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Impact of Patent Trolls on Small Businesses

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ABSTRACT

One of the most significant threats to the innovation-driven industries in particular to the areas of technology, software development and biotechnology has been identified as the proliferation of patent trolls or Non-Practising Entities (NPEs). As opposed to conventional patent holders, patent trolls do not purchase patents to commercially exploit them or innovate technology; instead, they mainly seek to leverage their patent rights by waging aggressive litigation and strategic settlement claims. These parties get money by cashing in on the infringement suits rather than establishing a business opportunity after capitalizing on the uncertainty in patent claims and the prohibitive aspect of litigation. There are economic and operational consequences of patent trolling. Businesses often pay huge legal costs and the constant risk of lawsuit divert funds and time of management to research and development. Small businesses and startups are particularly susceptible, since they usually do not have the funding and legal means to survive a protracted legal fight, and many of them choose to settle expensive to comply, regardless of the soundness of the claims. These practices not only put a strain on scarce resources but also deter entry into the market, decrease competitiveness and slow technological advancement. This paper reviews the effect of patent trolling on small businesses, the legal frameworks of various jurisdictions that regulate NPEs activity, and assesses the effectiveness of reforms to strike the balance between effective patent protection and the necessity to preserve the innovation and entrepreneurial development. The study highlights the need to have greater procedural protection and policy change to ensure that small businesses are not victimized due to predatory patenting.

Keywords: *patent troll, small startup, Non-Practicing Entities, infringement, development*

I. INTRODUCTION

The term patent troll or Non-Practicing reality (NPE), is used to relate to an individual or a company which obtains patents not to produce or make a product but to collect licensing freights or train suits against other companies on grounds of allegedly violating their patents. Patent trolls do not exploit the patents they have to develop new products or services. Rather, they

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attempt to earn money by suing other companies, which use the same technology, asserting that they are violating their patents. This is usually aimed at getting a settlement payment out of the accused company instead of trial. The practice may be detrimental to innovation since it may deter companies to create new products or even enhance the existing products in fear of sued on patent infringement. It also puts an additional strain on the legal system and the cost to consumers because companies have to transfer the cost of litigating against patent trolls to consumers. The majority believes that patent trolls are corrupted and subdue the patent system, and deter innovation. Certain jurisdictions have already passed, or attempted to pass, laws or regulations to curtail the actions of patent trolls to bring a frivolous lawsuit, but the question is controversial and grey².

The emergence of patent trolls has become a major threat to innovation and business all over the world. This predatory behaviour is particularly elevated in those industries whose technologies are complicated and whose patents overlap, such as in software and telecommunications. In such areas, patent trolls exploit patents that are too broad or vague, to purport infringement claims against start-up companies and small business. Patent trolls have devastating economic effects. Targeted Companies can be affected by significant legal costs and the ever-present risk of legal action can suppress innovation since no one wants to bother with creating new products. Such lawsuits are also more likely to attack small businesses and startups since they tend to lack the financial resources to take the case to the last ditch and are typically forced to pay costly settlements. Not only does this practice deplete companies of important resources, it also inhibits technological innovations and reduces market competitiveness.

II. COMPARATIVE LEGAL FRAMEWORKS ADDRESSING PATENT TROLLING ACROSS JURISDICTIONS

The legal systems of patent trolls are not the same in all countries and they are constantly changing as governments and courts act to combat the problem. Below is a quick summary of the legal landscape of patent trolls in India, the United States, the United Kingdom, Europe.

India

The concept of patent troll is not referred to in the Indian law, but the practice exists. Indian Patent Act 1970 provides a remedy to infringement and remedies of patents, but, there have

² Colleen Chien, Santa Clara Law santa clara law Digital Commons Faculty Publications Startups and Patent Trolls (2012), <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1554&context=facpubs> (last visited Apr 1, 2026).

been instances of frivolous suits that are instituted by organizations who are not actually interested in the innovation and commercialization of patented technology. Lack of enforcement of patent laws and lengthy process of patent litigation are among the main factors that enable patent trolling to flourish in India. In the case of small businesses and start-ups, lengthy litigation adds to legal costs and business risk. A lawsuit may cost huge amounts of money and time even when the patent is not strong and is doubtful.

