

LITIGATORS CORNER: The Cowardice of Anonymous Bloggers



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Anonymity is a disguise — often a repugnant one. For example, pictures of a teenaged girl killed in an automobile accident were posted anonymously by someone on the Internet. The photos were of her dead and mutilated body inside the car.

The *Chicago Tribune* announced on February 1 that it was shutting down the comment boards on its web site for all political news stories. See “Crossroads of Web, Credibility Full of Potholes,” by Timothy McNulty. The reason? Describing recent posted comments, McNulty said:

Those are the latest on the list of volatile topics — including race, immigration and rape — that bring out anonymous writers who are so nasty, obscene and racist that the boards were beginning to read like a community of foul-mouthed bigots.

What, you say, does this have to do with intellectual property litigation? As it turns out, quit a lot. Some things written anonymously might be witty, like “Primary Colors,” or the blog written by a fake “Steve Jobs.” But the vast majority are

not. Anonymous postings are poisoning the online well, making any real debate over our patent system in the Internet arena difficult to nearly impossible. We litigators have been told, over and over, that we are not civil enough to each other. Unlike some politicians, many of us have heard — and heeded — the message. But these anonymous bloggers, and those who post anonymous comments to these blogs, can say whatever they want. As McNulty said in his article, “Anonymity emboldens the cowardly and the liars.”

But recently, the situation has become worse. We are now seeing death threats. Before we go further, keep in mind that, on December 6, 2006, two patent lawyers and one of their staffers in Chicago were shot to death by a disgruntled client. In 2005, the mother and husband of a federal district judge in Chicago were shot and killed by a deranged litigant.

Many of you who are Internet-savvy know the anonymous law blog, TrollTracker. This blog owner does not want anyone to know who he is. On December 6, 2007, a commenter on the TrollTracker's blog said, naming one of my partners, “If you shoot and kill Ray Niro tonight, I would consider it a justifiable killing.” To my knowledge, TrollTracker does not moderate comments, so anyone can post anything. At least this threat had a name attached to it, and was removed, but not until a month later.

Another blog that includes lots of anonymous posts is Slashdot.org. One posting on Slashdot identified Ray Niro by name, and posted his home addresses and phone numbers, and even listed his wife's name. Later, in another anonymous posting on Slashdot, a “courageous” fellow added his “thoughts,” by saying this:

We already know who this Lawyer is, and who his firm is and who they work for. There is an exceptionally expedient way for society to deal with this. It is unfortunate that it is necessary, but we must reconcile ourselves to fact that societal institutions have been corrupted. We must search for means to enact reform, and if they

have forced us to take plays from their books, then so be it.

Vigilantism is not only necessary, it is justified. We need to seek out the personal information of this lawyer, his entire firm, and the President and board of directors of the companies that employ them. Publish their names, home addresses, any phone numbers that can be found, their license plate numbers, the names of their family members, the schools their children attend. Everything. This is War, ladies and gentlemen. Of a more dire and extreme sort than any in history. Only by securing true strategic objectives can the enemy be worn down. We must destroy not just his willingness, but his ability to fight. Destroy the ability of those who drive the conflict to live their lives in the most basic way and victory is assured.

We, the greater whole of society, are everywhere. We surround them. We can destroy them. All that is required is the will.

Is this person just a crank, or someone who is really prepared to “destroy them”? The persons who shot and killed a judge's family and several people in a law firm were thought to be cranks, too. But they were cranks with guns and ammunition.

The anonymous bloggers say that firms like ours — intellectual property litigation firms — are “trolls” and that we destroy innovation. But those commenters — or should I say “ranters”? — aren't bothered by the facts. To paraphrase what the late Chicago reporter and humorist, Finley Peter Dunne, once said (referring to fanatics), these people do exactly what the Lord would do if He had all the facts of the situation at hand. The facts these anonymous bloggers don't want to hear about include the cases our firm has won on behalf of companies trying to protect the intellectual property that makes them successful. Our firm has a great record of representing both companies and individuals. In the last fourteen months, we have won four multi-million-dollar verdicts for real companies, with real inventions, all with findings of willful infringement. Each was on behalf of a real company. One, for a manufacturing company, Acumed, involved the infringement of a significant patent on an implant for the treatment of shoulder fractures that

was copied by a deliberate infringer. The trial judge enjoined that willful infringement and her judgment was affirmed on appeal.

