

Steven Titch

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

December 11, 2013

Dear Commissioners:

The Federal Trade Commission's investigation into patent assertion entities (PAEs) and public comment period come at a critical time for a very complex, highly impactful issue. I write to the Commission today to commend your efforts in addressing this, and considering the long-term impacts PAEs can have on the U.S. economy and innovation.

The business model of *patent trolls* seeks to litigate without creating or inventing, and some aggressive patent pools are beginning to undertake trolling activity as well. American Intellectual Property Law Association estimated the median cost of defending a patent claim at \$600,000 in cases where as relatively little as \$1 million was at stake – much above what a small company or patent holder can afford.

Unfortunately, these troublesome and harmful PAEs are found in the U.S., and they are widespread and alarmingly even sponsored and operated by governments in various parts of the world. State-funded PAEs have a distinct advantage and access to government capital and resources. As I mention in my October 30, 2013 piece in *The Hill*, which is included with my filing today, government-sponsored patent trolls include Intellectual Discovery of South Korea, Industrial Technology Research Institute of Taiwan, and the Innovation Network Corporation of Japan's IP Bridge patent pool. Foreign PAE threats to the economy also come in the form of more traditional private trolls like Italy's Sisvel. This troll was originally founded in 1982 to maximize TV-related patents, but has since grown into a patent pooling super power with troll-like tendencies.

One concerning PAE that I did not mention in my October piece is France Brevets. The huge financial backing from France for this PAE directly challenges competition and single market policies of the E.U. The U.S. should be concerned about such entities as well because many government-funded PAEs admit to supporting domestic companies and targeting foreign patent holders with lawsuits. These state-owned enterprises are influencing the free market, displaying favoritism, and violating multiple international trade agreements.

Please consider these aforementioned bad acting and government-sponsored PAEs in your investigation on patent law violators. The U.S. free market mentality and innovative nature is at risk should these entities be allowed to carry on their litigious ways without repercussions. I commend the Commission's investigation and thank you for the opportunity to comment.

Sincerely,

Steven Titch



CONGRESS BLOG

THE HILL'S FORUM FOR LAWMAKERS AND POLICY PROFESSIONALS

October 30, 2013, 02:15 pm

State-sponsored patent entities threaten innovation

By Steven Titch

<http://thehill.com/blogs/congress-blog/technology/188692-state-sponsored-patent-entities-threaten-innovation>

The popular mind connects the idea of patents with specific inventions: the telephone, the light bulb and the proverbial better mousetrap.

In reality, patent law is much more complex. The current information-driven economy has revealed shortcomings in the way patent law addresses innovations involving software and the information technology processes. To extend the mousetrap analogy, the way today's technology patent process works it's as if you can merely describe the process of baiting, trapping and killing the ordinary household rodent and gain the leverage to sue for patent infringement anyone who actually designs and builds any new mousetrap.

Legal shortcomings regarding software and IT processes have given rise to so-called patent assertion entities (PAEs), known pejoratively as patent trolls. PAEs are not motivated by protection of their IP investment in an extant product or service. Their business model is based on the reality that it is cheaper for defendants to settle an infringement claim than to endure a lengthy court process and the risk an unfavorable ruling. In 2008, American Intellectual Property Law Association put the median cost of defending a patent claim at \$600,000—just in cases when less than \$1 million was at risk. The median cost was \$5 million in major patent cases. Elsewhere, the White House has cited research that shows PAEs filed nearly 60 percent of the patent lawsuits in the U.S. in 2012, up from 25 percent in 2007.

Patent pools, whose original aim was to be a single point of licensing for groups of complementary patents involved in the manufacture of consumer electronic products, over the years have grown so much in size that they now present barriers to legitimate market entry.

For profit entities such as Italy's pooling giant called Sisvel is a perfect example. Sisvel was originally founded in 1982 to maximize the value of a portfolio of television related patents. Now it has grown into a patent holding super-power controlling the access to 12 different technology standards pools operating out of multiple offices in 7 countries. Sisvel made news when they requested that law enforcement raid the German CeBIT Trade Show claiming that 51 of its booths were infringing upon their patents. Though profiteers like Sisvel claiming infringement was nothing new; raids by armed guards drew international attention to just how far these pools were willing to go.

Now, foreign governments are getting into the game. South Korea, Taiwan, and Japan have formed government-sponsored patent trolls (GSPTs) that are bent on acquiring all the patents they can, in order to extract settlements from alleged infringers. For example, Intellectual Discovery, the Korean government controlled patent pool, has bought more than 200 U.S. patents, including one for retinal eye scan technology from Singaporean chipmaker Avago Technologies Ltd, according to U.S. government records.

Taiwan's quasi-government agency, the Industrial Technology Research Institute (ITRI), holds more than 18,500 patents, and has not shied away from asserting them in U.S. courts. In July 2013, the Innovation Network Corporation of Japan partnered with Panasonic and Mitsui to form the "IP Bridge" patent pool with the aim acquiring 5,000 more patents.

