(English Translation)

Why Non-Practicing Entities (NPEs) Are Good For China

Author: IvesDuran, Zhi Chan Li, Today

In recent years, Non-Practicing Entities (hereinafter referred to as “NPEs”) shifts their focus to China. Some comments are of the view that China is becoming the preferred venue for global companies to obtain and enforce patent rights, which reflects the magnitude of China’s economic impact and its efficient and reliable legal system. The situation also indicated that China is becoming an innovation powerhouse and not merely a source of inexpensive manufacturing and unskilled labor.

The United States company, iPEL, Inc. (www.ipel.com), which is led by prominent U.S. patent lawyers recently declared that Chinese patents are now more valuable and a better investment than U.S. patents. The company has also shown their confidence in the Chinese patent system with definitive actions, which is probably the best example of China’s rapidly transforming status in the innovation economy.

Since its founding in May 2017, when iPEL secured $100 Million USD in initial capital, it has purchased more than 1,000 Chinese patent families and has filed 10 patent infringement lawsuits in three different Chinese courts/tribunals. At least 1,000 of the Chinese patent families originated from Huawei and ZTE.

Although the pricing details are not known, it appears that iPEL has acquired more Chinese patents than any other foreign company and likely paid a significant amount of money for them, which suggests that the patents are of a high quality.

Additionally, iPEL’s investments and enforcement efforts in China show that China’s efforts to improve its patent system have been successful.

In China, patents are increasingly recognized as having economic value as independent assets that can be freely purchased and traded by anyone in the world. And, equally important, all owners of Chinese patents are able to seek monetary damages and permanent injunctions for patent infringement from any of the specialized intellectual property courts and tribunals. It could be said that the economic value of Chinese patents is directly tied to a patent owner’s ability to enforce its rights against infringers through a well-defined and predictable legal system.

Some people believe that China encourages the theft of patent rights from U.S. companies and lacks its own ability to innovate. Apparently, there is no concrete evidence to support these wrong accusations.

Take iPEL for example, iPEL is owned and operated by U.S. patent experts. The President of iPEL, Rasheed McWilliams, is a prominent patent trial attorney who has represented many high-profile technology companies in large patent cases. The CEO of iPEL, Brian Yates, is also a patent lawyer, and through his wholly owned companies, has completed more patent lawsuits and patent license agreements than nearly everyone. The founders of iPEL, from the view of professionals, represent the views of patent practitioners who understand patent issues and are in the best position to determine the value of patents.

The actions of iPEL demonstrates that U.S. patent experts acknowledge and value the innovations made by Chinese inventors, and that non-Chinese companies are infringing Chinese patents and stealing intellectual property from Chinese companies (and not Chinese companies stealing U.S. patents).

The patent analytics company RPX Corporation compiles data for all patent infringement lawsuits that have been filed during that last two decades and only two companies (through dozens of wholly owned subsidiaries) have filed more patent infringement lawsuits than Mr. Yates' companies: IP Edge LLC and Acacia Research Corporation. That probably explains how iPEL was able to secure $100 Million USD of capital last year, while the entire U.S. patent market struggled. And that is also why iPEL's conclusions about U.S. patents and Chinese patents are so meaningful.

Before discussing why NPEs are good for China, it is necessary to distinguish NPEs from "patent trolls."

During the last decade in the U.S., there has been a major effort by special interest groups to characterize all patent owners who do not "practice their patent" (meaning they do not make or sell a product/service that is covered by their patent) as patent trolls, if those patent owners realize value of their patents through enforcing their patent rights. The term patent troll is intentionally insulting.

The current Director of the United States Patent and Trademark Office, Andre Iancu, recently rejected "the patent troll narrative" because it is not accurate and actually inhibits innovation. But, there are indeed examples of NPEs filing frivolous lawsuits and using patents in an abusive way. Those activities are definitely bad and should not be accepted – by any patent owner.

Whether a patent owner is an NPE should be irrelevant to those activities. The criteria should be whether the allegations of patent infringement have merit. If the term "patent troll" is going to be used at all, then it should be defined as: "a patent owner who makes allegations of patent infringement that are either knowingly false or are made without first conducting a diligent infringement analysis." Such a patent owner is properly called a patent troll, regardless of whether they are an NPE, because they are acting in bad faith.

In fact, all of the risks and concerns related to "patent trolls" are easily addressed through the litigation process in China.

In the U.S., the risks of frivolous patent lawsuits is greater because the merits are decided by a

group of jurors who lack patent expertise and can incorrectly conclude that a patent is infringed. Also, the discovery process in the U.S. is expensive and inefficient, which incentivizes parties to extract settlements that are less expensive than the cost of litigation.

