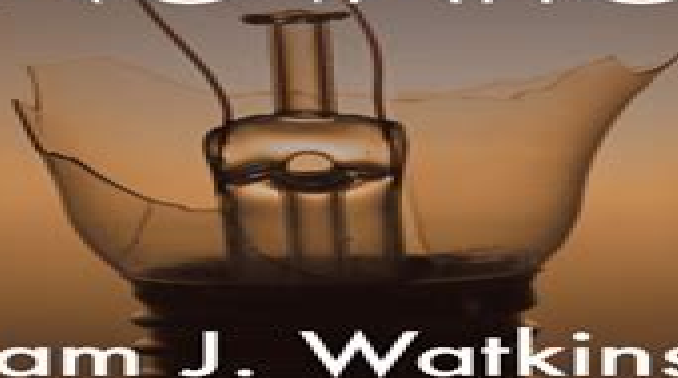


# PATENT TROLLS

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PREDATORY  
LITIGATION

and the  
SMOTHERING of  
INNOVATION



**William J. Watkins, Jr.**

Foreword by William F. Shughart II

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# Patent Trolls Predatory Litigation And The Smothering Of Innovation

**L Darling-Hammond**



## **Patent Trolls Predatory Litigation And The Smothering Of Innovation:**

*Patent Trolls* William J. Watkins, 2014-04-01 Patent trolls are stifling innovation Using overbroad patents based on dated technology trolls threaten litigation and bring infringement suits against inventors Trolls also known as Non Practicing Entities NPEs typically do not produce products or services but are in the business of litigation They lie in wait for someone to create a process or product that has some relationship to the patent held by the troll and then they pounce with threats and lawsuits The cost to the economy is staggering Watkins calls attention to this problem and the challenges it poses to maintaining a robust rate of technological progress He also examines a more fundamental problem an outmoded patent system that is fundamentally ill suited for the modern economy Finally he examines proposals for reforming the patent system

**Patent Trolls** William J. Watkins (Jr.), 2013 *Patent Trolls* William J. Watkins, 2014-04-01 Patent trolls are stifling innovation Using overbroad patents based on dated technology trolls threaten litigation and bring infringement suits against inventors Trolls also known as Non Practicing Entities NPEs typically do not produce products or services but are in the business of litigation They lie in wait for someone to create a process or product that has some relationship to the patent held by the troll and then they pounce with threats and lawsuits The cost to the economy is staggering Watkins calls attention to this problem and the challenges it poses to maintaining a robust rate of technological progress He also examines a more fundamental problem an outmoded patent system that is fundamentally ill suited for the modern economy Finally he examines proposals for reforming the patent system

**Supreme Court Economic Review, Volume 23** Todd J. Zywicki, Michael S. Greve, Thomas W. Hazlett, 2016-01-21 Supreme Court Economic Review is a faculty edited peer reviewed interdisciplinary series that applies world class economic and legal scholarship to the work of the Supreme Court of the United States Contributions typically provide an economic analysis of the events that generated the Court's cases its functioning as an organization the reasoning the Court employs in reaching its decisions and the societal impact of these verdicts Beyond academic analysis SCER contributors stimulate interest in the economic dimension of the Supreme Court and explore solutions for its manifold and complex problems

*The Internet as a Technology-Based Ecosystem* Nigel Walton, 2017-05-04 This book examines and critiques classical approaches to strategic analysis whilst exploring alternative methods which utilise ecosystem and platform concepts as well as chaos and complexity theories The innovative study provides a critique of the neoclassical Newtonian school of strategy and proves it to be largely inappropriate as a decision making methodology in today's internet based market By developing a new biological hydrothermal vent model in which analogical comparisons are made with the Information Communication Technology ICT sector the chapters challenge existing paradigms of competitive advantage and analyse the extent to which the Internet can be considered to be an ecosystem in its own right The Internet as a Technology Based Eco System offers a range of alternative models and analytical frameworks for the analysis of internet based technology companies in the twenty first century creating a valuable tool for students and

