



The goodfellas

Detkin and Myhrvold on patents, trolls and Intellectual Ventures

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IV moves from myth to reality

Until recently, Intellectual Ventures had operated in almost total secrecy, revealing nothing and seemingly happy to allow rumours about its business model become accepted truth. Now, however, senior directors Nathan Myhrvold and Peter Detkin are beginning to talk

By **Victoria Slind-Flor**

When Nathan Myhrvold brought Peter Detkin into Intellectual Ventures, Silicon Valley buzzed with rumours that he had hired an enforcer. Had Detkin, who is credited with having originally coined the term patent troll, gone over to the dark side to become the biggest troll of them all?

Myhrvold laughs at the suggestion. "Is Peter more of a danger here than he was as a partner at Wilson Sonsini or at Intel?" he asks. "I don't have the dean of the plaintiff's bar here. I have the opposite. He's become more of a businessman, not an attorney."

Instead, Myhrvold says those who fear Detkin, himself and Intellectual Ventures in general are responding from "their guilty knowledge". They are, he claims, merely projecting "what they'd do if they had the patents".

Detkin and Myhrvold are the best known of Intellectual Ventures' four managing directors. Myhrvold has had a high profile ever since he served as chief technology officer for Microsoft Corp. Detkin, meanwhile, first surfaced into the public gaze as a renowned and aggressive intellectual property litigation partner in the Silicon Valley powerhouse law firm of Wilson Sonsini Goodrich & Rosati.

The other two directors are Edward Jung, also a former Microsoftie who holds more than 60 patents covering a wide range of scientific disciplines; and Gregory Gorder, a transactional lawyer who had been a partner in Seattle's Perkins Coie, one of the northwest city's premier law firms.

Their company, headquartered on the edge of a former cranberry bog in Bellevue,

Washington, has been maligned by many and understood by few. Go to any intellectual property bar function or meeting of the Licensing Executive Society and the lead topic of gossip rumbling around the edges of the meetings is Intellectual Ventures and its supposed evil plans.

The war chest

Everyone wants to talk - although generally not on the record - about how Detkin is "running around the [Silicon] Valley, signing everyone up". Companies that refuse to deal are said to be targets of patent litigation for which Intellectual Ventures has allegedly collected a huge war chest and amassed a wide array of assertable patents (though most people are not certain what "signing up" actually means). Others have said companies take a licence to IV's patent portfolio as a way of paying protection money to ensure they will not be litigation targets. And the latest rumour to surface is that IV has brought in a number of institutional investors, including pension funds.

When an unnamed bidder made a series of low-ball US\$10,000 bids at the OceanTomo patent auction in April (see *IAM*, issue 18, pages 4 and 5), speculation in the auction room was that Myhrvold was the mysterious bidder. While IV has never revealed how many patents it has acquired over the years, popular wisdom has it that the number is high. According to one website, Myhrvold is "a patent-hoarding hobbit".

One of the reasons for so much speculation is that Intellectual Ventures has been highly secretive for much of its six years of existence, perhaps a legacy of Myhrvold's time at Microsoft, a company which has mastered the FUD factor, sowing

“fear, uncertainty and doubt” in the minds of any potential competitor. Detkin, who previously was a chatty leader of the Silicon Valley IP bar, quickly became tight lipped in response to any enquiries about what his new company was doing and why. One Silicon Valley intellectual property specialist suggests that Intellectual Ventures was operating “in roach mode”, scattering whenever the light goes on.

But over the last few months, Detkin and Myhrvold have shifted gears and started giving interviews. Myhrvold has testified before Congress and even addressed the annual meeting of the Association of University Technology Managers in March. IV now has a Washington presence in Peter Harter, an experienced lobbyist who in the past represented Netscape Communications, EMusic.com and Securify. Harter is constantly on the stump, addressing a wide range of tech and IP meetings, including the Licensing Executives Society, where he delivered an impassioned defence of NTP Inc for enforcing its patent against Research In Motion Ltd in the *BlackBerry* case.