That patent assertion entities like Sisvel are stifling innovation is bad enough without protectionist governments raising the ante. Only in today's IP-fueled global economy, instead of slapping tariffs on imported products that compete with home-grown industry, governments are dubiously applying patent law to extract a "tax" on any product that threatens native commercial interests. Yet like old-fashioned import tariffs, such behavior only incites retaliation. As a result, consumers worldwide suffer as questionable infringement claims create a morass of litigation and inflated patent costs.

The U.S. thus far has resisted the urge to join the trend. Instead, both the White House and Congress are examining various ways of limiting the ability of patent pools from controlling too many substitute patents. Bipartisan efforts that allow the free-market to determine patent value should be encouraged and the U.S. should apply diplomatic pressure against the proliferation of GSPTs.

The public is served when it gets a better mousetrap and when the inventors and innovators are duly compensated. Flaws in the current patent system are hindering these desired outcomes and enriching non-participants instead. Sound reform will end perverse incentives that have made patents legal bludgeons and restore them as a source of rightful royalties for innovators and inventors.

Titch is a telecom and technology policy analyst whose work had been published by the Reason Foundation and the Heartland Institute.

HOUSTON★CHRONICLE

Titch: Patent reform getting long-overdue attention

Federal agencies and Congress are seeking ways to rein in 'trolls'

By Steven Titch | November 19, 2013 | Updated: November 19, 2013 7:17pm

<http://www.chron.com/opinion/outlook/article/Titch-Patent-reform-getting-long-overdue-4994145.php>

Patent reform is gaining traction on Capitol Hill, and with good reason. Patent "trolls" - shell companies that profit or attempt to profit from patents they had no hand in creating - are harming tech and other innovative industries in the United States. This sector helped add 10,000 jobs to our Texas economy in 2012.

Currently, there are seven separate proposed laws aimed at addressing the issue of patent trolls, or, in legislative parlance, patent assertion entities. These include the Innovation Act sponsored by Republican Reps. [Lamar Smith](#), of San Antonio, and Blake Farenthold, of -Corpus Christi, and due for markup this week, as well as the Senate version introduced Tuesday (the Patent Transparency and Improvements Act of 2013). The bills aim to protect innovators from frivolous litigation brought by these so-called "trolls." U.S. Sen. [John Cornyn](#), R-Texas, also has sponsored a legislative solution known as the Patent Abuse Reduction Act. Though it's unclear which legislative course will be selected, it is clear that lawmakers are focused on this issue and action will be taken.

But government may not need to get involved, which should be the preferred route of any business. Within the realm of intellectual property, there is a possible solution that also is a source of intense debate: the sometimes questionable undertakings of patent pools - for-profit companies that exclusively cross-license a particular technology standard like Blu-Ray or MP3. When properly administered, patent pooling reduces product design and manufacturing costs: An innovator or manufacturer pays the pool for a single license covering all patents associated with the technology standard. This is extremely beneficial in today's high-tech environment, when a particular product utilizes hundreds if not thousands of individual patents.

Theoretically, patent pools should only license essential and complementary patents related to a particular technology. For example, in a wireless technology patent pool, one patent may cover the way voice is encoded into data. A complementary patent would cover how that data is converted into a radio signal. They become legally questionable and anti-competitive, however, when they begin to incorporate "substitute" and "nonessential" patents.

The perfect case study for such a scenario is the [MPEG LA](#) patent pooling firm - a private company formed in 1997 to administer patents related to a video compression standard called MPEG-2. This standard can be found on common consumer technologies like personal computers, televisions and gaming consoles. Today, MPEG LA has exploded to manage some 8,500 essential patents, many of which, critics say, are substitute and nonessential.

Even ardent defenders of intellectual property rights should question whether it's appropriate for one patent pool to control rights to a number of competing technologies. The patent providers within a given pool have a vested interest in promoting only one, and entities like MPEG LA lack arms-length management and administration that would serve as a check on such favoritism. These tactics harm consumers by reducing incentives for innovation and keeping prices high - the antithesis of what has made Texas the second-highest provider of technology jobs in the U.S. Entities like MPEG LA do not have consumers or even individual companies in mind - their only goal is to maximize profit through their control of licensing fees.

As with Congress, government agencies are taking a closer look at patent issues. The Obama administration, in calling for patent reform, cited research that found "patent assertion entities" filed nearly 60 percent of the patent lawsuits in the U.S. in 2012, up from 25 percent in 2007. And the [Federal Trade Commission](#) wants to conduct a broad study of patent trolling to coincide with the legislative initiative now in play.

Patent pools like MPEG LA could be part of the patent reform solution and keep big government at bay. They could reduce their anti-competitive grasp to only essential and complementary patents, choose independent administration and adopt licensing practices that align their fees with patent value that accounts for expired patents.

"Authors and inventors" would remain protected, yet an innovative and dynamic marketplace can flourish. Or the pools can continue their anti-competitive practices at the expense of consumers and technological innovation more broadly.

The choice is theirs. Which will they choose?

Titch is a telecom and technology policy analyst whose work had been published by the Reason Foundation and the [Heartland Institute](#). He is based in Sugar Land.