academics undertaking research in strategy technology and electronic engineering      **Is Social Justice Just?** Robert M. Whaples, Michael C. Munger, Christopher J. Coyne, 2023-05-31 Anyone concerned with social justice will find this book makes him question his assumptions rethink his premises and think Andrew P Morriss professor Bush School of Government and Public Service School of Law Texas A and the answers have been as earnest as they have been varied Today our expert class also claim to have answers updated answers more equitable answers more technological answers in short answers that are simply better suited to our times But are those answers in any way correct Do they work Are they just In these elegant nuanced essays the authors use the wisdom of ancient and modern philosophers to shed light on these important questions and the answers are revealing Armed with ample evidence from real world experiences lessons from history the wisdom of the classics modern philosophers and even the teachings of the world religions the contributors of *Is Social Justice Just* illuminate the central role of the individual in achieving justice in all its aspects Read *Is Social Justice Just* and discover how to do social justice wrong with the poison of resentment envy and ignorance how to do social justice right with the insights of philosophers and theologians how to respect people's rights and liberties without sacrificing true equality and how to reform flawed public policies that just make everything worse In a world of partisanship hysteria maliciousness and good intentions attached to hellish outcomes this landmark book enters the public discourse at a critical time With a foreword by Jordan B Peterson a preface by Nicholas Rescher and a collection of essays by some of the best and brightest scholars of our time *Is Social Justice Just* is a timely and urgent work Read it and you will begin to think about social justice and justice in some surprising new ways      *Crossroads for Liberty* William J. Watkins, 2016-10-01 What did the American Founders actually intend for the country and does it even matter today If America began as an idea then what kind of idea In a time of increasing turmoil over American history politics and society *Crossroads for Liberty Recovering the Anti Federalist Values of America's First Constitution* takes a surprising and thought provoking look at the American Revolution the Articles of Confederation and the Constitution and asks what we can learn from them Author William Watkins casts a critical eye on conventional wisdom about the Articles of Confederation as he outlines the differences between that original U S governing document and the Constitution which replaced it He finds that the Articles protected individual liberty and community centered government in ways that the looser language of the U S Constitution did not Watkins draws from contemporary examples of bureaucratic overreach and expansion to support his argument examples that were startlingly predicted by proponents of small government at the time of the Constitution's adoption Along the way he points back to the Articles and the values of the American Revolution as a framework for reimagining American politics to foster liberty and truly representative governance *Crossroads for Liberty* arrives at an important time in American political life and its reexamination of the American Founding presents a significant contribution to the story about America Readers will come away with a greater understanding of current political and constitutional issues as well as a new perspective on American

history *Vanquishing the 'Patent Trolls'* Matthew Rimmer, 2016 Patent law provides exclusive rights to exploit scientific inventions which are novel inventive and useful The regime is intended to promote innovation investment in research and development and access to scientific information In recent times there have been concerns that the patent system has been abused by opportunistic companies known by the phrase patent trolls It has been alleged that such entities have stunted innovation and spurred unnecessary patent litigation Adam Jaffe and Josh Lerner discuss such pathologies of patent law in their book *Innovation and Its Discontents How our Broken Patent System is Endangering Innovation and Progress and What To Do About It* James Bessen and Michael Meurer have addressed such concerns in their recent text *Patent Failure How Judges Bureaucrats and Lawyers Put Innovators at Risk* There have been particular fears about the rise of patent trolls in the field of information technology Peter Deken an assistant general counsel at Intel used the phrase patent troll to describe firms which acquired patents only to extract settlements from companies on dubious infringement claims **Patent Assertion**

**Litigation and the Patent "Trolls" Debate** Stephen P. Copeland, 2013 Congress has recently demonstrated significant ongoing interest in litigation by patent assertion entities PAEs which are colloquially known as patent trolls and sometimes referred to as non practising entities NPEs This book reviews the current debate and controversy surrounding PAEs and their effect on innovation examines the reasons for the rise in PAE litigation and explores the legislative options available to Congress if it decides that these are issues that should be addressed **Patent Trolls** Lauren Cohen, Umit G. Gurun, Scott Duke Kominers, 2014 We provide theoretical and empirical evidence on the evolution and impact of non practicing entities NPEs in the intellectual property space Heterogeneity in innovation given a cost of commercialization results in NPEs that choose to act as patent trolls that chase operating firms innovations even if those innovations are not clearly infringing on the NPEs patents We support these predictions using a novel large dataset of patents targeted by NPEs We show that NPEs on average target firms that are flush with cash or have just had large positive cash shocks Furthermore NPEs target firm profits arising from exogenous cash shocks unrelated to the allegedly infringing patents We next show that NPEs target firms irrespective of the closeness of those firms patents to the NPEs and that NPEs typically target firms that are busy with other non IP related lawsuits or are likely to settle Lastly we show that NPE litigation has a negative real impact on the future innovative activity of targeted firms

