

Patent Assertion Entities have had an interesting effect on patent law in recent years. PAE's are said to be different from trolls, yet they use very similar strategies and procedures. PAE's, however are legal and are responsible for a large amount of patent infringement lawsuits in this country. PAE's are a new entity which presents rather new problems for our patent system. Because thus far we have very little knowledge on Patent Assertion Entities, it only makes sense that our government should do something in order to better and more fully understand the role these entities play and the effects they have on the economy.

PAE's are often chastised and compared to patent trolls because they perform similar functions. PAE's operate as companies who essentially assert patents on existing technologies, legally. This action is the primary business function of these companies, so it is reasonable for members of society to question the validity and the good in these actions. Because patent trolls are frowned upon and because they take advantage of unsuspecting users of patented material, many of whom settle rather than defending their use of the material in court, logic would only lead one to reasonably question the validity of a company doing essentially the same thing, and how this operation is even legal. The most absurd thing about Patent Assertion Entities might be the fact that they don't necessarily have to invent the material which they assert a patent on.

These Entities simply assert a patent on material simply because no one else has asserted ownership of these existing technologies yet, and the patent assertion entity is allowed to reap the benefits of ownership of the patent. The American people should be outraged by the current standards of the law. It is not fair that an entity or a company with the sole purpose of asserting claims on patents should be allowed to reap the benefits of these patents while preventing others from using these existing technologies without first paying a licensing fee. The way PAE's operate is to collect licensing fees from others seeking to use the patented material. The FTC's request for public comment on the issue of placing burdens on these entities in order to better understand the effects the practices of PAE's have on the economy, and on the incentives to create and invent by those not protected by entities like PAE's. I can appreciate the measures the FTC is taking to remedy the lapse in knowledge regarding these entities.

As the FTC is seeking public comment I will attempt to comment on whether or not the questions the FTC proposes to ask Patent Assertion Entities are valid or not. There is a strong interest in these questions not being too burdensome, but at the same time it is highly necessary for us to be able to have a more comprehensive idea regarding these companies, and the effects of their dominance and control. It is important to not violate the guidelines set forth by the Paper Reduction Act, however this is an extreme case which may require the FTC to investigate to whatever lengths are necessary to gain full results and understanding. These questions are subject to Office of Management and Budget approval before they can be asked to Patent Assertion Entities.

The first question the FTC proposes to ask is, how do PAE's organize their corporate legal structure, including parent and subsidiary entities? This question is valid, and I do not believe that it would place a significant burden on the companies to provide this. I am sure the companies involved in patent assertion, have a comprehensive and detailed guide of the companies inter workings and all of its functions on a daily basis. I am sure that there are various logs already compiled which would be easily transferred to the FTC to satisfy these requirements. I suppose though, these companies would feel as though they are being targeted unfairly and are being required to provide information on the companies functions that many other companies are not being subjected to. However, there is compelling interest by the public to fully understand this subject matter. If PAE's did not exist today, then what would the patent

law suit climate entail? Would there be as many lawsuits regarding patent infringement, would people be able to randomly patent existing material, simply because no one had claimed ownership of those parts, would they be able to patent solely with the intended being to license out the patent, but not put it to use themselves? Sometimes, companies just pay the PAE's so they can continue to operate, like they do with trolls. This raises the question of whether or not the patent system should require marketing in order to secure a patent, or at least to keep it. Those who receive patents are not currently required to market their patents to the public; therefore these patents are useless as nobody benefits from the new invention. I am not sure that this should be a requirement; however it would make sense for it to be, especially in the case of the PAE's.

These are all questions that go hand in hand with PAE's and their effects. People have legitimate concerns about the effects these entities have on the economy.