In a second case, we represented Black & Decker — the creator of the DeWalt brand of power tools — against a large foreign infringer of its patents on a unique radio charger used by construction workers. That infringement was also enjoined to protect Black & Decker's investment in innovation (part of which was a \$3 million payment made to an individual inventor). A third case involved a small company in Pittsburgh that was founded by two inventors who created new jobs for more than 100 people and then got crushed by a giant company that willfully infringed its patents on the first Internet-based electronic system for auctioning municipal bonds. The fourth case, tried in May, involved a publicly-traded manufacturing company named Telecommunication Systems Inc., that invented a new system of inter-carrier text messaging. The patented invention was copied by a deliberate infringer who told TCS it would rather pay lawyers than respect invention. It is the infringer, not the patent owner, who is responsible for the damage done to innovation.

Some of the individual inventors we have represented include: a man who was deposed on his deathbed, whose wish was to take care of his family; a schoolteacher from Iowa who had a better idea about color inks; an electrical engineer in Indianapolis who started his own business after he was laid off when his job was moved overseas; an electrical engineer from Oklahoma who has sixty patents to his name, and who established a successful business that makes and sells products; and an army veteran, also with sixty patents to his name, who made his own products and couldn't even get a decent response from two major companies, one of whom thought it cute to accuse him of inequitable conduct.

The anonymous bloggers say that firms like ours represent "shell" companies, implying there is something illegal about a patent holding company. The criticism is misplaced. Some large companies have subsidiaries that do nothing but own, license and litigate patents. Individual patent owners should be entitled to have the same advantages, because some large defendants with well-funded law firms may chase an individual plaintiff for the bloated fees the defendant incurred by hiring a mega-firm.

To make matters even worse, they try to collect out of the inventor's personal assets. A single individual is as entitled to the benefits and protections of the corporate form as is any giant corporation.

Even successful individual inventors have endured struggles. Eli Whitney, who was broke, invented the cotton gin. After being involved in many disputes over his invention, he concluded that "an invention can be so valuable as to be worthless to its inventor." He never patented anything again. Alexander Graham Bell was a teacher and author. His patent for the telephone led to years of litigation. Elias Howe, an unemployed machinist in frail health, spent five years inventing the sewing machine. He was destitute for years, while others were using his invention. He didn't begin receiving any royalties on his 1846 patent until 1854. Chester Carlson, the inventor of xerography, began his work in 1934. It took him four years to make a xerographic copy, and ten more years before he got any support from Battelle. The first copy machine using his invention was sold in 1958, twenty-four years after he began his work.

People who wish to engage in the debate about patent law are welcome to do so, even on the Internet. There are several excellent patent blogs out there. In the better ones, the authors identify themselves. See Dennis Crouch's Patently-O; Peter Zura's 271 Patent Blog; Lawrence Ebert's IPBiz; PHOSITA (<http://www.okpatents.com/phosita/>), written by several lawyers from a firm; Chicago IP Litigation Blog, by David Donoghue; and a lot of others. These lawyers are willing to stand up for what they say. And because they are open about their identities, many attorneys — including me — are interested in what they have to say.

An even better example of having the courage to stand behind what you say was in a public service advertisement that appeared just before the Super Bowl. The spot featured people like Lovie Smith, Roger Staubach, Ronnie Lott and the widow of Pat Tillman reciting the Declaration of Independence. I was reminded that all of the backers of the Declaration put their names on it, so the English would know who to hang if the Revolution was not successful. That's walking the talk.

But the anonymous bloggers and their anonymous ranters/commenters are different. They don't have the courage to identify who they are, so that their postings and

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comments will have to be responsible, rather than vile, and sometimes, even criminal. We are not able to evaluate where they come from, what experiences have formed their lives, or what biases or prejudices they may have that influence and shape their commentary, so that the reason — or lack of it — for their views may be honestly judged. TrollTracker offers opinions about one of the clients we represent, and his opinions are harsh, to say the least. TrollTracker's postings include references to "shell" corporations. Wouldn't it be nice to know what, if any, corporate work TrollTracker has done? Wouldn't it be nice to know if TrollTracker represents, for example, companies who are members of the misnamed Coalition for Patent Fairness? Wouldn't it be nice to know if TrollTracker has ever represented an individual or small company whose interests were run over by, say, Intel, which secretly set up a front company in the Cayman Islands so it could tell a judge in Texas that a patent was valuable at the same time it was telling a judge in California that the same patent was worthless?

Imagine what our courts would be like if lawyers could behave like these bloggers and commenters. They could appear under false names, and not identify their firms or describe their backgrounds. Imagine what it might be like to hear from a judge who, covering his or her face, wrote opinions that didn't carry any judge's name. And imagine what Congress would be like if all of its members could argue and vote anonymously.

A good propagandist knows that repetition can make a lie true. It isn't public debate when anonymous posters slander their opposition, or encourage violence. It's time for these cowards make themselves known. 