And these days, Intellectual Ventures’ website features a diagram, complete with stick figures, explaining what the company is all about, or at least as much of the company’s business aims as Myhrvold and Detkin are ready to disclose.

No trolls here

The shift may be to counter a growing PR problem. “They’ve realised they are being viewed as the super troll. That’s the public perception,” says Ron Laurie, managing director of Inflexion Point Strategy of Palo Alto, California. And nobody wants to be considered a troll. Last year Laurie and Detkin were on the same panel at a one-day conference on patent trolls and property rights sponsored by the Washington DC-based Intellectual Property Owners trade group. “Here was this discussion about trolls with 400 people and there wasn’t a self-admitted troll in the room,” Laurie says.

When Myhrvold talks about IV’s patents, he emphasises the home-grown intellectual property. Two years ago he told a reporter from the *Seattle Post-Intelligencer*: “We want to invent cool things. We want to bet on crazy, new ideas that are interesting but may not have any immediate application.”

That stick-figure chart shows something called invention labs moving to invention research and development, which yields an invention library leading to market enablement. In other words, IV is all about

developing a product that is a library of IP that can be sold to others in a variety of ways.

Myhrvold hosts invention sessions in which he sits with other scientists and engineers speculating about possible solutions to a problem in any number of technological areas. IV has a stable of senior inventors who work with the company on a part-time basis and participate in these brainstorming sessions. They include such big names as Dr Leroy Hood, who heads the Institute for Systems Biology; MIT’s Professor Robert Langer, who runs the largest bio-engineering lab in the US; and Dr Chuck Whitmer, a physicist who, with Myhrvold, was co-founder of a software company acquired by Microsoft. A key participant in the invention sessions is Chief Patent Counsel Casey Tegreene, whose job it is to take some of the good ideas flowing from the get-togethers and cover them with patent applications.

OceanTomo’s James Malackowski suggests that this part of IV’s business looks a lot like the model employed by Jay Walker at Walker Digital of Stanford, Connecticut. Like Myhrvold, Walker has invented across technology lines and developed a laboratory to generate new intellectual property such as the successful web-based travel company Priceline.com. However many of the technologies Walker invented were for web-based companies that went down in the dotcom bust in 2000 and the company lost billions of dollars. “Maybe Jay was ahead of the mark and Nathan has hit the right time,” says Malackowski.

IV also acquires technologies from universities, individual inventors and companies lacking the wherewithal to develop products from their inventions. So far it has no presence anywhere but in the United States, but may have done deals with overseas universities, companies or individual inventors. For the record, neither Myhrvold nor Detkin bid on anything at the OceanTomo auction. All day long during the auction Detkin kept getting messages on his BlackBerry asking “is it you?” when telephone bids came in from unnamed sources. But “the stuff” IV might have wanted to buy was not there, Myhrvold says.

However, that could well have been because IV jumped in ahead of the other bidders. Malackowski says that prior to the auction IV did contact one company planning to put patents up for bid and bought the patents for undisclosed terms. Malackowski was not upset. “I don’t think what they did was inappropriate,” he says. “There was no reason for them not to do it.”

Intellectual Ventures senior inventors

In addition to Nathan Myhrvold, Edward Jung and Casey Tegreene, IV has a roster of senior inventors. They are:

- **Dr Roderick Hyde** – former senior physicist at the University of California’s Lawrence Livermore National Laboratory.
- **Dr Bill Mangione-Smith** – senior professional engineer for over 15 years.
- **Dr Alexander Cohen** – senior analyst at Quantum Intellectual Property Services.
- **Bran Ferren** – co-chairman, Applied Minds Inc, working in entertainment, product development, engineering, architecture and the sciences.
- **Dr W Daniel Hillis** – co-chairman and chief technology officer, Applied Minds Inc.
- **Dr Leroy Hood**, co-founder and director, Institute for Systems Biology.
- **Dr Muriel Y Ishikawa** – project and programme leader, Lawrence Livermore National Laboratories.
- **Dr Robert Langer** – professor, Massachusetts Institute of Technology.
- **Roy Levien** – principal and manager of Keystone Advantage LLC and a managing inventor at Ambient Architecture, an invention company.
- **Eric C Leuthardt MD** – neurosurgeon, Washington University in St Louis.
- **Mark Malamud** – principal and manager, busymonster LLC, a consultancy company focused on advanced user interface and design.
- **Sir John Pendry** – professor, Imperial College, London, theoretical solid state physics.
- **John D Rinaldo Jr** – user interface architect.
- **Dr Thomas Weaver** – senior interviewer, Fannie and John Hertz Foundation.
- **Dr Chuck Whitmer** – co-founder of Dynamical Systems Research Inc with Dr Nathan Myhrvold.



Nathan Myhrvold

IP is the fate of the US economy



Peter Detkin

Nathan loses me at "hello" in science

Myhrvold describes IP as "the fate of the US economy" and believes the two are inextricably linked. "IP is the thing we're good at," he says. Manufacturing, he continues, has moved overseas in search of lower costs and will not return which means the focus on IP can only grow. "In 10 years patents will be even more important than they are now."

Fertile imagination

The idea that became IV sprang from one of the most fertile imaginations on the planet. Myhrvold, whose open, genial face belies the powerful intellect that resides within, is a lot like a restless 10-year-old boy who wonders what would happen if... He is endlessly curious about everything from palaeontology to photography to cooking to cosmology.

Detkin brings a lawyer's aversion to risk into the mix, but he insists he seldom puts the brakes to Myhrvold's enthusiasm. "I don't look at Nathan's ideas and say: 'Interesting idea but don't do A; instead do A-prime'," he says. Instead, he uses a different approach. "I say to Nathan: 'Of the 10 ideas you have, three are really interesting and seven are not such good ideas.' But sometimes I'm wrong. Nathan loses me at 'hello' in science. He's one of the real luminaries in the tech world."

Myhrvold grew up in Santa Monica, California, and, after skipping a number of grades in school, started at Santa Monica College aged 14. He then moved over to the University of California at Los Angeles for an undergraduate degree in mathematics and a master's degree in geophysics and space physics. Next Myhrvold studied at Princeton University, acquiring a second master's degree in mathematical economics before he shifted focus to theoretical and mathematical physics, in which he received a PhD. Cambridge University then gave him a post-doctoral fellowship in applied mathematics and theoretical physics, which enabled him to work with famed physicist Steven Hawking researching cosmology, quantum field theory in curved space time and quantum theories of gravitation.

He came to Microsoft through a fluke, having taken a brief leave from Cambridge to help his brother Cameron Myhrvold and several Bay Area friends with a software project. The project bloomed into Dynamical Systems Research Ltd; Myhrvold became chief executive officer and in 1986 moved to Microsoft when the company was acquired by the software giant for US\$1.5 million.

In all, Myhrvold spent 14 years at

Microsoft, ultimately becoming chief technology officer and overseeing a research and development budget of US\$2 billion, as well as an in-house industrial lab with over 700 researchers. When he joined the company, Microsoft had only two patents and any research emphasised making products rather than looking to the future. "We were eating our seed corn," he says. Today a search of the USPTO database indicates that Microsoft is the assignee on 5,126 issued patents.

But Myhrvold's interests have always ranged far wider than software. "I never met a kind of science I didn't like," he told members of the US Senate's Subcommittee on Intellectual Property earlier this year. And that's a fact. He has published a palaeontology paper suggesting that *Apatosaurus* dinosaurs communicated with each other by whip-cracking their large tails at the speed of sound; while after leaving Microsoft in 2000, he spent a summer unearthing *Tyrannosaurus rex* bones in a fossil bed in Hell Creek, Montana. At other times, Myhrvold is to be found in exploring the universe: he joined with Microsoft co-founder Paul Allen to donate US\$12.5 million to finance the construction of an array of radio dishes to monitor the sounds of deep space as part of the Search for Extraterrestrial Intelligence, commonly known as the SETI Project. But it is not just science. Myhrvold has also finished both first and second in the world championships of barbecue cooking, held in Memphis, Tennessee.