**Blackberries and Barnyards** Gerard N. Magliocca, 2014 This Article provides context for the ongoing debate on opportunistic licensing or patent troll litigation by pointing out that the same phenomenon occurred in the nineteenth century with respect to design patents on farm tools This previously unexplored episode shows that trolls or sharks as they were called then explode when patents are extended to inventions that 1 are cheap to acquire 2 are hard for a defendant to substitute away from and 3 evolve incrementally Modern information technology and basic farm tools share these traits albeit for different reasons The Article then compares the remedies proposed in each era and concludes that curbing trolls through a comprehensive reform is bound to fail A better approach would seek either to abolish

software and business method patents or reduce the arbitrage spread by raising the maintenance fees charged to retain patents

**Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse** United States. Congress. Senate. Committee on the Judiciary, 2015

*Patent Failure* James Bessen, Michael James Meurer, 2008 Presenting a wide range of empirical evidence from history law and economics this text is an authoritative and comprehensive look at the economic performance of patents It asks whether patents work well as property rights and if not what institutional and legal reforms are necessary to make the patent system more effective

**Why 'Patent Trolling' by High-Tech Companies is Stifling Competition & Innovation - And What We Should Do About It** Andrew Grosvenor, 2012 Recently there has been an explosion of patent litigation in the high tech sector as companies buy up patent portfolios and use them to force settlement agreements from competitors This has led to an environment in which patent trolling is prevalent and smaller players are pushed out of the market because they lack the patent portfolios to compete Patent trolls are companies that do not create products but instead acquire portfolios of basic patents that they use to sue possible infringers for fast profits Larger tech companies such as Google Apple and Microsoft have recently begun to use their vast patent portfolios in this way especially in the mobile sector where competition is most fierce This note will analyze the current state of the patent system with regard to the big tech lawsuits including how broad process patents on software have helped create new problems and will compare relevant aspects of the U S system to standards in other countries to assess ways to improve our system The note will also evaluate current legislative efforts to reform the system and make recommendations regarding what the most effective changes would be The purpose of the patent system is to encourage innovation and to reward inventors by protecting the fruits of their labor Abuse of this sanctioned monopoly is helping to consolidate the tech marketplace to the few large companies that are winning the patent arms race This note will propose reforms that will encourage true competition while retaining incentives to encourage innovation in the tech sector

*The Myth of the Patent Troll* James F. McDonough, 2012 A new breed of companies has emerged and they are being called patent trolls A patent troll is a person or entity who acquires ownership of a patent without the intention of actually using it to produce a product Instead it licenses the technology to an entity that will incorporate the patent into a product or it sues an entity it believes has already incorporated the technology in a product without permission The government corporate America and the media are fervently acting against these trolls New proposed legislation a blizzard of Supreme Court cases involving trolls and endless newspaper and magazine articles are all trumpeting the same story line Patent trolls are bad for society and must be stopped This article suggests that patent trolls are actually good for the patent system Patent trolls are more accurately described as patent dealers because they act as market intermediaries in the patent market Once the activities of patent dealers are isolated from other distinct problems that have been identified with the patent system specifically the issuance of poor quality patents and the problem of the patent thickets it becomes clear that the emergence of patent dealers marks a stage in

the natural evolution of the patent market Patent dealers make the patent market more efficient by realigning market participant incentives making patents more liquid and clearing the patent market The article concludes by rebutting the common complaints that patent trolls stunt innovation and spur unnecessary litigation **Patent Trolls and Technology**