In China, however, these inefficiencies and imbalances do not exist. The specialized intellectual property courts and tribunals in China are equipped with specialized judges who are able to quickly and accurately identify frivolous lawsuits. Because there is no discovery process and a decision on the merits can often be achieved within one year, the abusive tactics employed by patent trolls in the U.S. can be avoided in China.

As long as NPEs in China are not patent trolls, they deserve the same rights and protections as all other patent owners. Their investments in Chinese patents and reliance on the Chinese legal system provide significant benefits to Chinese innovative entities.

NPEs increase the value of Chinese patents by enforcing them and holding infringers accountable. Without enforcement and accountability, value of patents will not be respected. Instead patents will simply be ignored. Many patent owners lack the resources and expertise to enforce their patents, and many other patent owners do not want to enforce their patents for various reasons. The existence of NPEs provides those patent owners an opportunity to generate revenue from selling their patents to NPEs. And, everyone in the innovation ecosystem will have greater respect for patents and the rights of others if they understand that patents (regardless of who currently owns them) might be sold to an NPE and asserted against them.

Additionally, inventors and technology companies will have an additional incentive to invent, including in areas that are outside of their core areas of expertise, if they are able to obtain patents that are desirable to third parties.

As NPEs demonstrate the value of Chinese patents by proving infringement through litigation, the demand for Chinese patents will increase, and so will the values/prices. This will incentivize further innovation and patenting, which will perpetuate the positive cycle of further innovation. It is truly a win-win situation.

Foreign NPEs demonstrate the value of Chinese patents. Just as the value of American companies largely rely on their patent assets, the value of Chinese companies will directly increase as their patent assets increase in value.

On the other hand, failing to embrace foreign NPEs would immediately tell investors around the globe that Chinese patents are a bad investment, which would reduce demand and reduce value and, ultimately, reduce innovation.

To sum up, the arrival of foreign NPEs into China will have a positive impact on operation and development of Chinese innovative entities. It is direct proof that China succeeded in creating a valuable patent system that rewards innovators and punishes thieves. iPEL and other NPEs are exercising their rights, only make good faith infringement allegations, and do not adopt tactics of “patent trolls”, they will not be a burden for Chinese innovative entities. Instead, they will help increase enthusiasm for invention of the Chinese innovative entities.

为什么说非实施实体（NPE）对中国是有利的

原创：IvesDuran 知产力 今天

作者|IvesDuran

（本文2434字，阅读约需5分钟）

近年来，非实施实体（Non-Practicing Entities，以下称“NPE”）将其关注点转移到中国。有评论认为，中国正在成为全球范围内公司获取和运营专利的理想之地，这也反映了中国经济发展所产生的巨大影响及其高效和可靠的司法体系。不仅如此，这一现象的产生也说明，中国已不再是廉价制造业和低端劳动力的代名词，而是正逐渐成为一个创新强国。

近日，由知名专利律师领导的美国iPEL公司（www.ipel.com）宣称“中国专利比美国专利更有价值，是更有利的投资”，其也用具体的行动表明了对中国专利制度的信心，或许这是中国向创新经济转型的最好的例子之一。

iPEL公司在2017年5月成立以来获得了1亿美元的初始融资。截止目前，已经购买了1000多个中国专利家族（patent families），并在三个不同的中国法院/法庭提起了10起专利侵权诉讼。上述专利家族（patent families） 中至少有1000个来自华为和中兴通讯。

虽然我们无法获知这些专利交易的定价，但是似乎iPEL已经获得了比其他任何外国公司更多的中国专利，并且可能为此支付了高价。这也说明这些专利的价值是极高的。

除此之外，iPEL在中国的投资和专利运营也证明了中国在优化其专利制度方面是成功的。

在中国，专利逐渐被承认为是具有经济价值的独立财产。任何个人，无论国籍，都可以任意地买卖和交易专利。同样的，专利权人也可以通过知识产权法院/法庭来寻求赔偿和永久性禁令。可以说，中国专利的价值和专利权人通过一个明确的、可预测的司法体系来运营其专利是相互关联的。

一些评论认为，很多中国企业从美国公司窃取专利，缺乏自主创新的能力。很显然，这些错误表述并没有证据支持。

以iPEL公司为例，该公司由美国的专利专家所有和运营，iPEL总裁Rasheed McWilliams是一名著名的专利诉讼律师，曾代表了多家知名的高科技公司处理大型的专利案件；iPEL首席执行官Brian Yates也是一名专利律师，其通过其全资公司，完成了比几乎所有人都更多的专利诉讼和专利许可。iPEL创始人站在专业性的角度，代表了专利从业者的观点，他们了解专利问题并且最有能力确定专利的价值。

以iPEL创始人为代表的美国专利专家已经通过具体行动证明，美国专利专家承认并重视中国发明家所进行的创新。当前，非中国公司正在侵犯中国的专利权并从中国公司窃取知识产权，而不是中国公司窃取美国的专利成果。