Today, the government is so concerned with these large entities, and has been failing to understand the true purpose of patent law, "The patent system was established, I believe, to protect the lone inventor. In this it has not succeeded ...The patent system protects the institutions which favor invention."<sup>1</sup> Patent laws are designed to encourage inventors to invent by providing them with essentially exclusive monopoly rights as to avoid competition. According to the essay by David Nobel, "...it is the corporations, not their scientists that are the beneficiaries of patent privileges."<sup>2</sup> This has been a long standing issue because regular people are not benefiting fully from patent laws and its incentives, instead patent holders either sell or license out their patents to larger companies whom happen to gain monopolies in patents.

The way the system is today does not benefit the public, and it is not designed to. I find the fact that the disincentives to the current patent laws outweigh the incentives greatly. The fact that corporations hold the majority of patents is troubling. In 1885, twelve percent of patents were issued to corporations and by 1950; at least three-fourths of patents were assigned to corporations.<sup>3</sup> Throughout my entire education thus far, I have been taught that monopolies are dangerous and the government has the authority to step in and end monopolies, so it confuses me that, "Patents are the only legal form of absolute monopoly."<sup>4</sup> In the case of PAE's there is an absolute monopoly, and the only profit coming from it is through the licensing agreements, not through production and sale of the items themselves. In my opinion, this on its face is wrong, and clearly I do not understand the benefits of PAE's fully, therefore it is clearly necessary for the FTC to conduct an investigation.

The second question the FTC seeks to ask PAE's is, what types of patents do PAEs hold, and how do they organize their holdings? This question is probably less burdensome than the first question. Again, if the company keeps books and records, as all companies do, then it

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<sup>1</sup> Merges, Robert P., and Jane C. Ginsberg. *Foundations of Intellectual Property*. New Providence, NJ: LexisNexis Matthew Bender, 2006. 37.

<sup>2</sup> Merges, Robert P., and Jane C. Ginsberg. *Foundations of Intellectual Property*. New Providence, NJ: LexisNexis Matthew Bender, 2006. 38.

<sup>3</sup> Merges, Robert P., and Jane C. Ginsberg. *Foundations of Intellectual Property*. New Providence, NJ: LexisNexis Matthew Bender, 2006. 39.

<sup>4</sup> Merges, Robert P., and Jane C. Ginsberg. *Foundations of Intellectual Property*. New Providence, NJ: LexisNexis Matthew Bender, 2006. 39.

should be as easy as performing a Google search to find a list of all the patents a PAE holds, which may in fact be an unreasonable amount of patents, when one considers the fact, again that PAE's need not produce items regarding the patents that they hold. Also, one should keep in mind that the sole purpose of these companies is to profit from the licensing of patents. I see the downside of answering this question for the PAE in that it might expose some truths which may be detrimental to the PAE in the long run. Because there can be changes made in the laws of intellectual property, PAE's would be right to be fearful of what exposing too much knowledge to the government might ultimately mean for the PAE in the long run. The part of the question regarding how the company organizes its holdings could easily mean how the company allocates its resources. It might actually be unfair and unethical for the government to request all of this information, but at the same time, it answers to these questions could be highly beneficial, and help the greater good. The little people are the people who should be protected by patent law. This includes consumers as well as the inventor who is different from the corporation which essentially has the rights to everything the inventor created.

Ultimately what's at stake is the incentives to even create, and is the existence of PAE's raising the cost of certain products for consumers. As mentioned above, important features of patent law include incentives to the inventor, as well as benefits of the people as a whole. These categories are supposed to be the most important ones relating to patent law, however in recent year with the development of PAE's and other companies who own patents, or even the rights to anything created by people who work for their company, it appears as though the corporations who own the patents are receiving the greatest benefit from our society and its patent laws. In a country plagued by poverty, yet claims to be a super power, there is no reason why our citizens should not be able to benefit from the wealth of our nation.

