Busting a Rogue Blogger
Troll Tracker has been unmasked as a patent lawyer for Cisco. Now they're both facing litigation

by Michael Orey

Of the many blogs born last May, Patent Troll Tracker seemed as innocuous as any. Its focus: the obscure but controversial subject of "patent trolls," a derogatory term used to describe businesses that make money by purchasing patents and then suing big companies for infringement. The author was clearly no fan of the practice, but his or her identity was a mystery. The "about me" section of the blog noted that the writer was simply "a patent lawyer trying to gather and organize information about patent litigation."

Through regular, copious posts, Troll Tracker quickly drew a devoted following in patent law circles, even among those who disagreed with its point of view. What readers didn't know, however, was that the blogger was Rick Frenkel, in-house patent counsel at Cisco Systems (CSCO), the Internet infrastructure giant. Cisco didn't sanction the blog, but it, like other tech firms, has waged a long, public battle against so-called patent trolls. And in its pointed commentary, Troll Tracker advanced views squarely in line with the company's own agenda. Cisco General Counsel Mark Chandler even cited the blog as a good independent source of information while in Washington lobbying for changes to patent law that would rein in trolls, unaware he was plugging the work of a Cisco employee.

Troll Tracker gained repute as a forum for information, not invective. But its more volatile content would eventually combine to blow up the blog and land its creator and Cisco in legal hot water. A reader comment in December contained a death threat against Chicago attorney Raymond Niro Sr., who has long represented trolls. Two Texas attorneys were enraged by Troll Tracker reports suggesting that the lawyers may have had dates altered on a court document—a felony. By the end of last year, Niro had put up a $15,000 bounty to unmask the anonymous blogger, and Internet sleuths had tried to track him.

On Feb. 23, in what turned out to be his final post, Troll Tracker outed himself with an entry titled "Live by anonymity, die by anonymity." According to the post, he had received an anonymous e-mail that told him to declare his identity or the e-mailer would do it for him. "Let me introduce myself," Troll Tracker wrote. "My name is Rick Frenkel."

The fallout was swift. Frenkel and Cisco are now defendants in a pair of defamation lawsuits, and they may be dragged into other litigation. Frenkel still works for Cisco, but his forced outing raises questions about the risks of blogging anonymously, both to bloggers and the companies for which they work. As Troll Tracker's case demonstrates, in the rough-and-tumble blogosphere, conversations on even mundane topics like patent law can quickly spiral into vituperation and personal attacks. Despite this, Big Business has embraced blogging as a way to engage the public on everything from policy to products. Sun Microsystems (SUNW), for example, boasts more than 4,000 employee bloggers, including its chief executive and general counsel. Cisco itself sanctions 12 in-house blogs; about 75 workers post, including CEO John T. Chambers, who does a video blog.

"A TENDENCY TO BE RECKLESS"
While official corporate blogs typically display the names of contributors, anonymous commentary is widespread on the Web. The cloak of an Internet handle may free writers and readers to air controversial opinions. Microsoft (MSFT) has for years tolerated trenchant ribbing from a blogger, presumed to be an employee, who is known only as Mini-Microsoft. But when an employee blogs about company business, anonymity can spell trouble. "I think there's very much a tendency to be reckless when you're posting anonymously—and to be more biased than you normally would
“be,” says Dennis D. Crouch, a law professor at the University of Missouri, who runs Patently-O, the most widely read patent blog. Consider Whole Foods (WFMI) CEO John Mackey, whose pseudonymous trash-talking of rival chain and acquisition target Wild Oats Market on a message board sparked a Securities & Exchange Commission inquiry. (Whole Foods declined to comment.)

Apparently, only a handful of co-workers and his direct supervisor, Mallun Yen, knew of Frenkel’s secret second life. A few had even suggested topics to him. After his identity was revealed, Cisco took a path of contrition. In a Mar. 24 post to its corporate blog, Cisco said that even though Frenkel intended his blog to reflect solely his opinion, “Cisco takes responsibility for the content.” The statement concluded: “Blogging and blog policy are evolving areas for many companies. We believe we have learned a valuable lesson from this regrettable situation.” Cisco declined to say if Frenkel or Yen would be disciplined, noting it does not comment on personnel matters. But the statement noted that Frenkel "has many fans" who "recognize his blog as an important voice in the ongoing national dialogue on patent issues." Cisco did not make Frenkel available for an interview.

Patent trolls, or patent enforcement companies, as they prefer to be known, say they fight big corporations on behalf of bullied individual inventors, who lack the resources to pursue infringement cases on their own. But they have long been a thorn in the side of big tech companies. Frenkel said he launched the blog partly out of frustration at how hard it was to figure out who was behind the shell companies that usually file patent lawsuits. "If you're getting sued for patent infringement, you have a right to know who is really behind the lawsuit," he blogged.

