



CAPITOL HILL FLY-IN

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Policy Brief: Patent Reform

Congress should pass legislation to reform the nation's patent laws to deter abusive litigation practices by Patent Assertion Entities (i.e., "Patent Trolls").

Background

Patent assertion entities (PAEs), commonly referred to as "patent trolls", assert patents against companies that have inadvertently incorporated patented technology into their products. Although trolls are sometimes the original inventor or applicant for the patent, they usually acquire patents through a subsequent transaction. Since trolls generally do not produce or sell anything, they are not at risk of infringing other patents, allowing them to assert patents aggressively without fear of retaliation. Often defendants choose to settle to avoid expending time and resources on costly litigation. Patent trolls are increasingly aggressive and predatory. A US Government Accountability Office study found trolls now account for almost 60 percent of patent infringement lawsuits in America. In 2011, patent troll activity cost the US economy \$80 billion dollars and productive companies made \$29 billion in direct payouts. In 2012, trolls sued more non-tech companies than tech, spanning a wide range of industries. Given all of this activity, it was only a matter of time before trolls began targeting the printing and graphic communications industry – an industry in transition and one which employs new, developing technologies every day.

Industry Position

The overriding view of the industry is that legislation should deter patent trolls from the outset in order to protect printing & supplier companies from ever becoming part of the cycle of abusive patent litigation. However, if companies do in fact find themselves involved in extortionate legal situations, new law should be in place to provide less costly, less burdensome courses of defense. Reforms should include the following: 1) Punishing deceptive behavior that accompanies bad faith demand letters; 2) New litigation procedures to increase transparency and stop runaway legal costs; 3) Protect end users targeted in patent infringement lawsuits by permitting them to be stayed while the manufacturer litigates the alleged infringement; 4) Change the business model to make patent trolls pay when they sue companies frivolously; among others. Business and innovators drive the spirit and economy of this nation, and both should be protected from abusive patent trolls.

113th Congress

On 12/5/13, the US House of Representatives passed H.R. 3309 (Innovation Act), sponsored by Judiciary Chairman Goodlatte (VA), by a strong bipartisan vote of 325-91. A comprehensive approach to combat patent trolls, it included provisions from more narrowly drafted House bills and addressed the above concerns. Currently, the action is in the US Senate. S. 1720 (Patent Transparency & Improvements Act), a bipartisan bill sponsored by Chairman Leahy (VT) & Senator Lee (UT), is the primary bill moving through the Senate. It includes some of the above reforms and at press time was being redrafted to include potential reforms outlined in other bills, including S. 1013 (Cornyn), S. 866 (Schumer), S. 1612 (Hatch). At press time, the Senate Judiciary Committee was scheduled to markup its comprehensive package in late April, which would pave the way for full Senate consideration in late spring or summer. President Obama has voiced his support for combatting patent trolls via legislation, specifically calling for it in his State of the Union Address on 1/28/14.

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- Print is an industry that traces its roots to Johannes Gutenberg and Benjamin Franklin; yet, its modern face is high-tech and innovative – it must be in order to survive. Today's print marketplace is all about using a cross-media mix and emerging technologies to drive the economy. Unfortunately, we're also an industry that has attracted the damaging attention of patent assertion entities (PAE) or "patent trolls."
- A study commissioned by the US Government Accountability Office found trolls now account for almost 60 percent of patent infringement lawsuits in America. In 2011, patent troll activity cost the US economy \$80 billion dollars and productive companies made \$29 billion in direct payouts. In 2012, trolls sued more non-tech companies than tech, spanning a wide range of industries.
- Prior to 2013, it was unheard of for printing companies to be accused of patent infringement. This is no longer the case. Currently, there are at least eight patent trolls that are seeking licensing fees from printers or threatening costly litigation. These include targeted technologies that printers consider essential to their business growth and success, such as computer-to-plate workflow, web-to-print ordering/inventory systems and QR codes that increase the value and revenue generation of advertising mail, magazines and other printed material.
- For small printers, especially, abusive patent litigation practices divert precious economic and human resources. One common demand letter in the industry demands a \$75,000 licensing payment within two weeks; after two weeks, the demand increases to \$95,000. The general estimate is that printers are forced to spend \$10,000 - \$15,000 on initial legal fees and between 125-150 hours away from running their businesses.
- The industry's overriding view is that legislation should deter patent trolls from the outset in order to protect printing companies and equipment suppliers from ever becoming part of the cycle of abusive patent litigation. However, if printers do in fact find themselves involved in extortionate legal situations, the industry is working to put in place laws that will provide less costly and less burdensome defenses.
- Such measures would include provisions to: 1) Stop trolls from issuing deceptive demand letters; 2) Require patent owners to disclose ownership and specifics of alleged patent infringements up front; 3) Allow manufacturers to protect end users targeted by trolls after purchasing valid products; 4) Change the legal and financial model that benefits troll behavior by requiring more transparency and shifting legal costs in frivolous cases. A comprehensive solution is needed to combat patent troll abuse.
- Patent trolls do not innovate, do not promote economic growth, and do not contribute to the greater good of education or scientific research. Most importantly, patent trolls do not create jobs – our businesses do. Business and innovation both drive the spirit and economy of this nation, and both should be protected from abusive patent trolls. Congress should pass and the President should sign patent reform legislation this year.

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