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BUSINESS DAY

Has Patent, Will Sue: An Alert to Corporate America

By **DAVID SEGAL** JULY 13, 2013

If you're a corporate executive, this may be one of the last sentences you want to hear: "Erich Spangenberg is on the line." Invariably, Mr. Spangenberg, the 53-year-old owner of IPNav, is calling to discuss a patent held by one of his clients, which he says your company is infringing — and what are you going to do about it?

Mr. Spangenberg is likely to open the conversation on a diplomatic note, but if you put up enough resistance, or try to shrug him off, he can also, as he put it, "go thug."

He demonstrated what that sounds like in a brief bit of role-play recently, sitting in the apartment he is renting for the summer in Paris near the Arc de Triomphe. His voice dropped, the curse words flowed, and he spoke with carefully modulated menace.

"Once you go thug, though, you can't unthug," he explained, returning to his warm and normal tone. "Actually, you can unthug, but if you do that, you can't rethug. Then you just seem crazy."

Mr. Spangenberg's company, based in Dallas, helps "turn idle patents into cash cows," as it says on its Web site. A typical client is an inventor or

corporation, with a batch of patents, demanding a license fee from what it contends is an infringer, usually a titan in the tech realm. His weapon of choice in this business — the brass knuckles of his trade, so to speak — is the lawsuit.

In the last five years, IPNav has sued 1,638 companies, according to a recent report by RPX, a patent risk management provider, more than any other entity in the patent field. “To get companies to pay attention, in some percent of the market, you need to whack them over the head,” Mr. Spangenberg said. “In our system, you can’t duel, you can’t offer to fight in the street, which would be fine with me.”

This combat readiness has made Mr. Spangenberg, a high-school dropout raised in Buffalo, very rich. He earns about \$25 million a year, he says, which is at least a couple of million more than the country’s top bank executives. Until recently, he lived in a 14,000-square-foot home in Dallas; it is now on the market for \$19.5 million. He often flies on a company jet, and at one point he owned 16 cars, six of them Lamborghinis.

His clients, who pay IPNav a percentage of any recovery, contend that he earns every dollar and praise him as a hero.

“Erich saved our bacon,” said Steve Dodd, a patent holder with a client company called Parallel Iron. “We were more than \$1 million in debt and I was getting ready to file for bankruptcy.”

Mr. Spangenberg’s opponents use less flattering terms to describe his work. Like shakedown artist. Or patent troll.

There is debate about the definition of patent trolls, but the term broadly refers to people who sue companies for infringement, often using patents of dubious value or questionable relevance, and then hold on like a terrier until they get license fees. In recent years, patent trolls — they prefer “patent assertion entities,” or P.A.E.’s — have gone from low-profile corporate migraine to mainstream scourge.

This is partly because the number of patent infringement suits has more than doubled in recent years, to 4,731 cases in 2012 from 2,304 in 2009, according to that RPX report. The cost to businesses, which pass along the expense to consumers, is immense. One study found that United States companies — most of them small or medium-sized — spent \$29 billion in 2011 on patent assertion cases.

“And only about \$6 billion of that money wound up in the hands of inventors,” said James Bessen, a co-author of the study and a professor at the Boston University School of Law. “As for the other \$23 billion, most of it goes to legal expenses, both for defendants and patent troll companies, with the rest going to operating expenses of the trolls — overhead and marketing — and finally, patent troll company profits. That’s why we call this type of litigation a tax on innovation. It discourages innovation much more than it encourages it.”

The notoriety of trolls also arises from legal claims that, at minimum, sound absurd. Like the P.A.E. that last year mailed letters to companies contending it had a patent on e-mailing scanned documents and asking for a license fee of \$1,000 per employee. Or the company that has sued for license fees from podcasters through a patent originally filed in 1996, long before podcasts were conceived.

