



Comment: TP-Link Systems draws line in sand against 'prolific' patent litigant

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By [Melissa Ritti](#)

InnoMemory, a nonpracticing entity that has filed more than 50 patent infringement actions since 2022, was named a defendant this week in a declaratory judgment action by TP-Link. The lawsuit provides a blueprint to other practicing entities that increasingly find themselves on the receiving end of what TP-Link calls "cut-and-paste" patent complaints.

TP-Link took aim this week at InnoMemory, or IM, assignee of a former Intellectual Ventures patent which has been wielded dozens of times in infringement litigation throughout the US this year alone.

In a lawsuit filed in the US District Court for the Southern District of New York, TP-Link says a declaration of noninfringement is necessary to "remove the cloud" over its business caused by IM (see [here](#)).

At issue is US Patent No. 7,057,960, "Method and Architecture for Reducing the Power Consumption for Memory Devices in Refresh Operations," and TP-Link's AC1200 Gigabit Smart WiFi Router, or AC1200. The '960 patent was issued in 2006 to Cypress Semiconductor Corp., assigned to IV in 2018, and then again to IM in 2019, one day after IM was founded by Jeffrey Gross.

Gross is described by TP-Link as "one of the most prolific filers of patent cases in the United States," "responsible for at least 140 patent cases filed in 2024 so far."

Among them is IM's August 2024 complaint against "TP-LINK Technology Co., Ltd." in the US District Court for the Eastern District of Texas, which accuses AC1200 of infringing the '960 patent.

— Pre-suit investigation questioned —

The problem, TP-Link says, is that no such company exists.

"Indeed, IM could not have satisfied the patent venue statute . . . for an infringement claim against TP-Link USA in Texas because TP-Link USA is a California corporation headquartered in Irvine, California, and TP-Link USA has no offices in the State of Texas," the complaint states.

"IM filed its EDTX Complaint against 'TP-LINK Technology Co., Ltd.' either as a litigation tactic to attempt to avoid the patent venue requirement for U.S. companies that applies to TP-Link USA — so that it could attempt to pursue its infringement claims against an unaffiliated (and non-existent) Chinese company in Texas — or because it did not conduct a sufficient pre-suit investigation," TP-Link alleges.

From there, TP-Link builds a case against IM's actions as an NPE.

— 'Highly litigious' —

Among its allegations are that the New York address of IM's principal place of business is the same

principal place of business for 12 other companies who have filed patent infringement complaints filed this year, including WebSock Global Strategies in the District of Delaware, Auth Token LLC in the Eastern District of Texas, HyperQuery LLC in the Western District of Texas and Authentixx in the Middle District of Florida.

The '960 patent, meanwhile, has been asserted by IM against JPMorgan Chase Bank, Koninklijke Philips, Xiaomi Corporation and 27 others in 2024, alone.

“This District has an interest in determining who is responsible for IM and these other companies operating in this District and whether their highly litigious activities – including threatening dozens if not hundreds of companies across a range of unrelated industries with expensive patent litigation – are based on meritless patent claims,” TP-Link maintains.

With regard to the latter point, TP-Link asserts IM “appears to have filed its complaint against the AC1200 router without even inspecting an actual AC1200 product.” Had it done so, IM would have discovered that the AC1200 does not use DDR4 memory, and thus it cannot infringe the '960 patent, according to TP-Link.

In making the case for declaratory judgment standing, TP-Link singles out “concern among customers that the sale and use of TP-Link USA’s AC1200 product will be subject to IM’s infringement claims based on the '960 patent” as its injury.

– Stanford database –

NPEs are most commonly associated with shell companies who spam federal courts with patent complaints, targeting defendants with deep pockets, in the hopes of securing a license as part of a nuisance settlement. Often, they have no intention of taking their case to trial.

Stanford University Law School says such conduct is the hallmark of patent assertion entities, or PAEs. Their NPE Litigation Database includes PAEs as one of 11 different types of NPE, ranging from failed startups to industry consortiums to universities and non-profits.

In the US District Court for the District of Delaware, Chief Judge Colm F. Connolly has put in place rules that require patent litigants to disclose the identities of all real parties in interest as well as any non-recourse third-party funding received in connection with a case. He has made it clear that those rules will be enforced (see [here](#)).

– Local rules, or lack thereof –

While Connolly’s measures haven’t entirely stopped NPEs from filing suit in Delaware, they do appear to be having an effect.

In its mid-year report on NPEs, Unified Patents said NPE-initiated litigation has dropped off in Delaware and picked up substantially in Texas, both in the Eastern District where IM sued TP-Link as well as in the state’s Western District.

Patent risk management company RPX Corp. reached nearly identical findings this summer.

While the District of Delaware was the preferred venue for NPEs as recently as the first quarter of 2023, one year later it sunk to third place, with just 9 percent of NPE-led litigation in the first quarter of 2024. By contrast, RPX’s data shows, the Eastern District of Texas boasts 44 percent of NPE-filed cases, followed by the Western District of Texas with 19 percent.

More than 30 US district courts have local patent rules in effect and some judges, like Connolly, supplement those rules with rules of their own. In the Eastern and Western Districts of Texas, parties are

under no obligation to disclose their origins or whether their litigation is backed by third-party financing. IM's suit against TP-Link is assigned to Judge Robert W. Schroeder, III, who has no additional disclosure requirements for patent litigants.

Whether the declaratory judgment complaint by TP-Link will become a model for others remains to be seen.

However, if the threat of being forced to defend itself and the '960 patent in New York is enough to nudge IM into dropping its infringement allegations against TP-Link, it could supplant the patchwork of local rules that some NPEs appear to have become adept at exploiting.

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