

PAE Reports: Paperwork Comment: Project No. P131203

NPE has become of the most debated topic in the intellectual property area. FTC and other governing agencies' effort of collecting more information and offering more transparency can help mitigate the patent troll problem to great extent. Without any more redundant words, I put my comments/suggestions as below:

1: Provide information collecting templates and/or platforms

In order to make the information collection process friendlier for the respondents, it would be better for FTC to provide them templates when filling out corresponding information. An online platform would be much better where the respondents can fill in information online and attach required documents.

Besides, such template and platform can make later information processing work for FTC much easier and more efficient. It's better to plan future exploitation of collected information for policy study at the first beginning, so that resources of all parties will not be spoiled.

2: Comments on potential respondents list

So far, FTC proposed approximately 5 PAEs and 15 other entities

asserting patents (including manufacturing firms and NPEs in the wireless communications sector).

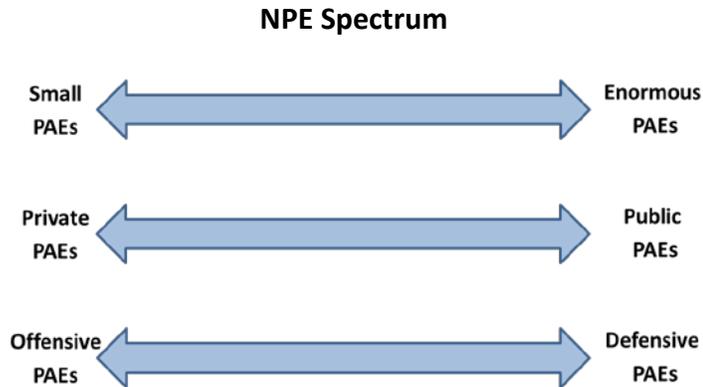
There are several concerns:

Firstly, why only other entities from the wireless communications sector?

Is it just because there are relatively more patent litigation cases in this area? However, other industries like pharmaceutical and chemical might have potential threats as well. As the patent asserting activities spread, PAEs may appear in any industry the patent system covers. As a future-oriented study, I propose FTC consider a more widely touched investigation. (Due to the corresponding complex, a template or platform is more needed)

Besides, what specific respondents should be investigated needs serious consideration and they should cover the whole spectrum of PAEs (i.e. small, median and big entities, public and private entities, and of various business modes, for example offensive and defensive). Regarding this subject, I sent email to paestudy@ftc.gov to request some information how FTC came out with the respondents list available on internet, but so far I received no feedback. What I do hope is that the way FTC comes out with the potential respondents can be as wide as possible, while at the same can aim at those should-be-investigated NPEs (for example, from

the list available so far, Intellectual Ventures, RPX and Rockstar Consortium and other NPEs are not on the list).



3: Comments on “Information Requests” on Manufacturing Firms

On the Information Request part, the Comment Request says “...The FTC will have Manufacturing Firms respond to Information Requests A-B and E-H...” (Para. 4, Page 4).

But, why does not require Manufacturing Firms not to respond to Information Requests C & D, which are most important parts for patent information collection. In fact, we should focus on actions not only on entity names. Information of Requests C & D from manufacturing firms may be very useful, too. For example, such information can be used to see whether manufacturing firms are also trying to step into non-core business field and try to leverage by exploiting patents, or running for patents not for the purpose for innovation and technology development

but for preempting the ownership of intellectual property.

Manufacturing firms can privateer with patents, which is worse even than patent trolls. Such a phenomenon has been described by Mr. Thomas Ewing.¹

4: Miscellaneous Comments

This information collection effort from FTC will positively do well for the patent community, even not aiming at so called NPEs or Patent Trolls. One of the most important and serious problem in the patent market is the information asymmetry. People are struggling with what kind of royalty rate to use and what lump sum payment to negotiate, and for what conditions are satisfied as F/RAND when licensing so called Standard Essential Patents. Licensing, royalty and even litigation cost information regarding patent(s) and patent portfolio(s) in certain industry can be helpful and useful for patent practitioners in same/similar industry. By narrowing the information gap between the buyer and seller, the patent market will become more and more rational.

¹ <http://hstlj.org/wp-content/uploads/2011/12/Ewing-Modern-IP-Privateering.pdf>