

Patent Trolls as Intruder in Intellectual Property Rights

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ABSTRACT

An inventor who obtains a patent is given the only authority to create, utilize, and market a particular invention for a given period. No one else may utilize the innovation after the right has been granted without a valid license from the patentee. Such inventors are legally protected by this privilege from any harm. Later, it is typically anticipated that the creator will use it by granting licenses to various other producers to introduce it to the consumer market. However, several of these inventors have recently abused the rights that are granted to them. Recently, numerous people have been patenting products in the most ambiguous way that the legal system would permit, with no intention of ever using the patent. They frequently want to make money by suing people or businesses who use products that are even vaguely comparable to their patented product in infringement cases. Patent trolling is the practice in question. Thus, the activity of obtaining and using patents for licensing or legal proceedings rather than for the creation of one's own goods or services can be described as patent trolling; this is because "its real business model is patent trolling." Therefore, we are attempting to describe the aspects, strategies, and methods of patent trolling in this paper and how to cope with them.

Keywords: Patent trolls, patent pool, intellectual property, litigation

Background

A patent is a unique privilege that allows an inventor to make, use, and sell an invention for a specific amount of time. No one else may use the innovation without the patentee's consent after the patentee has granted the right. This protection from legal penalties is provided for such creators by this right. Later, for it to be used in the consumer market, the creator intends to license it to various manufacturers. However, a number of these innovators have recently begun abusing the privileges bestowed upon them. With no

intention of ever using the patent, several people have recently started patenting items in the vaguest manner that the legal system will permit. To obtain compensation, they frequently initiate infringement lawsuits against people or businesses who use goods that are even vaguely like their copyrighted idea. This practice is known as patent trolling. A company that uses patent infringement claims to make money or restrict competition through court rulings is referred to as a "patent troll." (Bain and Smith, 2022). The expression can be used to describe a wide range of commercial activities that generate revenue using patents and the legal system. Therefore, the process of obtaining and using patents for licensing or litigation rather than to produce one's own goods or services can be referred to as patent trolling; "patent trolling is its actual business model." The expression can be used to describe a wide range of commercial activities that generate revenue using patents and the legal system. Although it is not against the law, a company that files patent claims without ever intending to sell a good or service is known as a "patent troll." The result is threats of bad faith infringement and license requirements, which compel businesses to spend a lot of money to defend against these claims without benefiting the public. Sometimes referred to as a "patent shark," "dealer," "marketer," or "pirate," among other names, a patent troll also goes by other names. The phrases "patent assertion firm," "entity," and "non-manufacturing patentee" are all used to refer to patent troll activities (Wild, 2008).

They do not act as inventors who carry out their own research, market it, or issue early patents. Instead, they safeguard their rights against infringement. However, they are organizations that gain from payments made by businesses that unintentionally violate the intellectual property rights of the trolls, either unintentionally or on purpose (Henkel & Reitzig, 2009). There are worries that these small companies would exploit the legal system to pursue economic rents from big businesses (Ball & Kesan, 2009). Legal definitions for the term "patent troll" are lacking. It was coined by Intel Manager Peter Detkin in 2001 to refer to Tech Search and their solicitors during a patent dispute. It is a disparaging word for non-manufacturing companies (NPEs) (Lee, 2016). In addition to phrases like *David vs. Goliath*, patent marketer, patent dealer, and patent shark are also linked (Chien, 2009). The phrase "patent shark" was originally used in a nineteenth-century journal. Because they can take advantage of underlying design flaws in the patent and court systems, patent trolls are more common in the United States. The purpose of patent laws is to encourage creation and innovation, which eventually benefits the public. According to the Indian Patent Act of 1970, these are the negative rights that are awarded for the public interest as well as the patentee's personal gain. In this context patent pools in the Intellectual Property regime played vital role because it may provide opportunities for possible anti-competitive behavior: as with any cooperation between competitors, they involve the inherent risk of collusion. It also played an important role in shaping the

face of the industry. Such as recalling that the first patent pool was formed for sewing machines in 1856 by Grover, Baker, Singer, and Wheeler & Wilson (Singh, 2022).

A firm or business unit that buys patents primarily for the purpose of using them against other businesses is known as a "patent troll." The goal of patent trolling is to enforce patent rights to generate licensing income, drag manufacturers into infringement lawsuits, and coerce third parties into buying licenses or paying damages. Patent trolls are often referred to as Patent Holding Companies (PHCs), Non-Practicing Entities (NPEs), or Patent Assertion Entities (PAEs).

Literature Review

The business model for patent trolls appears to be well defined acquire patents, remain hidden until the market for a certain technology expands and patents become important, and then use patents against producers to extort astronomical royalty fees (Henkel & Reitzig, 2008). Trolls are mainly just concerned with the right of exclusion, not with the underlying information (Fischer, 2009). When an unwary offender has made irrevocable investments and the targeted product has already evolved into a key or basic technology, patent trolls emerge. Due to this lock-in problem there are frequently no ways to get around the patents or even stop using the technology.

