

PATENT TROLLS HARM AMERICAN INDUSTRY AND INNOVATION



PROMPT ACTION IS NEEDED NOW

THE PROBLEM

Patent assertion entities (PAEs) abuse our patent system, destroy American jobs, and are a hidden tax on our most innovative products and services. Abusive patent litigation extorts large sums of money from established companies and kills many startups before they can get off the ground.

IS GETTING BIGGER

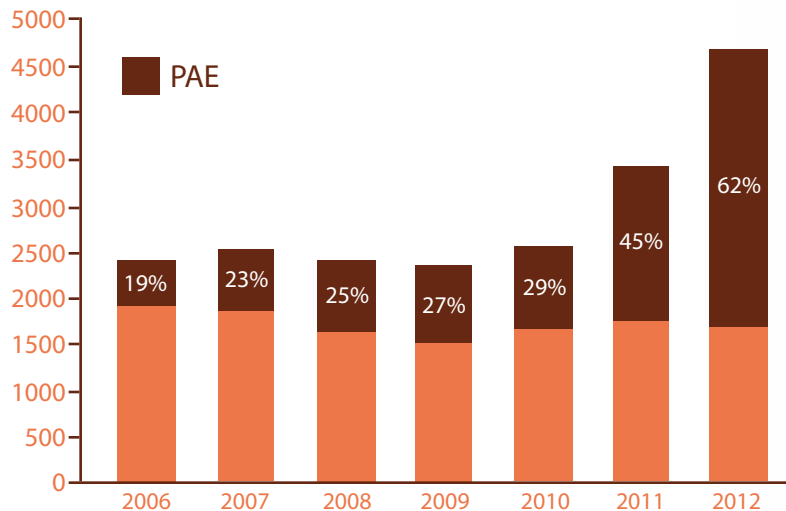
Since 2006, patent troll litigation has soared at an alarming pace, and now represents the majority of all patent litigation. In 2011 alone, patent troll suits cost American companies and innovators \$29 billion in direct payouts, and \$80 billion in indirect costs. Today, the problem has expanded to nearly every US industry from Internet startups to main street retailers, from automakers to newspapers, and even to state and local public transit authorities.

AND IS BAD FOR AMERICA

Companies targeted by PAEs must divert precious capital – otherwise used to develop innovative products, services, and hire new employees – to fend off these frivolous lawsuits.

THE RISE OF PATENT ABUSE

TOTAL NUMBER OF PATENT CASES COMMENCED >>



TARGETING INTERNET COMPANIES AND THEIR USERS >>

Because of the extraordinary cost of patent litigation for defendants, companies often settle cases rather than incur the costs necessary to prove noninfringement or invalidate bad patents. Some PAEs target downstream customers of Internet companies, hoping that the cost and complexity of litigation will coerce a quick settlement. These settlement payouts divert funds that otherwise would be invested in new products and high-paying American jobs.

Internet business method patents are litigated nine times more often than other patents. Patent trolls target Internet and high-tech industries with so-called “business method patents,” many of which are low-quality patents that claim to own old ways of doing business simply because computers or the Internet are now involved. These patents often use vague and abstract terms to claim ownership of basic everyday actions performed online, like promoting discounts or applying for a job on a website.

The imbalance in legal costs and risks, and the vague and ambiguous patents at issue in many cases, are encouraging litigation, not the innovation that our patent system was designed to promote.



A BLUEPRINT TO COMBAT PATENT TROLLS



THERE IS NO SIMPLE FIX, BUT THERE ARE WAYS TO HELP



1) Discourage frivolous patent litigation. Patent trolls face little risk and little deterrence when bringing frivolous cases. Shifting attorneys' fees to the losing party would help level the playing field between the parties and discourage abusive behavior.



2) Today, some patent assertion entities extort settlements based on "nuisance value" — it costs less to settle than to go to court. Patent trolls shouldn't be able to profit from threats of litigation rather than the merits of their cases. Requiring parties to pay for the non-core discovery they request will reduce that threat. Heightened pleading standards requiring the identification of accused products and asserted claims, and earlier Markman hearings will ensure that troll suits without merit are dealt with more quickly and that trolls can't run out the clock to force innovators and businesses to settle.



3) Create a cheaper, faster alternative to litigation. Patent trolls often rely on bad business method patents. But invalidating those patents often means going to court and fighting an expensive, drawn out battle. Expanding the Patent and Trademark Office's covered business method review program would give American businesses an important tool to more quickly and cheaply weed out bad patents.



4) Prevent the targeting of innocent customers and end users. These patent assertion entities also target customers and other end users of products and services, creating multiple recoveries for the same alleged infringement, and knowing that a party who is unfamiliar with patent litigation or the technology at issue will be easier to intimidate into a quick settlement. Allowing the joinder and intervention of the upstream manufacturer and staying the case against the end user will stop trolls from harassing individuals having only a tangential involvement with the alleged infringement.



5) Increase transparency. Today, patent trolls frequently hide their patents in shell companies, insulating themselves from any real penalty for abusive litigation and making it nearly impossible to determine who really owns an asserted patent or who is orchestrating — and profiting from — the litigation. Requiring disclosure of patent transfers, the real party in interest in a patent, and any party with a substantial financial interest in a lawsuit would help companies understand exactly whom they're up against.

DAMAGE TO THE U.S. ECONOMY >>

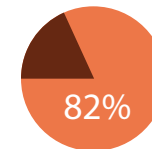


\$500,000,000,000

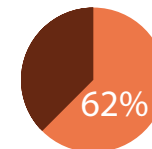
According to one estimate, these patent assertion entities have cost the U.S. economy half a trillion dollars in the last 20 years.

\$320,000,000,000

The U.S. economy incurred \$320 billion of that half a trillion dollar economic loss in the last four years alone.



Of the companies targeted, 82% have annual revenue of less than \$100 million.



In 2012, patent assertion entities filed 62% of all patent cases.



Internet business method patents are litigated nine times more often than other patents.

