Intellectual property lawsuits increase in Tech Valley, nationally

Intellectual property, such as patents, copyrights and trademarks, have become increasingly important to our economy both regionally and nationally. As manufacturing and production facilities, and the jobs that accompany them, are increasingly exported overseas, the emphasis on corporate valuation in the United States has shifted from physical property to intellectual property.

However, innovations and ideas are not, in and of themselves, enough to stimulate and sustain economic growth. It is the ability to protect and commercialize those ideas that provides economic value. The increase in economic value attributable to intellectual property has brought about a corresponding increase in litigation over ownership and infringement of such property. The number of federal lawsuits filed can be a significant indicator of the value associated with intellectual property, because such lawsuits often cost the parties involved hundreds of thousands of dollars.

The high cost of such litigation is attributable to the value of intellectual property to its owner, the complexities of the legal and technical issues involved, and the need for counsel with expertise in intellectual property law matters. A review of federal litigation trends over the last 10 years reveals an increase of approximately 50 percent in the number of intellectual property lawsuits filed throughout the country. The growth in patent litigation has been characterized as an “explosion.”

Although there have been some minor deviations from year to year, lawsuits filed in the Northern District of New York (NDNY), the district that includes Tech Valley, have increased by similar proportions. This trend has continued in 2005 with the total number of patent, copyright and trademark cases filed in the district already exceeding the total number filed in 2004 by approximately 20 percent.

The number of NDNY copyright lawsuits filed in 2005 through October make up the greatest share of the intellectual property cases. These numbers parallel national intellectual property filings. This is significant because, since at least 1995, trademark cases filed in the NDNY have consistently exceeded the number of copyright cases and patent cases filed in the NDNY.

At least in terms of the sheer number of filings, copyright litigation is becoming more predominant both nationally and regionally. According to federal court records, new copyright cases filed in the NDNY in the two-year period of 2003-2004 increased by nearly 62% percent from the previous two-year period. And, this trend is continuing. The number of copyright cases filed in the NDNY in the 10-month period of January 2005 to October 2005 already has exceeded the number filed during the preceding two-year period.

A survey of copyright cases filed in all federal district courts indicates this trend in the NDNY is consistent with national copyright cases filings throughout the country. Some analysts attribute the increase in copyright cases to a recent decision from the District of Columbia Circuit Court of Appeals, Recording Industry Ass’n of America Inc. vs. Verizon Internet Services Inc., in which Verizon successfully challenged the use of subpoenas under the Digital Millennium Copyright Act to obtain the identities of persons using file-sharing programs to download copyrighted music from an Internet Service Provider.

In response to the Verizon decision, the RIAA and others in the music industry have been filing individual John Doe lawsuits (a suit in which no named defendant is identified) in a large-scale antipiracy campaign. Such lawsuits are more common in copyright infringement cases involving online file sharing because many of the defendants are unknown or use false identities. According to an Oct. 26, 2005, RIAA press release, students at Rensselaer Polytechnic Institute and Rochester Institute of Technology, among many other colleges, are included in the latest round of lawsuits against individuals.

The film studios, following on the heels of the music industry, have begun filing an increasing number of copyright lawsuits as well.

The Verizon decision has had a significant impact in NDNY. A review of copyright cases filed in the district shows that in 2004, the music industry filed seven out of 12 copyright cases, at least two of which were John Doe lawsuits. Of the 26 copyright lawsuits filed in 2005 (as of October), 17 cases were filed by the music industry and six by film studios. At least seven copyright cases filed in the NDNY in 2005 are John Doe lawsuits.

The plaintiff in the majority of these cases is a collective group consisting of Inter-scope Records, Capitol Records Inc., Motown Record Co. L.P., Elektra Entertainment Group Inc., Sony BMG Music Entertainment, Warner Bros. Records Inc., and UMG Recordings Inc. Among these copyright cases, lawsuits filed by the music industry in the NDNY, most, if not all, either have settled or a default judgment has been obtained within a short period of time, and all have been in favor of the plaintiff’s enforcement of their proprietary, intellectual property rights.

As Tech Valley’s businesses and research and development institutions continue to rise to prominence and compete on a national level, it can be expected that challenges to, and enforcement of, its intellectual property rights will see similar increases.