专利分析公司RPX分析了过去20年内提起的所有的专利侵权诉讼。分析结果显示，只有IP Edge LLC和Acacia研究公司提起的专利侵权诉讼数量比iPEL公司提起的诉讼更多：即。这也解释了在美国专利市场不景气的情况下，为何iPEL公司在去年能够获得1亿美元的融资。也正是如此，iPEL公司对美国和中国专利的分析是十分有意义的。

分析NPE对中国是有利的原因之前，我们有必要将NPE和“专利流氓”进行区分。

美国近十年来，特殊利益集团不遗余力地将自己不“实施专利”（指不实际生产专利产品/提供专利服务），而是通过运营的方式实现专利价值的实体描述成“专利流氓”。但“专利流氓”这个词是有意地贬低非实施实体的价值。

美国专利商标局的现任主管Andre Iancu近期表示，“专利流氓”这个表述是不准确的，它实质上抑制了美国的创新能力。但是，实践中确实存在NPE滥诉并滥用专利的情况。这些恶意行为应当被禁止，也不应被任何的专利权人所接受。

专利权人是否是NPE与这些行为的产生无关。判断NPE的标准应当是该专利侵权诉讼是否属实。“专利流氓”应当定义为：“专利权人在知道是虚假的，或者在没有进行尽职的侵权分析的情况下仍提起专利侵权诉讼”，因为他们的诉讼行为是恶意的，无论该专利权人是否为NPE，均应当称其为“专利流氓”。

实际上，任何与“专利流氓”相关的风险和担忧都可以通过中国的诉讼程序解决。

在美国，由于事实问题是由没有专利相关专业知识的陪审团决定，他们极有可能错误地决定专利侵权的存在，因此在美国“专利流氓”滥诉的例子非常多。另外，美国诉讼中的调查取证程序极为昂贵且低效，因此会促使很多当事人选择较诉讼更为低廉的和解程序。

相较而言，上述低效和失衡在中国并不存在。中国的专业的知识产权法院和法庭配备了专业的法官，他们能够迅速、准确的识别恶意诉讼。另外，中国没有调查取证程序，法院可在一年内依案件事实做出最终判决。因此，专利流氓在美国采取的滥诉的策略在中国都是可以避免的。

只要在中国的NPE不是“专利流氓”，他们应该享有与所有其他专利权人相同的权利和保护。这些专利权人信赖中国的司法体系，在专利投资的过程中， 为中国的创新主体带来了巨大的利益。

NPE通过专利运营和让侵权者承担责任的方式提高其中国专利的价值。没有运营和责任追究，专利的价值就不会得到尊重。实践中，很多专利的价值被忽略，很多专利权人缺少必要的资源和专业能力去执行他们的专利，另有许多专利权人出于种种原因不愿去强制执行其专利。因此，NPE的存在提供给专利权人一种选择：他们可以将专利卖给NPE并从中获利。这样，在创新系统中的每个人，如果了解专利（无论专利权人是谁）会被交易，并有可能被用来挑战他们后，都会更加尊重专利和他人的权利。

另外，如果能够获得第三方所需的专利，发明人和高新技术公司都会有额外的动力来鼓励创新，包括在其核心专业之外的领域增加创新的投入。

由于NPE通过专利侵权诉讼的方式证明其中国专利的价值，对中国专利的需求将会增加，价值/价格也会上升。这将激励进一步的创新和专利化，形成一个鼓励创新的积极的循环，这是一个“双赢”的局面。

外国NPE证明了中国专利的价值。正如美国公司的价值很大程度上依赖于其所拥有的专利资产，随着专利资产价值的增加，中国公司的价值将随之增加。

另一方面，拒绝外国NPE的进入，相当于暗示全球投资者其对中国专利的投资是一种不良的投资，这将导致需求的减少，价值的降低，并最终抑制创新主体的发展。

总之，外国NPE的进入对中国创新主体的经营与发展具有积极的影响。这是证明中国已成功建立了有价值的专利制度，激励创新并惩罚盗窃的最直接的证据。以iPEL公司为代表的外国NPE正当的行使自身专利权，只进行正当的专利侵权诉讼，不采取“专利流氓”的策略，它们非但不会对中国创新主体的发展起到负面作用，还会提升中国的创新主体的创新积极性。


知产力
www.zhichanli.com
微博：知产力
微信：ZHICHANLI
邮箱：tougao@zhichanli.com
为创新聚合知识产权解决方案
内容合作：
010-88829697 15901308463（毛立国）
项目合作：
010-88580836 13269624558（胡晓东）
媒体合作：
010-88580836 18611809368（陈 静）
培训合作：
010-88580586 18110294220（朱承章）
商城合作：
010-88580586 13552314137（吴倪娜）