In a bid to solve this problem, the Indian government has made efforts to enhance the patent system in the country. The government introduced the National IPR Policy in 2016 in an effort to enhance the intellectual property rights ecosystem in India. The policy incorporates provisions to enhance the efficiency of the patent registration process, quality of patent examination and grant and effective enforcement mechanisms to discourage patent trolling. Moreover, the Indian Patent Office has unveiled a number of initiatives to speed up the process of patent examination and minimize the number of patent applications pending. They involve the application of rapid patent application process in some fields like biotechnology, green technology and military. Although patent trolling is still a problem in India, the government is trying to make the patent system better and enforce better mechanisms to curb such activities, which are likely to reduce such behaviors and encourage innovation and development in India. Nonetheless, the cost of litigation and delays in the process can still be an issue to small businesses.

United States

The lack of loser pays is one of the primary reasons as to why patent trolls are so common in the United States.. In the majority of other countries, the loser in a patent law suit must pay the legal expenses of the victor. This is a caution to any negligence when it comes to litigation and encourages those parties to settle out of court. In the United States though, every party pays its own legal expenses which can be as high as millions of dollars. This allows patent trolls to easily rake in settlements on defendants since litigation can be prohibitively expensive to the small and medium-sized enterprises (SMEs).

Several measures have been suggested and taken in the US to fight with the patent trolls. These feature changes to the patent framework, like the America Invents Act of 2011, which added novel methods of contesting the validity of patents. Moreover, other states have passed their own legislation to help limit the operations of patent trolls, such as mandating NPEs provide more details of their patents, and the holders thereof. However, the patent trolls issue is a hot one in the US, and each side of the argument is sure that more reforms are necessary to resolve

the issue, and some are convinced that NPEs are an important aspect of patenting. Still, there is a threat of the small businesses due to the high cost of lawsuit and uncertainty.

European Union

The European Patent Convention permits the grant of so-called unitary patents, which are granted protection in all member states that are involved. This would also be easier when NPEs can apply and enforce their patents in more jurisdictions and this may end up making it more costly and risky to small businesses that might be accused of infringement. The European Union has been undertaking some reforms in the patent system in the recent past in a move to address the issue of patent trolls. They include the creation of Unified Patent Court which will be in charge of unitary patents and is likely to provide a more effective and streamlined process of patent litigation.

Also, EU has suggested a legislature to enhance the transparency of the ownership and licensing of patents that may complicate the activities of NPEs in the so-called patent trolling. Notwithstanding, they are feared to have left the European patent system vulnerable to patent trolls particularly when it comes to small and medium sized businesses that lack the financial capacity to counter cross-border litigation of a complex nature. Other stakeholders have suggested further alterations, such as putting in place a more rigid set of requirements prior to patent eligibility or placing other barriers to the enforcement of patents. Some claim that patent trolls are a significant part of the patent system, as they help in the transfer of patents and promote innovation.

United Kingdom

The Intellectual Property Act 2014 brought about provisions to ease the process of companies questioning the validity of patents and to offer more details in terms of who owns and licences patents. Another provision of the act is the limit on recoverable costs in patent litigation, which is supposed to decrease the exposure of infringement accused companies. The UK has also undertaken several measures, which seek to enhance innovation and entrepreneurship like tax incentive to finance research and development activities and start up finance. Those are aimed at stimulating the emergence of new technologies among small businesses and making patent trolls less willing to buy and defend patents. But under these measures, the patent system in the UK is feared to be left open to abuse by patent trolls on small businesses.

Others have urged additional reforms, including the establishment of stricter conditions to qualify as a patent holder or providing more obstacles to patent litigation. It is believed that patent trolls can be significant in the patent system as they make the transfer of the patents easy

and guarantee innovation³.

III. ECONOMIC AND INNOVATION IMPACTS OF PATENT TROLLING

Escalation of Litigation Costs

The substantial rise in the cost of litigation is among the most dire effects of patent trolls. Sometimes a company can easily spend millions of dollars in defending against a lawsuit of patent infringement, and even though the accused firm can be found innocent in the suit. These expenses are particularly hurtful to startups and small businesses, which cannot afford the financial means to have a months-long legal battle. This causes most of such companies to pay patent trolls, whether the allegations are weak and they do not make any sense, merely to save the cost and time involved in court proceedings.

This economic strain is especially high on small and medium sized enterprises (SMEs) which end up paying the price in most cases. When forced to pay out a substantial percentage of their resources in paying up arrears to NPEs or in restitutions damages in court, the resources are directed to other unproductive activities like research and development (R&D)⁴. Such a capital diversion undermines innovation in industries and slows the process of introducing new products and services in the market. To the smaller firms, the costs may be prohibitive and in other instances, it results in the failure of good ideas.