Fear factor

Ask Myhrvold why he is feared and even hated by so many in the patent world and he will deflect the inquiry with an anecdote, saying his kids know he is not even the most feared person in his family. More seriously, however, he points out that Intellectual Ventures has yet to file a single infringement lawsuit so, Myhrvold insists, the patent troll title does not fit. "If I'm a troll, I must be the dumbest and least effective one of all," he recently told the Senate IP subcommittee. If the term is to be used it should, he says, be "reserved for people who manipulate or abuse the intent of the patent system". Whereas, instead, it often seems to serve as a name applied to those who the accuser has a problem with, such as "a plaintiff or a guy he does not like".

Detkin, the coiner of the phrase, agrees. "Patent troll has been hijacked and used in many circumstances where it's not appropriate. People see trolls in every shape they want to," he says. But he describes

himself as “baffled” when the term is applied to him, Myhrvold or Intellectual Ventures. “If anything, I’m anti-troll,” he says. “If I’m buying a patent, it’s definitely for sale.”

Detkin has an undergraduate degree in electrical engineering in addition to his law degree. When he was at Wilson Sonsini, he was perhaps best known for his involvement in the high-profile *Lotus v Borland* software copyright case that went all the way to the US Supreme Court in 1996; he second-chaired Borland’s representation together with another equally intense Wilson Sonsini litigator, Gary Reback.

Detkin then moved over to Intel Corporation, where he spent eight years running the chipmaker’s patent litigation against the likes of Digital Equipment, Compaq and Intergraph. He joined IV in 2002, when he was on sabbatical from Intel. “I thought what Nathan was doing was very cool,” he explains. “And it gave me the opportunity to be a principal.” He gave Myhrvold only two ultimatums when he made the switch: no cubicles and no flying economy class. Both were part of the Intel culture and Detkin had had enough. He says what IV is doing is creating a new asset class and that instead of fearing his company and its business model, other should embrace it. “Most experts who are telling others how to manage IP don’t have the breadth of experience that’s necessary,” he claims.

To have and to hold

So just what does IV have so far? In June, the company issued a press release announcing the filing of its 500th patent application. According to the US Patent and Trademark Office’s database, IV is listed as the assignee on just one issued patent, which is for a computer network-based broadband communication system. Interestingly, among the named inventors on that patent is F Scott Yeager, former senior vice president of Enron’s broadband division and a defendant in the defunct Texas-based energy company’s insider-trading case. Myhrvold says of the acquisition that there were some “great deals” coming out of Enron’s bankruptcy. Others have said the former Enron patent is strong enough to give pause to networking giant Cisco Systems Inc.

The USPTO has been publishing patent applications since 2002. In the database of published applications, Myhrvold is a named inventor on 38 different applications in a wide range of technologies. These include photo-related applications, integrated circuit lithography and methods of heightening an

immune response. A number of these patents are assigned to Searete LLC, which has the same Bellevue address as IV. It is likely that many issued patents and published applications may be assigned to shadow entities with unusual names that actually are part of IV. In March 2004, for example, Net Perceptions, Inc sold its patent portfolio for US\$1.8 million to Thalveg Data Flow, which turned out to be an IV company.

Much has been made of the fact that IV has established a number of shell companies, often with fanciful literary names such as Steinbeck Cannery and Dickens Coal. Detkin insists there is nothing reprehensible about the use of shell companies. “All companies rely on acquisition entities. When I was at Intel, we created a zillion new companies.” IV, like other businesses, uses these shell or acquisition entities to keep any potential liabilities of the acquired company from affecting the whole organisation. And contrary to published reports, Detkin says the names for the new entities do not come from a name-generating computer program.