According to RPX Corporation, a company that assists businesses in reducing the risk of patent litigation by granting licences to patents it owns in exchange for a pledge not to sue, patent trolls filed more than 2,900 infringement claims worldwide in 2012 (almost six times as many as in 2006). President Barack Obama of the United States stated in response to the America Invents Act (AIA), which was passed by Congress in September 2011 and updates US patent law, that "efforts at patent reform only reached about halfway to where we need to go" in February 2013. The following step was to bring the stakeholders together and get a consensus on "smarter patent laws." In an effort to combat patent trolls, the Patent Trial and Appeals Board received permission to start conducting Inter Partes Review (IPR) hearings in 2012. IPR makes it possible for a government agency to review a patent's validity instead of needing to do so in front of a judge in the past. The legitimacy of the IPR proceedings was confirmed by the Supreme Court in 2018. When previously only a court could conduct such a review. A court known for favouring plaintiffs and having expertise in patent cases, James Rodney Gilstrap, received 28% of all patents in 2015, while the Eastern District of Texas in Marshall received 45% of all patent lawsuits brought in the United States (Mullin, 2017).

Result and Discussion

Indian Patent Trolling

Prior to the amendment's passage in 2005, patent trolling in India's information technology and communications sectors was relatively common compared to other nations, but it quickly decreased after the amendment. The presence of patent trolls is not expressly forbidden by Indian patent law. However, clauses like section 146 mandate that an issued patent must be utilised in India (Monica Raje, 2020). Compulsory licencing may be applied if a patent is not developed or used on Indian soil. The Act also mandates that, at the conclusion of each fiscal year, a statement of a patent's working must be filed. Patent owners who fail to submit such a statement could face fines and/or imprisonment. Section 83(b), which stipulates that patents are not awarded only to allow patentees to enjoy a monopoly, discusses the technique of using patent trolls to misuse patent rights. The encouragement of technological innovation, technology transfer, and the prevention of the wrongful exploitation of patent rights to unnecessarily impede global technological transfer are all included in clause (Rajkumar V, 2008) .

The Business of Patent Trolls

For established manufacturers in R&D-intensive industries, patent trolls are a danger. Although these trolls have been understood in general for more than a century (Edison 1898), they have only recently begun to appear as a larger class of competitors (Lerner, 2006; Reitzig, Henkel, and Schneider, 2010; for a historical exception of a cluster of trolls in the farming industry in the nineteenth century, see Magliocca, 2006). In keeping with earlier research, we refer to "patent trolls" as synonymous with "patent sharks." According to Reitzig et al. (2007), "patent sharks" are "individuals or firms that seek to generate profits mainly or exclusively from licencing or selling their (often simplistic) patented technology to a manufacturing firm that, at the point when fees are claimed, already infringes on the shark's patent and is therefore under particular pressure to reach an agreement with the shark. As the aforementioned definition makes clear, patent trolls benefit from having legal protection for their final negotiating power when dealing with other companies, particularly (big) manufacturers who invest much in R&D. Trolls have a right of exclusion that enables them to prevent any other person or company from using their patented technology. Patent trolls strive to avoid asserting this entitlement before the negotiation environment is such that their negotiating position over manufacturers is legally assured. To put it another way, trolls watch for negligent infringement of their proprietary technologies by manufacturers before they step on their toes. With or without the 'proprietary' information of the troll, and regardless of whether the troll ever existed, this indicates that the producers that unwittingly infringed are theoretically capable of

creating the same six items. However, the troll comes to depend on the manufacturers legally. As a result, the troll's value proposition is odd and represents a form of rent-seeking: it offers "not to act," which means that it will not use its right of exclusion against the manufacturer (Gregory, 2007).

Examining Patent Trolls

These patent trolls are referred to as Non-Performing Entities (NPE). Instead of marketing or producing their goods, these businesses will just demand payment from those who appear to be violating a patent that belongs to the NPE. Small firms, organisations, and individuals took the brunt of the reaction as a result of the numerous lawsuits filed against them, since trolling had grown to be a serious problem. Many corporations settle even when they don't think there is any infringement because the risk of losing an infringement lawsuit and having to pay millions of dollars is too great. In contrast to Europe, where the losing party is accountable for both sides' expenditures under the "losers pay" policy, the act is more prevalent in the United States. This discourages individuals from filing false allegations, but in the US, this is not the case. However, the Supreme Court recently rendered a very favourable decision in the case of *TC LLC v. Kraft Foods Group Brands LLC*, declaring that patent defendants may face legal action wherever they conduct business. The lower courts in this case, which were according to a guideline established in 1990 by the United States Court of Appeals for the Federal Circuit, refused to let the defendant in this case to transfer the litigation to the location of its corporate headquarters (Joe, 2017). The fact that many cases can now be moved from 'plaintiff-friendly' districts to more impartial districts, where defendants have a higher chance of receiving a fair trial, has greatly comforted many individuals.

