

EXHIBIT 24

Apple Made A Deal With The Devil (No, Worse: A Patent Troll)



Friday, December 9th, 2011



Over the last two years, Apple has been engaged in vicious legal battles over smartphone patents, many of which are aimed at squelching (or squeezing money out of) manufacturers of devices running Android. And now, for some reason, it has given valuable patents to a patent troll — which is using them to sue many of the top technology companies in the world.

Meet Digtude Innovations, a firm based in Virginia that recently [filed \(http://www.itcblog.com/wp-content/uploads/2011/12/digtudeinnovations.pdf\)](http://www.itcblog.com/wp-content/uploads/2011/12/digtudeinnovations.pdf) suit with the International Trade Commission alleging patent infringement by technology companies including RIM, HTC, LG, Motorola, Samsung, Sony, Amazon, and Nokia (note that Apple is not on this list). The ITC is a favorite for companies litigating over mobile phone patent disputes, as it can block the import of products long before a case has actually concluded.

Digtude was founded in 2010 and raised \$50 million from Altitude Capital Partners, with [aims to \(http://www.prweb.com/releases/2011/03/prweb5171554.htm\)](http://www.prweb.com/releases/2011/03/prweb5171554.htm) “acquire, aggregate, and license key technology areas within the consumer electronics and related technology fields in a patent consortium” — in other words, it buys up patents and then sues other companies until they settle and agree to pay licensing fees, because it’s generally less expensive than actually going to court.

From a Forbes [article \(http://www.forbes.com/sites/nathanvardi/2011/06/13/big-tech-companies-might-learn-to-fear-digtude/\)](http://www.forbes.com/sites/nathanvardi/2011/06/13/big-tech-companies-might-learn-to-fear-digtude/) this past June:

Digtude is a new kind of patent investment vehicle because it seeks to team up with strategic players that can invest in Digtude not with money, but by contributing patents. The contributing entity would then get a license for all of Digtude’s patents, [Digtude Chairman Robert] Kramer says.

In April, Digtude [announced \(http://www.prweb.com/releases/2011/04/prweb5278144.htm\)](http://www.prweb.com/releases/2011/04/prweb5278144.htm) the “completion of its first such strategic partnership with one of the world’s leading consumer electronics companies” — which it didn’t name. The company later [announced \(http://www.prweb.com/releases/2011/6/prweb8572959.htm\)](http://www.prweb.com/releases/2011/6/prweb8572959.htm) that additional (unnamed) parties have jumped on board as well, who will receive a portion of Digtude’s proceeds based on the value of the IP each party contributed.

Apple appears to be one of these participants, and may be the unnamed leading consumer electronics company that Digtude boasted about this past spring. Of the four patents that Digtude included in its claim this week, two were owned by Apple earlier this year, before they were transferred to Digtude.

The patents in question:

USPTO #[6208879 \(http://assignments.uspto.gov/assignments/q?db=pat&pat=6208879\)](http://assignments.uspto.gov/assignments/q?db=pat&pat=6208879) —
Mobile Information Terminal Equipment and Portable Electronic Apparatus

USPTO #[6456841 \(http://assignments.uspto.gov/assignments/q?db=pat&pat=6456841\)](http://assignments.uspto.gov/assignments/q?db=pat&pat=6456841) —
Mobile Communication Apparatus Notifying User Of Reproduction Waiting Information Effectively

In both cases, Apple transferred ownership of the patent to a company called Cliff Island LLC, which in turn transferred it to Digtude Innovations. In fact, Apple has transferred [a dozen \(http://assignments.uspto.gov/assignments/q?db=pat&qt=asne&reel=&frame=&pat=&pub=&asnr=&asnri=&asne=CLIFF+ISLAND+LLC&asnei=&asns=\)](http://assignments.uspto.gov/assignments/q?db=pat&qt=asne&reel=&frame=&pat=&pub=&asnr=&asnri=&asne=CLIFF+ISLAND+LLC&asnei=&asns=) patents to Cliff Island LLC this year (though only two of these were named in this ITC suit).

You probably haven’t heard of Cliff Island LLC, because it appears to exist in name only. There is a next to no information about the company available online — though the patent filing does include an address: 485 Madison Avenue, Suite 2300 in New York City.