Even as he cloaked his own identity, Frenkel, who is 41, set about untangling the often convoluted relationships between lawyers and patent holders. He wanted to shine a light on what he saw as opportunists that do nothing but pelt big companies with patent claims. A typical example of Troll Tracker's work, from Nov. 26, reads: "In October, Altitude Capital Partners, masquerading as Saxon Innovations, LLC, sued 15 companies in the Eastern District of Texas." Frenkel also traced a patent plaintiff called Software Rights Archive to Altitude's address in New York. (Altitude did not return calls seeking comment.)

At times the blog's tone was playful. In December, Troll Tracker held a haiku contest; a Valentine's Day post displayed a drawing from a patent for a heart-shaped candy box. Readers were impressed. "He was putting an awful lot of time and resources into this," says a patent lawyer who followed the blog. Crouch, the law professor, even e-mailed Troll Tracker to ask if he were interested in making his site a companion to Crouch's own patent blog. The offer was declined.

One of Troll Tracker's favorite bêtes noires was Niro, a Chicago lawyer who is dean of the patent troll bar. Tired of the blog's bashing, Niro, 65, in November announced a $5,000 reward for the author's outing. A couple of weeks later, a Troll Tracker reader posted a comment to the blog: "If you shoot and kill Ray Niro tonight, I would consider it a justifiable killing."

The comment reverberated across the blogosphere. At the tech blog Slashdot, another anonymous poster amplified the threat to include Niro's family members, publishing his wife's name, as well as their home addresses and phone numbers. By February, Niro had raised the bounty to $15,000, but not, he says, because of the death threats. "I wanted to expose this guy because I thought he had an agenda," says Niro, senior partner at Niro, Scavone, Haller & Niro. He says the threats astonished him: "I mean, what the heck, I'm a patent attorney." When he e-mailed Troll Tracker on Jan. 17 to complain, Frenkel responded the same day, noting that he didn't read all comments on his blog, but that he had deleted the threat. Objecting to Niro calling him a "hate monger," he wrote, "We can still disagree about things and be civil."

Coarse user comments are a fact of life on the Web. But Frenkel's own posts created a different kind of trouble. Troll Tracker frequently wrote about the Eastern District of Texas, a federal court region regarded by tech firms as a haven for patent trolls. Frenkel referred to it in an October item as "the Banana Republic of East Texas," even as Cisco was defending litigation there. Frenkel later reported that, in a patent suit in the Eastern District, lawyers for a company
called ESN appeared to have arranged to have a date altered in a court document, a felony which could lead to disbarment and imprisonment for an attorney. The defendant in the suit: Cisco.

CLOAK AND DAGGER
Within weeks, T. John Ward Jr., one of the two Texas lawyers named by Troll Tracker, filed a petition in court seeking permission to subpoena Google (GOOG)—which hosted the blog at its blogger.com network—for the author's identity. Other efforts were also being made to unmask Frenkel. Another lawyer, who says he doesn't generally agree with Frenkel's views, asked a technically adept colleague to trace Troll Tracker's digital footsteps. "He did a very good job of cloaking himself," the lawyer says. The search found that the blog was hosted on a Google server in Korea, and that the blogger filled out a profile in which he claimed to be from Afghanistan.

Frenkel acknowledged the hunt for his identity in various posts. Winning entries in his haiku contest included one of his own: "Bounty on my head/Hope my parents don't try to/collect the reward." In the end, it wasn't the effort to subpoena Google or Niro's bounty that outed Frenkel (no one has claimed it, Niro says), but an anonymous e-mail. In his Feb. 23 unmasking, Frenkel wrote that the e-mailer "[told] me I better tell everyone who I am (and he clearly knew), or else he would take care of it for me. The clear threat in the e-mail is that he would do it in a way I wouldn't be happy about."

With Frenkel's name public, Ward and fellow Texan Eric M. Albritton have now sued Cisco and Frenkel for defamation, claiming that his reports about altering documents were false. Cisco says it will defend the case. Facing litigation as a result of the rogue blogger in its midst, Cisco in a Mar. 24 blog post chastised some of its employees for "poor judgment," and outlined a new policy. Employees must now state their names and that they work for Cisco if they comment on issues involving the company. In a brief statement issued by Cisco, Frenkel noted that he hoped to resume blogging in the near future. For now though, visitors to Troll Tracker are greeted with a message that reads: "This blog is open to invited readers only."

LINKS
Rules of the 'Sphere
Some companies take baby steps into the blogosphere. Others, such as Sun Microsystems (SUNW), have plunged in. Sun's Web site tells its 4,000-plus employees who blog: "By speaking directly to the world, without [requiring] management approval, we are accepting higher risks in the interests of higher rewards." Some tips Sun offers: Link to lots of other sites, "Don't tell secrets," and saying something "sucks" is "not only risky but unsubtle."

Orey covers corporations for BusinessWeek.

Xerox Color. It makes business sense.