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Cisco's Patent Counterattack Fails

By ASHBY JONES

A federal judge in Chicago has dismissed legal claims filed by [Cisco Systems](#) Inc. against a licensing company, in a decision that dims the network-equipment maker's hopes of turning the table on so-called patent trolls.

In a ruling issued late Monday, U.S. District Judge James F. Holderman held that the aggressive licensing strategy used by Innovatio IP Ventures LLC against Cisco customers is protected by the U.S. Constitution. Companies such as Innovatio, more formally known as patent-assertion entities, buy up patents and seek to earn money from them through licensing and litigation.

In October, Cisco accused Innovatio of using illegal tactics to squeeze money from a large swath of Cisco customers on grounds that they had infringed Innovatio's patents simply by purchasing and using equipment made by Cisco and two fellow plaintiffs, [Netgear](#) Inc. and [Motorola Solutions](#) Inc.



Bloomberg News

Cisco Systems CEO John Chambers at the World Economic Forum in Davos, Switzerland, last month.

Cisco, based in San Jose, Calif., claimed that Innovatio sent 8,000 "threatening" letters to coffee chains, hotels and other retailers using Wi-Fi equipment that includes the three companies' technologies.

Innovatio's tactics, Cisco argued in its lawsuit, were "misleading, fraudulent and unlawful." It says they effectively amounted to an extortion scheme, and therefore violated federal antiracketeering laws.

Judge Holderman disagreed. He found Innovatio's behavior to be largely protected by a First Amendment principle that gives protection from liability to anyone seeking to "petition any department of the

government," including the court system. The protection extends to licensing demands made before a lawsuit, the judge wrote.

While the principle doesn't extend to "sham litigation," Innovatio's tactics didn't rise to that level, he said.

"It is enough for now to determine that Innovatio at least has a plausible argument that its infringement claims are still viable," wrote Judge Holderman. The "licensing campaign is therefore not a sham," he said.

Innovatio's lawyer, Matthew McAndrews, said: "It's a meaningful and important win for Innovatio and [PAEs] everywhere."

[Mark Chandler](#), Cisco's general counsel, said: "We will continue to work to protect our customers from being abused. Innovatio knows that huge numbers of the small businesses receiving these demands have no need for a license [and] we do not believe those misleading demands should be immune from liability."

Congress and the federal courts have largely failed to stem a wave of patent lawsuits that has roiled the technology industry. The proportion of patent lawsuits filed by PAEs grew to 40% in 2011 from 22% in 2007, according to Lex Machina, an intellectual-property litigation, data and analytics company.

Patent experts and lawyers watched the Cisco-Innovatio case closely, partly because large companies have rarely attempted to hold PAEs liable for their behavior. Rather, Cisco and other companies in their battle against PAEs have chosen to defend themselves when named as defendants or to pre-emptively ask a judge to declare either that a particular patent is invalid or that no infringement took place.

Judge Holderman's opinion doesn't bar other companies from filing similar claims in the future, but it provides valuable "precedent" that a PAE could use to defeat those claims.

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