I was unable to find a phone number for the company, so I attempted to pay a visit to their office, only to find that it doesn’t appear to exist. But there are other tenants on the twenty-third floor of 485 Madison. One of which is Altitude Capital, the same IP-focused private equity firm that happened to lead Digtude’s \$50 million funding round.

Put another way, Apple appears to have transferred its patents to the patent troll Digtude, though it first routed them through a shell company that shares the same office as Digtude’s lead investor and Chairman. Further evidence of the relationship between Apple and Digtude can be found on the ITC’s own website, where a list of files relevant to the lawsuit can be found. Many of these files are marked confidential, but it appears someone mistakenly left the file *names* intact. One of which is “Digtude-Apple License Agreement” (see screenshot below).



So what is going on? There are a pair of scenarios that seem plausible — though both of them are strange.

The first is that Apple is using Digtude as a hired gun of sorts in its patent offensive, giving the company valuable patents to wield against its opponents (while avoiding the waves of press that are spurred by each new lawsuit). But Apple hasn’t exactly been quiet about suing its rivals over smartphone patents, so it’s not clear what they’d gain from this.

The alternative is that Apple has given some of its patents to Digtude because the patent troll came after it first. The dozen patents Apple has handed over may have been part of a settlement with the firm, along with the license agreement (which would presumably give Apple the rights to its patents, and additional Digtude patents). This seems more likely.

But even if Digtude shot first, so to speak, it's still hard to see Apple in a positive light here. This is *Apple* we're talking about. The idea that the company didn't have any options other than handing over valuable patents to a patent troll — knowing full well that it would then use those patents to sue other tech companies — seems ludicrous.

I spoke with Julie Samuels, Staff Attorney at the Electronic Frontier Foundation who focuses on patents, who points out that in some cases certain companies will sell their patents to other parties when they're under financial stress. But Apple clearly doesn't fall into that bucket.

If Apple were deliberately aiding Digtude, Samuels says "it would be horrifying — the patent troll problem is completely out of control. Apple has every legal right to sue over its patents, but it should be the one to do it".

And if Apple was indeed threatened first by Digtude, and only handed over its patents as part of a settlement, she says she "cannot imagine any reasonable scenario where Apple didn't have any other options".

Both Apple and Digtude declined to comment.

Also, oddly, Digitide Innovations had a website as recently as December 4, but it apparently took it down in the last few days.

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Action Jacket Control Number:					
APO Number:					
Memorandum Control Number:					
Motion Number:					
Order Number:					
Publication Number:					
Federal Register Number:					
ATTACHMENTS					
Displaying 1 - 9 of 9 Attachments					
Order	File ID	Title	Size	Page Count	Create Date
1	689140	465782	944412	10	12/05/2011 12:00 PM
Not authorized to view.					
2	689141	Exhibit 4 - Confidential - Gomez Declaration	80047	7	12/05/2011 12:00 PM
Not authorized to view.					
3	689142	Exhibit 4a - CONFIDENTIAL- Digitide-Apple License Agreement	1189817	21	12/05/2011 12:00 PM
Not authorized to view.					
4	689143	Exhibit 4b - CONFIDENTIAL- Apple 10-K	2195339	186	12/05/2011 12:00 PM
Not authorized to view.					
5	689144	Exhibit 72 - CONFIDENTIAL - Claim Chart '636 Apple iPhone	816602	23	12/05/2011 12:00 PM
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6	689145	Exhibit 73 - CONFIDENTIAL - Claim Chart '655 MacBook Pro	958589	19	12/05/2011 12:00 PM
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7	689146	Exhibit 73 -CONFIDENTIAL - Claim Chart 655 MacBook Pro	974108	19	12/05/2011 12:00 PM
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8	689147	Exhibit 74 - CONFIDENTIAL - Claim Chart '879 Apple iPhone	1029656	40	12/05/2011 12:00 PM
Not authorized to view.					
9	689148	Exhibit 75 - CONFIDENTIAL - Claim Chart '841 Apple iPhone	1765297	21	12/05/2011 12:00 PM
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