The “Patent Troll” Phenomenon

What are “patent trolls”? The definitions vary, but generally patent trolls are persons or entities that
- do not manufacture any products,
- do not invent any inventions,
- obtain patents from others, and
- use predatory practices to extract money from companies that manufacture products that might infringe the patents.

Sometimes these entities are also referred to as “non-practicing entities” (meaning entities that do not manufacture any products that embody the patents – they do not “practice” the patented inventions) or “patent assertion entities” (meaning entities that specialize in patent enforcement – they “assert” patent rights).

Critics blame patent trolls for the steep rise in the numbers of patent infringement cases filed in the United States starting in 2011. Patent troll activities are considered harmful to innovation.

Patent Troll Activity in Nevada

Patent trolls have been active in Nevada although their activities, at least when measured by the number of patent lawsuits filed in the U.S. District Court for the District of Nevada, have not increased as quickly as in some other district courts.

In 2010-2013 repeat plaintiffs, who are typically the plaintiffs who are suspected of being patent trolls, accounted for between 10 and 18 cases in Nevada each year, which was 50%, 33%, 31%, and 42%, respectively, of patent cases filed in Nevada in those years.

However, one cannot conclude that all repeat plaintiffs are patent trolls. Repeat plaintiffs are not always patent trolls, and patent trolls are not always repeat plaintiffs.

Depending on the definition used to identify patent trolls, patent trolls filed between 20 and 27 lawsuits in Nevada in 2010-2013, which is 15-20% of all patent suits filed in Nevada during that period. These percentages are substantially lower than the nationwide percentages for the same activity suggested by various empirical studies.

Present Research

Professor Trimble's research presented here covers nine selected U.S. federal district courts outside Nevada and the U.S. Federal District Court for the District of Nevada. The nine-district research covers all 6,420 patent cases filed in those courts in 2004, 2009, and 2012; the Nevada research covers all 133 patent cases that were filed in the U.S. District Court for the District of Nevada in 2010-2013.

Proposals for Reforms to Suppress Patent Troll Activity

The true effects of patent troll activity on the U.S. economy are debated, with the prevailing opinion being that patent troll activity is harming innovation and negatively affecting the U.S. economy.

The phenomenon of patent trolls is not new; patent trolls and their business model have existed for decades. What is new about the phenomenon is the fact that its magnitude has now made it the defining feature of the patent litigation landscape in the United States. It is emblematic of the rise in the awareness of the phenomenon that the issue graduated from professional law journals to academic law reviews, and eventually to the front pages of daily newspapers.

By mid-2013 numerous stakeholders, Congress, and the White House had contributed their voices and actions to the fight against the undesirable phenomenon. Among the reform proposals are the following:

- White House and USPTO Initiatives: e.g., a proposal for new rules on reporting patent ownership information, a USPTO webpage with resources relating to abusive patent litigation, including links to databases with demand letters
- Legislative Proposals at the State Level: e.g., Wisconsin Senate Bill 496
- ITC Proceedings: changes in the interpretation of the rules for standing to file for an ITC proceeding
- Judiciary: limitations on the availability of injunctive relief, more frequent utilization of existing civil procedure tools to punish abuses of litigation

Recently some experts from the judiciary and academia have cautioned against taking hurried legislative action against patent trolls. These experts claim that existing tools can be sufficient weapons against the patent troll phenomenon while still allowing court discretion in the safeguarding of the legitimate interests of patent holders.