The inevitable counterattack on patent asserters has begun. In June, President Obama announced a handful of executive orders “to protect innovators from frivolous litigation.” Companies, large and small, are starting to vent and fight back, and figures as varied as Judge Richard A. Posner, of the United States Court of Appeals for the Seventh Circuit, and Marc Maron, the stand-up comedian and podcast host, have denounced trolling. Mark Cuban recently gave the Electronic Frontier Foundation \$250,000 to help finance “The Mark Cuban Chair to Eliminate Stupid Patents.”

Mr. Spangenberg has been called “a costly nuisance,” “one of the most notorious patent trolls in America” and many unprintable names in the

comments sections of Web sites like Techdirt. He has achieved a certain infamy.

In his telling, he is protecting put-upon inventors. But he may simply be profiteering from a flawed and creaky legal system.

Mr. Spangenberg speaks in rapid-fire clumps of words, usually while looking down and grimacing slightly, as though trying to lift a barbell. When we met, he was wearing what he calls “my uniform”: a pair of jeans and one of his 40 identical black, short-sleeve, mock-turtleneck Nike T-shirts.

He doesn't mind his public reputation as an ogre, and by all means, he says, call him a troll — though he thinks the name is a bogus effort to taint his profession.

When it comes to work, he is focused to the point of being obsessive. As an associate at a corporate law firm — after taking the ACT test, he attended the University of Delaware and eventually earned a law degree from Case Western University — he once worked four days straight without sleep, and was taken to the hospital in an ambulance.

“I had a mild seizure,” he said. “There's only so much coffee and caffeine tablets you can take.”

He stands about 5-foot-6 and was bullied as a child because of his height. He always fought back, he says, and he usually lost; his nose has been broken by an assortment of fists. This has given him a lifelong hatred of bullies, which explains, he says, why he wound up in a job where he often stands with a small company assailing a larger one.

But IPNav doesn't exactly fight using the Marquess of Queensberry rules. In a 2008 ruling, Judge Barbara B. Crabb of Federal District Court in Wisconsin, concluded that Mr. Spangenberg was involved in witness tampering — specifically, inducing a lawyer to “intimidate a witness on the eve

of trial.” The eviscerating 62-page ruling was in a case brought by DaimlerChrysler against a company owned by Mr. Spangenberg called Taurus IP. The carmaker accused Mr. Spangenberg of breaking a 2006 we-won’t-sue-you-again agreement over certain tech patents.

It was a complex case, but here’s a quick summary: one company controlled by Mr. Spangenberg (Orion IP) was accused of having signed a settlement with DaimlerChrysler. Later, a different Spangenberg-owned company (Taurus IP) sued DaimlerChrysler with related patents. Mr. Spangenberg seemed to be trying a double dip — angling for two settlements from the same defendant. Tsk, tsk, said Judge Crabb, though she used tougher language and painstakingly enumerated the maze of companies in the Spangenberg empire. She ordered Taurus IP to pay DaimlerChrysler \$3.8 million to cover its legal fees and succinctly described Mr. Spangenberg’s business model this way: “to license patents through litigation: first file a lawsuit, then negotiate a licensing agreement as part of a settlement.”

“It was a mauling,” Mr. Spangenberg said of Judge Crabb’s takedown, now under appeal. But weirdly enough, the ruling turned out to be terrific public relations.

Soon after Judge Crabb’s decision, IPNav’s phone was ringing with new business. RadioShack, Bridgestone and other companies wanted to strike a variety of deals to monetize their patents. The mauling had laid bare Mr. Spangenberg’s aggressive business techniques. IPNav soon grew from five employees to 80, most of whom are patent specialists; it currently manages about 10,000 patents. (One of its many relationships, as it turns out, is as licensing agent for a company suing The New York Times Company for patent infringement.) It has offices in Shanghai, Tel Aviv, Dallas and Dublin.

He calls the apartment he now rents “the Paris office” and says he spends summers there because the time zone is convenient for conversations with employees around the world. Mostly, though, he just loves Paris, as does his

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