Strategies and Measures

The NPEs used several strategies to get what they wanted. The most common techniques they employed, for instance, amassing patents in a single field NPEs accumulate numerous patents in a single industry, making it difficult and costly for the targeted company to defend against an infringement claim; They don't produce anything since patent trolls never produce the product they have patented; instead, they sue several defendants at once because it lowers their total expenses while still offering the chance of a sizable payoff in the future (Nalsar, 2018).

Even if their patent only covers a tiny aspect of the idea, they still claim a portion of the product's overall sales, and a successful product can net them a million-dollar prize. To avoid being sued and earning big awards, businesses have asked for special laws or

specific measures to be enacted against them (Rantanen, 2006). The actions listed below can be taken by businesses to battle patent trolls:

- ❖ Large Tent Coalition According to current legislation, anyone who uses a product that violates a patent may be held liable. The Bill will alter this such that going forward, only the company or individual who came up with the product or service will be able to file a lawsuit.
- ❖ How to get ready for a case like that: One can always take simple safety measures to protect themselves from such bogus lawsuits.
- ❖ A business or an individual should continually keep in mind these three fundamental procedures before opening their doors to others: Be proactive, get insurance, and speak with a lawyer. Properly responding: The sender of a notification must always receive an acceptable response. Searching for alternatives to litigation may be a waste of time because the plaintiff is already aware of these arrangements.

Old Issue

The practise of "patent trolling" is not new. In the 1990s, the phrase "patent trolling" was coined to describe organisations that aggressively brought patent cases. One defence for patent trolls is that they have a right to use their legal authority against companies that create consumer goods since they must reveal novel technologies to the public in order to get their patents. Thus, innovation is encouraged by the disclosure of new technology, and the patent holder is merely acknowledged for this advance in science (Edward, 2015). However, it has been noted that the inventions disclosed in patent applications made by patent trolls are unlikely to be particularly inventive, making their applicability to the advancement of science questionable.

Case Study

Somasundaram Ram Kumar (S.R. Kumar) received a patent for mobile phones that could accommodate several SIM cards in one of the most well-known lawsuits in this area, Spice Mobiles and Samsung India vs. S.R. Kumar. The patentee filed a lawsuit for infringement and requested an injunction, which was granted, in addition to registering his patent with the India Customs Authority to pursue it in accordance with the Intellectual Property Rights (Imported Goods) Enforcement Rules. A step further was taken by the patentee, who added "a plurality of headphone/earphone jacks for accepting a plurality of headphone/earphone plugs and/or a plurality of Bluetooth devices that enabled

communication on both the SIM-cards simultaneously" to the claims. Additionally, the patent holder gave legal notices to the Excise authorities so they could revoke the manufacturing licences they had given to Samsung India. When Samsung and Spice Mobiles filed a revocation petition, the Intellectual Property Appellate Board (IPAB) put an end to the shenanigans and cancelled the patent on the grounds of lack of innovative step (Srividhya, 2012).

Adverse Repercussions

The main negative impact of patent trolls is that, regardless of their non-practicing status or potential patent claim weaknesses, they can negotiate licencing fees that are wildly out of proportion to their contribution to the claimed infringer's product or service. The costs of extra vigilance for potential rival patents that may have been issued, as well as the possibility of paying exorbitant charges for licencing of patents they were not aware of, raise the costs and risks of manufacturing. Patent licencing is also regarded as pro-competitive because it inadvertently fosters investment in the development of new goods. Patent trolls thus make patent ownership more accessible by establishing a secondary market for them, which encourages invention and patenting (Reddy, 2012). By more effectively allocating ownership of patent rights, granting patents to more specialised licencing firms will increase access to technology.

CONCLUSION

The current patent system's judicial process and its decision-making in infringement cases appear to be the causes of the patent troll strategy's development. It can also be because there are a lot of pending applications and not enough technical experts to review patent applications. The issue still exists in the software business even though trolling activity has decreased. Due to policies like the domestic working and reasonable duration requirements, compulsory licencing, the pre-grant opposition process, and last but not least, the patentable subject matter, the Indian system has been largely resistant to the patent troll issue that has plagued many other nations. Troll patents are well known, yet evaluation of them hasn't even begun yet. The right to protect one's patents, even if they aren't being used, seems to be shared by all. It is just perceived as a business practise because it is so frequent among large organisations. Small businesses and individuals, on the other hand, need to be safeguarded from patent trolls since they face losses that can take years to recover from and potentially put them out of business. Due to how frequently it occurs in large organisations, it is simply seen as a business practise. Contrarily, small businesses and people need to be protected from patent trolls since they

risk suffering damages that could force them out of business and take years to recover from.

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