Inflexion Point’s Laurie has done three deals with IV to date on behalf of clients he declined to name. He says IV has a whole network of agents who make initial contact, seeking to buy patents. “They call people up and say ‘we’re looking for patents’. It isn’t until the second or third call that you find out what’s going on and that IV is the real buyer,” Laurie explains. One of the agents is Howard Skaist of the Berkeley Law and Technology Group of Beaverton, Oregon. Skaist was director of patents at Intel during Detkin’s tenure there.

Back to school

At the AUTM annual meeting in Orlando, Myhrvold told attendees his company has been buying up IP from what he termed “smaller universities”. He clarified this in a later interview, saying that he is looking past the “typical Silicon Valley focus on Berkeley, Stanford, MIT and CalTech”. He has found “a lot of invention action going on at other places that are not household names”, including such large institutions as several campuses of the University of California. “Great patents are coming from these other schools and they’re overlooked by people who think only the top universities matter,” he says.

In the past, the culture at many universities was anti-patent, says Myhrvold. “There was a sense of futility for academics who thought that if they filed an application it would just sit in a file cabinet and what’s the point of that?”

AKA Intellectual Ventures

When it has dealings with other organisations, IV is often thought to use shell companies. Some of those it is alleged to operate are listed below. Have any of these come knocking on your door?

Action Grindelwald
Alberti Anemometer
Athens Bluestone
Bar Harbor Acadia
Bayard Chimney Rock
Ben Franklin Patent Holding
Bradbury Press
Breckenridge Capital Fund
Calumet Keweenaw
Copper Data River
Corps of Discovery Patent Holding
Dickens Coal
Elliot Capital
Faulkner Interstices
Fritch Alibates
Gallitzin Allegheny
Golding Linings
Green Wireless
Hall Aluminum
Harington Valve
Ibsen Squared
Kipling Sahibs
Maquis Techtrix
Midnight Blue Remote Access
Nevada Liquidation
Ochopee Big Cypress
Orange Computer
Pasternak Solutions
Point Reyes National Liquidation Buyer
Poulsen Transmitter
Purchased Patent Management
Purple Mountain Servers
Rose Blush Software
Russell Equanimity
Sky Blue Interchange
Smeaton Pump
Steel Gray Server
Steinbeck Cannery
Steinmetz Electrical
Stokover Technology
Sugarload Acquisitions
Sun Gold Techtrix
Thalveg Data Flow
Twain Typesetting
Van Drebber Mariner
Wengen Wireless
White and Black
Yellow Data Access Morgan Signals



Edward Jung

IV director, former Microsoftie and holder of over 60 patents



Gregory Gorder

IV director and one-time Perkins Coie partner

Some university deals are put together “because we knew the inventor, or we know the university department is good,” says Myhrvold. Others come about because Elizabeth Holohan, IV’s director of university programmes, contacts various schools in search of new technologies, actually cold-calling many of them. Holohan was previously with the University of Washington’s tech-transfer office.

To date IV has done deals with about 50 universities. “Every deal we’ve done we’re happy with,” Myhrvold claims. In his testimony before the US Senate, Myhrvold said IV is acquiring technology that educational institutions and individual inventors are “ill-equipped to commercialise”.

He explains that he started in-licensing university technology back when he was with Microsoft and, in the process, discovered that many educational institutions have completely different methods of doing a deal from the business world. In one Microsoft transaction, he said officials at the university from which he was licensing the technology even “thought they had to have the state governor sign off on the agreement”.

The biggest difference Myhrvold has found between the private and university sector is that while a business with which he is trying to do a deal is pragmatic and will sometimes “settle for half a loaf to get a deal done”, universities may have other objectives that are non-financial, such as “promulgating knowledge and keeping the faculty happy”. On the other hand, most universities are realistic about the value of their technology. “The insane things that are asked are more common with a private individual,” he says, noting the solitary inventors who may seek as much as US\$1 billion for a relatively minor invention.

