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SCHUMER: ‘PATENT TROLLS’ PREYING ON NEW YORK'S TECHNOLOGY INDUSTRY WITH UNWARRENTEd LAWSUITS—COSTING LEGITIMATE COMPANIES BILLIONS OF DOLLARS; ANNOUNCES NEW LEGISLATION TO CRACKDOWN ON GROWING PROBLEM

Patent Troll Companies Make Money By Purchasing Broad Patents & Suing Legitimate Tech Companies With Similar Products

Schumer Introduces Legislation to Improve Patent Prosecution System; Bill Would Allow These Claims to Be Reviewed by Patent & Trademark Office—Will Avoid Costly Litigation Fees for Defending Businesses

U.S. Senator Charles E. Schumer today announced he will introduce legislation to crackdown on “patent trolls” – companies that prey on innovators and technology companies. Patent trolls are companies that don’t produce or manufacture products, but instead acquire, often low-quality, patents solely for the purpose of suing legitimate businesses which use technologies similar to those in the patents. Patent trolls cost operating companies $29 billion in suits in 2011. Schumer today highlighted the growing problem and introduced legislation that will improve the patent system by allowing these claims to be reviewed administratively by experts at the U.S. Patent and Trademark Office (PTO).

“Patent trolls are bullying New York’s technology companies, stymieing innovation and dragging down growth. It's time we address this growing problem,” said Schumer. “This legislation will provide small technology start-ups with the opportunity to efficiently address these claims outside of the legal system, saving billions of dollars in litigation fees. The Patent and Trademark Office is already reviewing twenty patent cases in a temporary patent review program, and I am confident that extending this program will be beneficial to New York’s and the nation’s economy.”
Patent trolls are companies whose sole purpose is to take advantage of other companies by taking them to court. Patent trolls buy low-quality patents, which often use broad language. Patent trolls do not produce the products in which they have a patent. Instead, they wait until another company develops a similar product and sues them in court.

In 2011 alone, patent trolls cost operating companies $29 billion. Under current law, a company hit with a patent suit only has two options – pay to defend the suit or pay a licensing fee or settlement agreement to make the suit go away. Both options are highly costly – the average troll settlement costs a small or medium company $1.33 million, while an in-court defense would cost the same company an average of $1.75 million per case.

Specifically, this has been an enormous problem among technology start-up companies: 62% of patents asserted by trolls from 1990-2010 were software patents; 75% were in computer and communications technology. And this is a particular problem for small businesses: 82% of companies targeted by trolls of annual revenues less than $100 million.

According to Patent Freedom, the number of companies sued by patent trolls in New York rose 75% to 288 between 2006 and 2012. Specifically, the New York based company, Etsy, has been sued for infringing on patents involving storing delivering and managing messages.

In September of 2011, the America Invents Act (AIA) updated the way patents are issued and prosecuted, and included the Schumer-Kyl program for business method patents related to financial products and services. The Schumer-Kyl provision is a temporary program that established a post grant review by experts at the PTO of covered business method patents and allows a petitioner to request that the PTO review a covered patent; if they find it more likely than not to be invalid, the PTO can take a second look and return a decision promptly. Since the provision began, approximately twenty patents have been challenged through the PTO.
Schumer today introduced legislation that would expand the Schumer-Kyl provision to include more businesses, specifically among technology start-up companies. The legislation would also remove the provision's temporary status. Schumer explained that a PTO prosecution system will provide patent holders and accused infringers with an alternative to court, which can be extremely costly. This will not only help resolve existing suits in a low-cost way, it will also deter trolls from filing suits in the future because it provides a cost-effective option to knock out bad patents.

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