As a consumer, it appears as though prices only go up, it is rare to see a steady decline in goods and services, because once the consumer is paying for those goods at a high price, it is unlikely that companies will reduce those prices even if the cost of production becomes cheaper and more efficient over time. If PAE's and their strong hold in patents causes the production of goods to be more expensive and those costs are somehow transferred onto the consumer, then there really is not a benefit to the American public as a whole to the presence of PAE's. If we were to take a look at cell phones, for example, the materials used to comprise this hand held device are probably not very expensive, and production of these goods over the years has probably gotten more efficient, yet every time a new Samsung or Iphone is released, the consumer feels the increase in the price of these items.

In recent months, the two major cell phone creators mentioned above have been seen in the media feuding over technology, and permitted use in the devices. Apple sued Android companies for patent infringement and won their claim, and Samsung was forced to pay Apple a very large sum of money. In order to get the last laugh, the South Korean company sent the money to California in the form of large trucks filled with billions of coins. Now, this is a story which is rather funny, however it would be naive to think that the consumer does not feel the effects of this silliness. Everything corporations due, ultimately goes on to effect the consumer in some way or another. Because Samsung was forced to pay Apple and if they want to continue to use whatever software was found to be the property of Apple do to patent law, then they must certainly pay a licensing fee. This added cost will have an effect on the consumer and it would be foolish to think other wise. The consumer will fell the cost of this blunder in some form even if it

is not immediately clear exactly where the extra expense is going to hit the wallet of the consumer.

The third question the FTC seeks to ask PAE's is, how do PAEs acquire patents, and how do they compensate prior patent owners? As I continue to read these questions and consider the rules of the paper reduction act, it appears as though these questions are not truly burdensome and this one especially would only require a simple answer as well. Because it is in the best interest of the people in this country to not be preyed upon by major corporations, it is important to be able to pin point exactly how these patents are acquired and to what extent the original owners of the patent were compensated. If the PAE's are doing everything legally, as they should be, then the answer to this question should not pose any significant threat to the PAE's in any way shape or form. It appears to me as though the FTC is not really trying to be too invasive; they are simply trying to gain a better understanding in order to protect the common good.

As an inventor with out the support of a large conglomeration, one may be easily swayed and preyed upon when business executives offer you a large sum of money for full out ownership rights of a patent. In this instance, the decision the inventor makes is an important one, and he or she may or may not be very well versed in patent laws. Perhaps these PAE's are predators who prey on the unsuspecting and are able to secure obscure patents on technologies and potentially run our economy through pervasive litigation that won't let up until a deal is reached. These PAE's are perhaps only concerned about the monetization potential of these patents, and not necessarily the effect the products made from the components of these patents are able to do for the entire world. It is very important to understand how the patents are required in order to protect others from being preyed upon if that is happening, and also who is to say that the individuals holding patents prior to acquisition by PAE's would be as pervasive and ruthless to litigate every single claim in order to collect on the patented materials use. It is doubtful that this would happen on the same scale as it does right now. Perhaps it would be better for individuals to retain their patents and collect through litigation as well than for them to just sell their patent to these PAE's for a flat rate.

The second part of the question regarding how the patent owners are compensated is also important in the sense that we don't want our hard working talented citizens to be taken advantage of and not receive the full benefits of their brilliance while a major corporate conglomeration is profiting through litigation by the hard work of these individuals. The PAE's may provide just compensation, but perhaps those who sell their patents don't even realize their full potential. Is it really fair for someone who is not well versed in the law to be approached and offered a large sum of money and a pen in exchange for a patent that can be used to drive prices up for consumers? In my opinion, this is not fair and it should not occur as often as it appears that it does.

The fourth question the FTC proposes to as the PAE's is, how PAEs engage in assertion activity (i.e. demand, litigation, and licensing behavior). Again, the people want to know exactly the routes these PAE's go through to assert their dominance through litigation. Do they use intimidation tactics in order to garner the patent from the individual, what do their lawyers do to pursue these claims in order to gain the licensing fee from those wishing to use the technology, how do they determine who can use the technology, are some corporations denied regardless of whether or not they can pay the fee? These questions all stem from the question proposed. What if these PAE's arbitrarily decided who could and could not use a certain patent, this would cause

a huge stir in the economic and producer/consumer climate in this country, and the PAE's would have the right to deny use to whomever they pleased for whatever reason.