Universities are interested in what Myhrvold has to say, says Mark Crowell, past president of AUTM and associate vice chancellor for economic development and technology transfer at the University of North Carolina at Chapel Hill. “There are a whole lot of people who think the idea of bundling patents seems like a good idea,” he explains. “A *bona fide* effort to come in and look at technologies that aren’t going anywhere and license them at some standard terms makes a lot of sense.”

Software focus

Much of the technology IV is buying is in the software and information technology area. With the obvious exception of Google, university inventors in these areas are much

less likely to be appreciated by industry than those who come up with new ideas in the health sciences sphere. “Companies in software and information technology as a practice don’t want to hear about others’ IP,” Myhrvold says, and often do not let their engineers read anyone else’s patents. That wilful ignorance is part of the product companies’ game plan, he insists. “They infringe lots and get away with it. They have made deliberate decisions not to check patents. They’re afraid in the long run they’d have to pay somebody,” Myhrvold claims. He says industry’s attitude is one of “wink-wink, nod-nod”: learn from others by attending meetings and reading professional journals but have no policy to pay for what is learned. Detkin uses a real-property analogy. The way these infringing companies behave is a lot like retail giant Wal-Mart deciding to refuse “to do a title search and then, when found to be squatting, refusing to get off.”

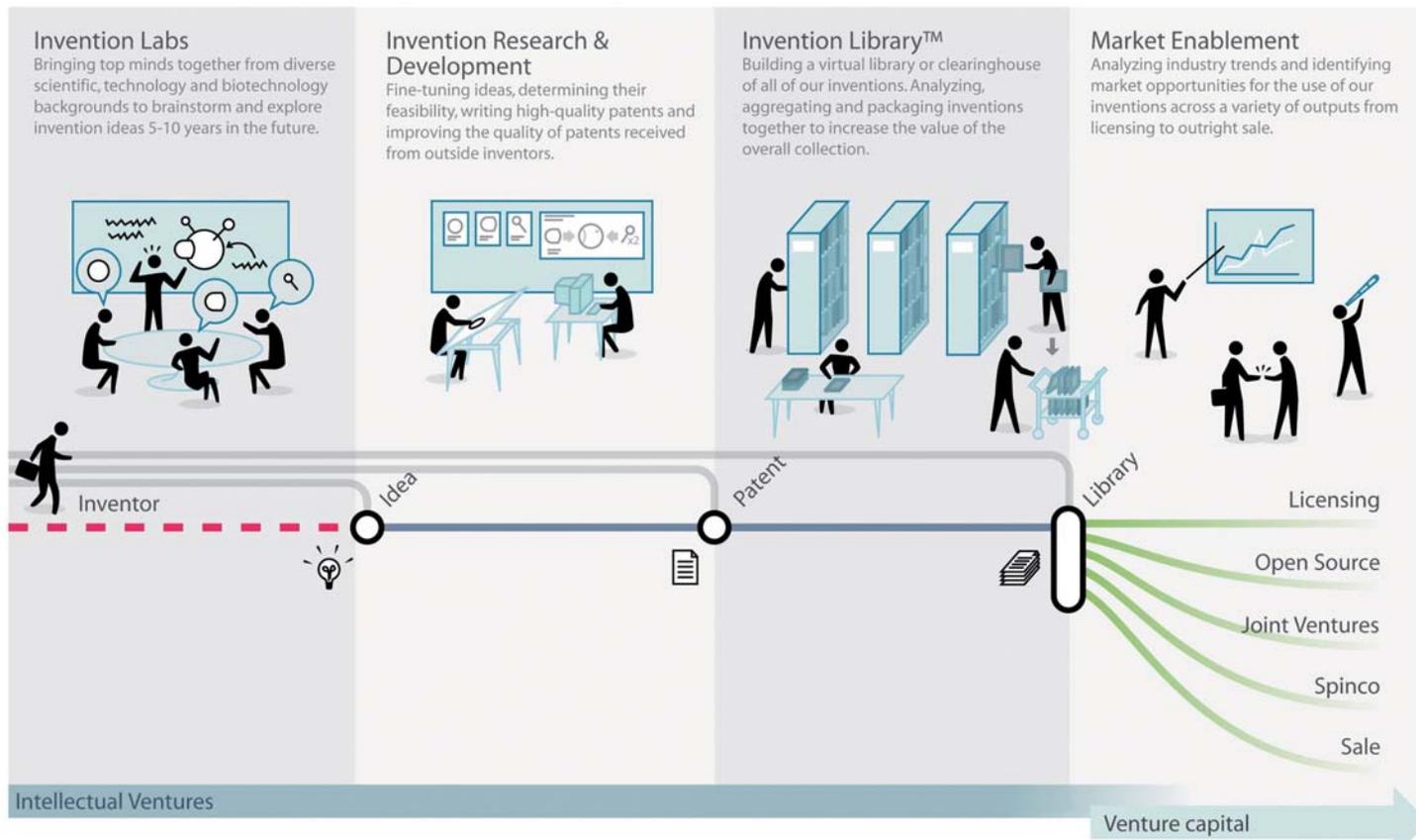
IV is very likely to be in a strong position to deal with companies that scoff at inventors who seek to enforce their patents. By all accounts, a powerful portfolio of tech patents is being aggregated. If an individual with one patent goes against a powerful company, that inventor has only a 50/50 chance of winning. But, Laurie points out, if someone has six patents, the company’s probability of escaping all infringement charges falls to only 16%. “And IV is not talking about just 10, but is potentially coming with 100 patents [against a company]. The theory is that no one will fight them; every one will reach for their cheque books. That’s the so-called assertion mode,” says Laurie. And the one that many fear IV will use.

