

COLUMNS

## In the patent world, pirates get the free pass

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Patents are a misunderstood space, partly because the patent industry has been recently plagued by labels. And many times these labels are not as simple as one-size-fits-all.

Napster was launched in June 1999. It was originally founded as a P2P file-sharing Internet-based service to exchange files, but quickly became a popular site for people to share MP3 (music) files.

Users of Napster simply liked to download and trade music for free. Before it was even a year old, the company faced numerous copyright infringement lawsuits and soon shut down.

As part of the wind-down, Napster agreed to pay damages to music creators and copyright owners for past, unauthorized uses of music, as well as an advance against future licensing royalties.

No bones about it

Napster lost, in part, through a successful public relations campaign that labeled those who copy music, without purchase, as pirates.

There are also pirates in the patent world – companies using someone else's intellectual

property for free. Many do so knowingly and willingly, but there is very little press scrutiny for infringers.

When was the last time you read an article critical of infringement?

In the patent world, it appears that it is patent owners that are disrespected. The pirates get the free pass.

It is very fashionable these days to describe all patent owners not as pioneers and not as innovators, but as “patent trolls.”

The fairy tale image of an ogre controlling a bridge he did not build has taken root. Now just about anyone responding to patent infringement by suggesting that perhaps infringers ought to compensate patent owners is labeled a “patent troll.”

The widespread and indiscriminate use of the mythic term has itself created a myth: that patent owners do not deserve to be compensated because they did not create anything of value.

In reality, many of today’s most valuable patents are the classic tales of invention: a great idea, late nights, trial-and-error, dead-ends and, let us not forget, the blood, sweat and tears.

For some, millions of dollars spent in research and development and, for some, a patent awarded at the end of this long and innovative struggle.

So why do the pirates or patent infringers believe they should be able to use these inventions for free?

And who exactly is it throwing out these derogatory labels?

Flying the flag

Patent critics are all too often the free riders who are using the patented technologies.

Whenever there is a patent issue or litigation, one party will always take the adverse position to the other, particularly when it suits their economic benefit. It is human nature.

Free riders use name-calling as their fortress and it is important to understand the motives of those making the criticisms to truly understand the complexity of the issues at hand.

So where does that leave us? Hollywood has glamourized the pirate. People like pirates, pirates usually make off with the gold and the romance, so why would it be any different in the patent world?

However, before you enter any new market, do your research to understand if there is IP in the space you are entering and who owns it.

Then, act responsibly.

Protecting the rights of patent owners is what our country’s patent system was based on. Do not be a pirate and rely on your fancy hat and eye patch to get you off the hook.

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