



IPOENTIAL NEWSFEED

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PATENT TROLLS

One of the headline making news that has caught the attention of industry experts around the world is the US Senate's rising interest in the proliferation of 'patent trolls' within recent years, and the criticism to the manner to which they seek to profit from the patents in their possession. 'Patent trolls' is a colloquialism that denotes what the patent holders rather prefer to be known as 'patent-assertion entities' (PAEs) or 'non-practicing entities' (NPEs). PAEs are companies, in some cases shell-companies, that hold the rights to various patents but do not produce anything from the patented technology. Instead they assert those said patents as their primary business model and it is whom they have targeted that has raised the ire of some high ranking US lawmakers.

This matter is serious enough that it is not only the US Senate that is looking to enact reforms to regulate the rise of these patent trolls but the European Union too has started to look into this issue.

Most NPEs demand a once off settlement or licensing fee from apparent patent infringers but there are others that demand more. Revenue sharing and equity stakes are among the most common demands especially from smaller entrepreneurships and businesses. NPEs target small or medium enterprises though some have gone after big name corporations like Microsoft and have walked away with settlements of undisclosed sums which range in the millions of dollars.

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NPEs used to just target software and IT firms but what has caught the attention of the US Senate and a growing number of State Attorney Generals (AGs) is the increase of 'troll assertion' letters being sent to various businesses unrelated to patent law including a few charity organizations and in some cases individuals. If things has come to such a state, then action definitely needs to be taken to reign in what many of the recipients of patent assertion letters have called 'blatant extortion'. It is because of such reprehensible actions that US Senators Patrick Leahy and Mike Lee have introduced a Bill, the Patent Transparency and Improvements Act, to help reduce these frivolous lawsuits filed by predatory NPEs. The Innovation Act introduced by Rep. Bob Goodlatte has just been passed by the US Senate and though not “perfect”, it does help to increase transparency in patent cases and reduce patent troll legality.

Many NPEs use poorly written and broadly defined patents that border on being vague in their harassment of their chosen targets. As most of the businesses and companies are too small to afford a lengthy investigation and challenge in court and thus choose to settle. This is how many NPEs, especially the unscrupulous ones, monetize their patents.

Litigation studies carried out by PricewaterhouseCoopers in 2013 has indicated that though not as prolific as in the US where patent trolls take advantage of a problematic patent system, NPEs do target Asian enterprises. Calculations from figures over the last several years show the annual average damages awarded range from USD1.9 M – USD16.5 M, a not so small sum for many Asian businesses.

Some NPEs, like Acacia Research and Intellectual Ventures, in their defense state that they are merely protecting their property rights and demand what is only fair. One of the two most successful NPEs, Acacia claims that they are providing a much needed service to inventors and patent holders to partner with them in assisting them to assert their patent rights. They claim that many inventors and patent holders are individuals and small companies that are unable to maintain a lengthy pursuit against larger enterprises that will just delay till the patent holders run out of money. For their support, Acacia splits the licensing and settlement fees with their partners. It has been pointed out however that most NPEs do not share revenue with the inventors. They prefer to buy the patents from often failing and financially distressed companies.

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Many tech investors and entrepreneurs, including the cofounder of Twitter Evan Williams and cofounder of Facebook Dustin Moskovitz, have asked the US Congress to reform the US patent system for what is widely acknowledge as being “broken” and benefits PAEs explaining in part to the rise of these patent assertion entities. New laws alone is insufficient to stop these NPEs from abusing the system, it needs to be fixed is the strong opinion of these technologist.

Right now time can only tell if the new Innovation Act and should it be passed, the Patent Transparency and Improvements Act will stem the rising tide of litigation and the abusive demand letters of patent trolls and assist in protecting innovation.

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