Myhrvold does not have much truck with patent reform that would bar injunctive relief to non-manufacturing patent owners. He told the Senate IP subcommittee that he had reviewed litigation data and found that only 2% of all patent litigation is generated by such companies. “It’s important to note that the vast majority of patent holders who don’t make products are perfectly honourable ... [and] have long been a part of America’s engine of invention.” He is unequivocally critical of what he calls “the infringement lobby”. It is, he says, exaggerating the ills of the system. “Their so-called reform is really a weakening of patent rights for people other than themselves.”

Strategic thoughts

As the big two at Intellectual Ventures begin to open up a little, the vague shadows of a long-term strategy are beginning to appear.

Intellectual Ventures — Investing in Invention



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Assertion may not so far have played a role, but that is not to say it will not happen in the future and is not there as a threat in the present. There can be little doubt the company has thought about it – why else would Myhrvold talk as he does about the “infringement lobby”? However, IV’s commitment to invention and close consideration of the technology underpinning the patents the company acquires are not the normal game of patent trolls. Trolls are generally opportunists, vacuuming up whatever patents they can acquire in the hope of getting something they can assert against others. That does not seem to be IV’s game.

IV will not reveal how many patents it has, or the names of entities to which it has licensed technology. Although Myhrvold and Detkin have become more forthcoming than in the immediate past, there is a limit to what they will talk about. “We’re a private company,” says Myhrvold. “We don’t disclose our investment plans any more than Warren Buffet does.”

But maybe IV’s strategy just boils down to backing Myhrvold and his team against all comers – figuring that no-one is going to understand more about innovation and technology development in the high-tech sector than Microsoft’s former chief technology officer. If someone with the experience and intellect of Nathan Myhrvold thinks he can make big money from patents, who can doubt that he will? And maybe that is the most frightening thing of all. When he says you are infringing on a group of patents he owns, the likelihood is that you probably are. ■

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