, and LG—were infringing the '750 patent, a licensing deal seemed to make sense. According to Cascades's complaint, however, at least one of RPX's members refused to fund the deal, and in late 2011 RPX withdrew from the negotiations. In the ensuing months, Cascades's lawyers at Niro Haller then tried to secure individual licensing agreements with each of the five smartphone makers, but that effort went nowhere—thanks to what Cascades claims was a group decision to boycott its licensing offers, in violation of federal and state antitrust laws.

Neither RPX nor lead defense counsel Alfred Pfeiffer of Latham & Watkins would comment for this article. But in a motion to dismiss filed in May, RPX called Cascades's allegations "nonsensical" and "implausible," and denied that there was any orchestrated boycott. RPX said that its members rebuffed Cascades's licensing efforts for a simple reason: Cascades was asking for too much money. Dell and Motorola have also filed separate motions to dismiss. (Winston & Strawn's Jonathan Retsky, who represents both companies, also declined to comment.)



When he was an in-house lawyer at Intel, Peter Detkin was the first to call Brown a troll.

At a July 10 hearing in Oakland, U.S. District Judge Yvonne Gonzalez Rodriguez expressed serious doubts about Cascades's case. "I don't see a sufficiently identified market [for the antitrust claim], I don't see injury to competitors," she told Niro Haller lawyer Daniel Ferri. Still, Gonzalez Rodriguez also said she's likely to grant Cascades leave to amend the complaint. "We view it as a positive," insists Niro, who says that the Cascades legal team will now be able to fix the complaint, so the case can in fact move forward.

On a parallel front, Cascades is continuing to pursuing separate infringement claims against the five smartphone makers named in the antitrust suit, as well as four other smartphone manufacturers that it contends are violating the '750 patent. Brown says there are likely more Babaiian-related suits to come, though he adds that Cascades doesn't send out licensing fee demands to just anybody. "We don't just shoot letters out," he says. "We do a lot of research to make sure that we have a reasonable basis for asserting a patent."

IN THE MEANTIME, BROWN IS TRYING to build up Cascades's inventory. He's particularly excited about a group of video streaming-related patents that he recently took on for three Italian inventors. The patents, among other things, enable Internet users to watch live sports or music events from multiple angles. "We're currently putting together our licensing

infringement claims.

Brown agrees that he's facing some tough challenges. Still, though declining to provide specifics on revenue or profits, he contends that Cascades is "doing okay," and says that he expects to grow the company at a steady pace, while continuing to be choosy about the patents he handles. Though he'd certainly like to make

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strategy," says Brown, who believes those patents will almost certainly produce substantial fees.

Niro, for his part, contends that Cascades still needs to scale up dramatically if Brown hopes to get any real return. "If you're going to engage in this fight, you're better off with scale," he says. Especially, adds Niro, since many judges have bought into defense-side propaganda about the evils of trolls and become more hostile to

money, Brown says, this time around he's more interested in working with inventors he likes and respects—and helping them get their due. "I like representing the underdog," says Brown.

If some find his legal tactics too aggressive, he says that bringing infringers to court is often the only way to get them to pay. "You can be polite and knock on doors," says Brown. "But that doesn't seem to work." ■

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