**Diffusion** Catherine E. Tucker,2013 Patent assertion entities sometimes known as patent trolls do not manufacture goods themselves but profit from licensing agreements that they often enforce via the threat of litigation This paper explores empirically how litigation by one such patent troll affected the sales of medical imaging technology It finds evidence that relative to similar products made by the same firm but not covered by the patent imaging software sales declined by one third This was not due to a suppression in demand by hospitals but instead is linked to a lack of incremental product innovation during the period of litigation **The Trouble with Trolls** Robert P. Merges,2014 This Article analyzes the secondary market for patent rights It defines a patent troll as a participant in this market that does not contribute to the social goal the patent system was meant to serve technological innovation The legitimate secondary market in which patent rights are bought and sold in ways that compensate real innovators and also often involve the transfer of information and or technology in addition to the legal right is distinguished from the more questionable market for the settlement of lawsuits involving weak outdated or irrelevant patents The presence of willing buyers and willing sellers does not necessarily imply that social welfare is being served at times the legal system must shut down markets when the things being exchanged have no social value as in the case of blackmail The Article reviews the prospects for corrective policies to reign in some activities in the current patent system Political economy considerations make Congress a long shot to fix the problem which leaves the courts and in particular the Federal Circuit Recent caselaw on damages is presented as a case study of a desirable Federal Circuit course correction involving the secondary market for patents Economically rational valuation techniques applied to the question of appropriate damages for patent infringement can help to undermine the incentives to litigate and hence the market for patents on minor features that can be used strategically to demand large damage awards under some readings of damages doctrine Can Patent Trolls be Stopped Without Interfering with an Individual's Property Rights? Talar

Sahagian,2022 This thesis seeks to analyze patent trolls and how they are able to prey on successful patented innovations to monopolize on profits all while doing it legally This research aims to answer the question if patent trolls can be stopped without infringing on an individual s property rights This study analyzes various legislation enacted to limit the actions of patent trolls and if they are sufficient in their totality to prevent the trolls from making a profit off a patent s they have no intention of utilizing or have never used The data will be analyzed to show if the enacted reform has impacted preventing patent trolls from flooding the patent litigation system and interfering with innovation Additionally the study will analyze if prospective legal reform would impact the hindrance of the actions of patent trolls Patent trolls will continue to exist as they cannot be stopped without sacrificing an individual s property rights *Patent Controversies* Kenneth Jost,CQ Press,2015

The U S patent system almost as old as the Constitution has helped make the United States a worldwide leader in science and technology Patent laws have helped spur innovations that have revolutionized medicine and transformed transportation communication and many other aspects of daily life Today the U S Patent and Trademark Office PTO issues about 300 000 patents to inventors each year But critics including the high tech and some other powerful industries say that the PTO is now issuing too many dubious patents and that some patent holders are engaging in abusive litigation that actually hampers innovation The House of Representatives passed a broad measure aimed at curbing litigation by so called patent trolls in 2013 but it died in the Senate Now the bill is back with some bipartisan support but it faces questions from some Democrats and from the pharmaceutical biotech and venture capital industries In addition some experts say recent court decisions and changes at the PTO may make the bill s provisions unnecessary

*Trolls Or Great Inventors* Hon. Ryan T. Holte, 2015 There has been much debate about the economic harms caused by patent infringement lawsuits filed by patent holders who do not make or sell products covered by their own patents entities pejoratively referred to as patent trolls This debate has thus far been largely theoretical or based on broad industry wide data The purpose of this Article is to present a focused empirical report that has previously been lacking detailed information regarding the inventors themselves the patent assertion entities PAEs that represent them and the stories behind their patents The research for this Article centers on two instructive case studies 1 MercExchange L L C the prominent PAE whose seminal patent infringement action against eBay continued to the Supreme Court in *eBay Inc v MercExchange L L C* 547 U S 388 2006 and 2 Capital Security Systems Inc a lesser known PAE that has sued some of the largest banks in the world on its patented electronic check processing technology This Article explores the stories behind the inventors the patented inventions and the entities asserting the patents in order to develop a more complete contextualized picture of PAEs and their economic impact Based on this more complete picture the Article then assesses whether these patent holders warrant the patent troll moniker lurking under the bridge of innovation waiting to harass and extort innovators attempting to pass or whether they instead resemble the great American vision of a Horatio Alger novel protagonist laboring to build that bridge of innovation brick by brick and eventually reaping a reward for their hard effort The Article concludes that while additional studies are needed the two PAEs studied herein fall squarely into the latter honest laborer category



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