

New rivals for Apple and Google in patent fight: South Korea and France

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Byline: By Dan Levine and Miyoung Kim Reuters

Body

SAN FRANCISCO/SEOUL -- Patent competition in the United States is usually a fierce arena for private companies, but now the South Korean and French governments are suiting up.

Both countries have launched patent-acquisition companies, with the goal of helping domestic technology firms and possibly making some money in the process. China and Japan are making moves into the business too.

The Korean and French firms, dubbed Intellectual Discovery and France Brevets, are similar to the handful of private patent-acquisition firms in the U.S. derisively called "patent trolls."

U.S. patent aggregators such as closely-held Intellectual Ventures -- which don't produce products -- are often accused of unfairly targeting companies that actually build things by threatening to sue unless they are paid royalties.

The aggregators say they create a more-liquid market for valuable intellectual property, and help assure that legitimate inventors -- especially those who don't work for big corporations -- get paid for their breakthroughs. The French and Korean firms haven't yet filed any U.S. lawsuits.

The advent of state-sponsored intellectual property dealers adds a fresh geopolitical element to the debate about patent trolls and how to protect legitimate inventions without stifling innovation. It could also complicate efforts to improve global cooperation on trade-related matters such as online piracy and computer security.

Congressman Peter DeFazio, a Democrat from Oregon and co-sponsor of a bill designed to limit patent litigation, called the new government-backed patent entities a form of "protectionism" that nobody had anticipated.

"This is a whole new level of jeopardy," said DeFazio, who had not been previously aware of them.

Government-sponsored aggregators are still comparatively minor players in the patent deals market, and officials involved with Intellectual Discovery and France Brevets say they have no intention of pursuing aggressive litigation strategies.

Intellectual Discovery presents itself as a defensive alliance: if a South Korean company finds itself targeted in a lawsuit, for instance, it can access the patents being compiled by Intellectual Discovery to hit back.

"It is still in an incubating stage and focusing pretty much on aggregating IP," said Park Jong-Pil, deputy director at South Korea's Ministry of Knowledge Economy, in reference to Intellectual Discovery. "It is not close to a stage of earning big revenues or identifying entities violating our patents or taking legal action."

Intellectual Discovery has bought over 200 U.S. patents, including one for retinal eye scan technology from Singaporean chipmaker Avago Technologies Ltd last July, U.S. government records show.

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And in a sign that its strategy is not limited to aiding Korean companies, it promptly sold that patent to Google (GOOG), which is busy developing its Google Glass product. A source familiar with the deal said the price was less than \$100,000.

Intellectual Discovery and Google declined to discuss the details.

France Brevets, for its part, owns only four patents in the United States and 50 total patent "families," according to vice president Yann Dietrich and U.S. patent records. He didn't disclose the total number of patents worldwide.

Dietrich said the goal was investing in quality IP so French companies can better monetize their technology.

"We are not playing with the rules to extract money," Dietrich told Reuters.

Patent reform advocates say patent aggregators have exploited loopholes in the system and are often little more than quick-settlement artists who threaten lawsuits with flimsy patent claims registered years after a product hits the market.

But big players such as Intellectual Ventures, launched by former Microsoft chief technology officer Nathan Myhrvold, say they prevent upstart companies and independent inventors from being ripped off and create a much-needed market for innovation. Several tech companies, including Microsoft and Google, as well as universities and foundations, are investors in Intellectual Ventures, according to court filings.

Companies used to deploy their patents largely for defense, and big tech firms routinely entered into broad cross-licensing agreements enabling them to use many of one another's technologies.

But that equation has changed over the past several decades as the value of breakthrough inventions in digital technology has soared. Tech firms began to see patents as a strategic weapon -- and entrepreneurs like Myhrvold saw a business opportunity.

The result has been an explosion of patent litigation -- especially in the mobile computing arena, where Apple (AAPL) has filed numerous patent infringement lawsuits against its major rivals, with mixed results.

The spiraling patent litigation, which some attribute at least in part to the aggregators, is seen by many in the industry as wasteful, and a threat to innovation. That in turn has attracted the attention of Congress.

DeFazio, the Oregon Democrat, has co-sponsored the SHIELD act, which aims to deter patent lawsuits by requiring most entities which sue over a patent they have acquired (as opposed to going to court over an invention of their own) to pay their opponents' legal fees if they lose. Trial lawyers have fiercely opposed the legislation, in part out of concern that "loser pays" could spread to other areas of tort law.

Stanford Law School professor Mark Lemley said the emergence of state-sponsored companies could drive more support for the bill, now in committee. Legislators may view them as foreign governments sucking away the fruits of U.S. research, Lemley said, regardless of whether that is a realistic threat.

So far, the government-backed aggregators don't have nearly the same scale as Intellectual Ventures, which says it has over \$5 billion in committed capital and owns roughly 70,000 IP assets.

France Brevets was launched in 2011 with 100 million euros, half from the state and half from the Caisse des Depots, a publicly managed investor in French economic development.

Pascal Asselot, licensing director for France Brevets, said that by assembling patent pools with intellectual property bought from French and foreign businesses, France Brevets aims to convince other companies to sign licensing deals and pay royalties. If France Brevets can show a healthy revenue stream, the hope is to attract sustainable private investment, Asselot said.

Korea's Intellectual Discovery, which was started in 2010 amid government fears that domestic companies were losing key patents that could be used against them by foreign companies, has a \$140 million government commitment.

Prominent South Korean companies like Samsung Electronics Co Ltd and LG Electronics have signed up as "shareholders," providing Intellectual Discovery with additional revenue in exchange for a license to its patent portfolio.

Intellectual Discovery chief general manager Chant Kim compares the company to San Francisco-based RPX Corp, which acquires patents to protect its members but doesn't initiate lawsuits.

Edward Jung, chief technology officer at Intellectual Ventures, said his company hasn't competed with Intellectual Discovery on as many patent acquisition deals as he had thought they would.

"It's a more difficult business model than they initially expected," he said.

Countries around the world are eager to strengthen their patent punch. The Innovation Network Corp of Japan, a joint public-private investment company, launched a fund in 2010 to acquire and license life sciences patents. Officials there were unavailable to comment.

China, meanwhile, has plans to set up around 20 IP "investment service platforms," along with exploring a joint government-industry-university patent funding model and extending pilot programs for patent insurance, according to a 2013 strategy plan from the state intellectual property office.

It's unclear from the document whether any of these programs will be similar to South Korea and France, and government officials did not respond to requests for comment.

Taiwan's national research lab set up an "IP service company" but it is not government funded, said Sean Wang, a representative for the lab in the United States in an email to Reuters. He did not respond to follow-up questions.

Stanford's Lemley said the ultimate method of judging these new players will be who they target. If Intellectual Discovery only uses its patents against companies who already sued Korean businesses -- but leaves everyone else alone -- then the company is a simple extension of Korean trade policy, Lemley said.

However, they might decide everyone is fair game.

"Then it really does look more like an effort by these foreign governments to get in on the boom business model of the last decade," Lemley said, "which is patent trolling."

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