

Who is the Original “Patent Troll”?

An article by John Bringardner in Law.Com(*excerpt attached*, highlight marked in turquoise), says that “[t]he term ‘patent troll’ was famously coined in reference to [Niro, Scavone, Haller & Niro] co-founder Ray Niro.”.

Federal Circuit Judge Kimberly A. Moore earlier this year has cited founding partner Gerald Hosier of Hosier & Niro for his work with Jerome Lemelson, while Niro himself credits then Intel Assistant General Counsel Peter Detkin with creating the patent troll nomenclature with Hosier as the original patent troll:

Judge Moore Cites Gerald Hosier, the Babe Ruth of Patent Trolls:

“Jerome Lemelson [is] perhaps the most well-known individual patentee of recent times [who] obtained more than three hundred patents and filed lawsuits against many large corporate defendants. Lemelson's lawsuits were handled by attorney Gerald Hosier, who collected more than \$150 million in contingent fees when he secured \$500 million in settlements for Mr. Lemelson.” Hon. Kimberly A. Moore, *Populism and Patents*, 82 N.Y.U. L. Rev. 69, n.50 (2007)(footnotes omitted).

Niro Credits Hosier, Disclaims Credit as the Pioneer Troll: [W]hat is the origin of the term ‘patent troll’? One of the first mentions of the term occurred in July 2001, when Brenda Sandburg authored the article, *Trolling for Dollars*.[.] Page one ... contains two photographs: The first picture is of Intel Corporation's then Assistant General Counsel, Peter Detkin, holding a small troll doll, while the second photograph shows Gerald Hosier next to one of his airplanes [purchased from his contingency fee wealth].” Raymond P. Niro, *Who Is Really Undermining the Patent System - “Patent Trolls” or Congress?*, 6 J. Marshall Rev. Intell. Prop. L. 185 (2007)(citing “You May Not Have a Choice: Trolling for Dollars,” Brenda Sandburg, *Law.com*, July 30, 2001)(footnotes omitted).

Regards,

Hal

A Bounty of \$5,000 to Name Troll Tracker

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[from law.com]

The successful strategy of Chicago plaintiffs firm Niro, Scavone, Haller & Niro of representing patent-holding companies with strong infringement claims on a contingency basis has spawned many imitators.

The term "patent troll" was famously coined in reference to firm co-founder Ray Niro. But in the past few months the firm has been involved in such controversial situations that a question arises: Is this how a patent plaintiffs firm acts in middle age?

The first curious incident occurred this summer. Niro had won a \$12.1 million jury verdict for Philip Jackson in April 2003 against Glenayre Electronics Inc., but the court later reduced the award to \$2.65 million and prevented Jackson from pursuing further infringement claims in the case. When his appeal of the court's decision failed, Jackson sued Niro for malpractice. In August, Niro turned around and challenged Jackson's malpractice suit by claiming the patent in question was invalid, a novel argument considering Niro had successfully enforced it. The case settled in late September for an undisclosed amount.

By that time Niro was involved in a growing spat with an anonymous blogger called the "Troll Tracker." Niro doesn't like to be called a "troll," but Troll Tracker started referring to Niro that way. So Niro pulled out an old weapon. He e-mailed the blogger, informing him that he may be infringing on patent number 5,253,341.

[This] is the same patent Niro used to try and silence another vocal critic nearly a decade before. In 2000 Niro filed suit to enforce the patent against the Green Bay Packers, a now-defunct porn site, and others. Greg Aharonian, the unabashedly outspoken author of the Internet Patent News Service, derided Niro's patent as "crap," and Niro added him to the suit. A third party filed for a re-examination of the '341 patent, and this September, seven years later, it emerged with one claim left intact, covering asymmetric decompression involved in the display of .jpg images on Web sites.

But that one claim is enough for Niro to use the patent to threaten Troll Tracker. (Niro says he's still pursuing the case against the Packers as well, but he finally dropped the suit against Aharonian, claiming, "If he's using the patent commercially, he's not doing it very well.")

For the moment, Niro and the Troll Tracker are at a standoff because the blogger refuses to reveal his identity. But Niro is willing to use his unorthodox tactics to surmount that obstacle. "I'll offer \$5,000 to anyone that can provide information that leads me to the identity of Troll Tracker," Niro says, announcing the bounty publicly for the first time here in *IP Law & Business*. "I view these people [anonymous bloggers] as know-nothings," he says, "afraid to reveal their identity."

Meanwhile, the Troll Tracker is responsible for making one of Niro's recent suits one of the most closely watched in the IP community. When Niro filed a patent suit on behalf of a client against Google Inc. in August, Troll Tracker was one of the first to publicize the startling juxtaposition of two facts: one, Scott Harris, a partner in Fish & Richardson's San Diego office, is the inventor of the relevant patent, and two, Google is a Fish & Richardson client. Within days Harris was asked to resign by firm president Peter Devlin.

Troll Tracker then went on and connected more dots, finding that Harris' patents are behind several other recent suits by Niro clients. Niro, Harris and F&R are currently involved in a heated court battle over ownership of the patents, with F&R claiming that they belong to the firm. (F&R declined to comment, but in its filings it says that Harris was a rogue attorney who acted without the firm's knowledge.)

Niro says he and Harris first met at an IP licensing conference in New York in May 2006, when Harris asked Niro to discuss his inventions. In March 2007 Harris first used Niro to enforce one of his patents, against Dell Computer Inc. Dell, which F&R claims was a client at the time; Harris disputes this complained to the firm. An investigation by F&R partners cleared Harris of any wrongdoing, but by May 1, according to Harris, the firm said he had two options: Drop the suit against Dell or leave Fish. Harris claims they also told him to sell all of his patents right away. Harris quickly sold his patents to Niro clients and stayed with Fish, until one of them sent the infringement letter to Google.

Many people assume that Harris, a partner in F&R since 1994 and a top rainmaker, was tempted over to the other side of the fence by the prospect of huge financial rewards enforcing his patents. "Things didn't go as I intended them to," Harris admits cryptically. Says Niro: "All kinds of people come to us."