This type of action could cause people to lose their jobs, because perhaps a certain product would cease to be competitive because the PAE in charge of a certain patent may never license out the newest technologies to a specific company. This could ultimately ruin some companies that have existed for so long. Of course this is an extreme theory, as currently understand PAEs, their primary concern is with making money, not ruining the economy, but if they did decide to really assert some control, they would be able to. This is a scary thought, and is potential situation that justifies this investigation by the FTC. This would be part of the licensing behavior discussed in the question. The FTC should investigate these issues more thoroughly as they have the right to do so.

The fifth question at issue with the FTC asking the PAEs is, what does assertion activity cost PAEs. This is important in order for us to better understand why these PAEs even exist. Clearly the money must be good; otherwise, there would be no reason for these companies to constantly acquire patents and force people to pay to use the materials. These materials may have been considered fair use at one point in time, or simply the former patent owner did not seek to maximize their profit with certain patents. The idea behind incentives to patents is what causes us to want answers to this proposed question. What exactly is paid to former patent holders to relinquish their claims to these patents, how much do PAEs have to pay for litigation, and what is their net profit? Clearly the incentive to control a patent is very large the way our patent system is set up today, which calls into question the current incentive to create for individuals and ordinary citizens.

If we as a nation of people believe that no matter what we create, eventually our patents will be controlled by a PAE and we will have no choice but to deal with them and their ruthless money hungry nature, why would we want to continue to create? The offer the PAE presents one with may be so tempting, it would be difficult for an ordinary individual to pass up. When you add this to the fact that many citizens will not be able to maximize the value of their patents as PAEs can, because of a lack of resources to effectively litigate, the sum of money the PAE offers you may be the most for sure money one could find. This is dangerous and will result in members of our society giving in to the evils of large corporations and conglomerations that already control everything.

A counter to the above argument, however would be that because of PAEs, people are able to make more money on their patents than they had before, because they did not pursue the money they could have made in the first place. This may be true; however this is relatively small in nature when compared to all of the potential negative effects of these PAEs. The people need more incentives to create, and being inevitably forced through the nature our current patent law system to accommodate a corporations request to sell your patent to them, is a large disincentive. As a nation of skeptics, more and more Americans are turning away from big business. America is the worlds leader, and more people should be able to create and be innovative and become a success through their own merit, and possible create their own empire, as opposed to being forced into an already existing and corrupt corporation.

The final question the FTC proposes to ask the PAEs is, what do PAEs earn through assertion activity? This obviously ties into many of the questions asked through out this survey, the most important piece of information to learn about, probably is how much money is being made by PAEs. Whether or not the money made by these PAEs is going back into the American

Economy or not is also an important aspect of this topic. Our government does not want to lose money because of the laws that we have, so it would be important to know whether or not Americans are benefiting in some form by these PAEs. We must remember that the inventor, the consumer, and the corporation are all primarily concerned with the incentives and disincentives involved in their respective outcomes.

In my opinion, none of the questions proposed to be asked are too burdensome. If these PAEs are inherently evil, there should be some developments in patent law to hinder the capacity of such entities. Whatever decision that is made based on the information discovered, should be made with the greater good of the individual and the citizens in mind. This decision may be to allow PAEs to continue to operate with their current full capacities, I do not know the answer to any of these questions, but I look forward to the answers that come from this inquisition. I do not think that The Office of Management and Budget should deny any of these requests because they really may only be simple answers given. I do not think that there will be any significant increase in paper based on these questions. At most, the corporations will be giving up some pride in unveiling the answers to these questions, but if they are legitimate, then they will have nothing to worry about. With the way the law is set up in this country, the government apparently has the right to know exactly what is going on with every one in operating here, therefore this inquisition is just.