Chilling Effect on Innovation

On top of the immediate financial effect, patent trolls have a chilling effect on innovation as well. It is particularly evident in the industries where the products and technologies are highly patented and this is what is often referred to as the problem of the patent thicket. Patent thickets arise when one product is patented hundreds and even thousands of times, with many of the patents being vague or overlapping⁵. Litigation threat in this kind of environment tempers companies, especially the small and medium size companies against taking new projects, introducing new products or investing in new technologies. Small businesses tend to be more susceptible to patent troll litigation because of their lack of financial and legal means to counter

³ Kanishk Kumar Sinha and Asst. Prof. Dr. Vivek Kumar, COMPARATIVE ANALYSIS OF PATENT TROLLS IN DIFFERENT COUNTRIES, V Indian Journal of Law and Legal Research 9–oct- (2024)(last visited Apr 3, 2026).

⁴ By Adam L. Perlman, Esq., and Kathryn S. Kayali, Esq. Williams & Connolly, 'Reverse' Patent Trolling: Nontraditional Participants in the Inter Partes Review Process, 33 Westlaw Journal (2017)(last visited Apr 1, 2026).

⁵ Sunidhi Pandey & Maulik Pratap Singh, *Patent Trolls: Impact on Innovation and Legal Solutions*, 10 INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY 189–195 (2024)(last visited Apr 4, 2026).

the threat. The threat of stalling their work due to a patent troll lawsuit may make companies fail to develop or even abandon some of their products. This chilling effect will decrease the competition in the market, lower the innovation and decrease consumer choice because the companies will become more risk-averse to not be noticed by NPEs⁶.

In most instances, big companies that can afford litigation can still opt to pay patent trolls than to take the risk of an unpredictable and expensive court proceeding. In the case of small businesses, though, the pressure of settling is usually even more strong, since extended litigation can jeopardize both its financial sustainability and its existence. This is also exacerbated by the fact that there is uncertainty about the validity and enforceability of the majority of patents and more so the patents held by NPEs. The risk of costly litigation as a result of patent trolls makes cooperation in the realm of research and development, or even allow other firms to share innovative ideas, even more of an obstacle to technological progress.

Implications for Startups and Small and Medium-Sized Enterprises (SMEs)

Patent trolls adversely affect small businesses and startups in particular. Small companies might not have the resources necessary to adequately defend themselves in court as opposed to large companies, which might have legal teams dedicated to fighting lengthy litigation battles and large financial resources.

In a case of a startup, like one of limited resources, even the thought of being sued by a patent troll can be devastating. A large number of startups will have to risk financial devastation by dropping good projects or innovations due to the risk of ongoing and expensive litigation. Startups are especially susceptible to being pressured by patent trolls in certain instances, since the former are aware that such ventures are less likely to sustain legal actions against them. In order to evade the expense of litigation, startups will typically have to make licensing payments or settlement payments to patent trolls, even in cases where the corresponding patents are dubious.. It is a practice that deprives the company of critical financial resources which otherwise would be used in research, product development or expansion. Not only is innovation suppressed by the forced diversion of funds, but the competitive stance of the startups in the marketplace is weakened, and it becomes harder to compete with bigger, older companies.

In addition, the risk of patent troll cases can deter investors to consider venturing into new

⁶ Zen Webnet, PATENT TROLLS AND THEIR IMPACT ON INNOVATION AND ECONOMIC GROWTH - S&A LAW OFFICES S&A LAW OFFICES - ISO 9001:2015 CERTIFIED (2024), <https://sandalawoffices.com/patent-trolls-and-their-impact-on-innovation-and-economic-growth/> (last visited Apr 1, 2026).

business, especially in technology intensive business processes in which patents have been extensively used. Investors are cautious of investing in the company that can get into a lawsuiting tangle over patent disputes because the legal risks inherent in patent disputes can greatly diminish the potential of returns. This decreased the availability of capital, which also minimizes the capacity of startups to innovate and develop, thereby reducing the economic development.

IV. REFORM STRATEGIES FOR ADDRESSING PATENT TROLL PRACTICES

Reforms to patent law have also been significant in India to counter the challenges of NPEs, but the problem of patent trolls has not been as acute as in the U.S. or Europe. The patent regime in India is regulated by the Patents Act of 1970, which was greatly revised in 2005 to adhere to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. These amendments came with a number of provisions that make sure that patents are granted on a basis of real innovation and to avoid any misuse of the patent rights. These protections especially apply to small and medium-sized enterprises (SMEs), where the financial capability to fight-off predatory patent litigation might not be present.

Among the most important reforms in India which seek to curtail the effects of NPEs is the mandate of a working statement under the Patents Act Section 146. The owners of patents are required to submit a statement of yearly submission to the Indian Patent Office, stating whether the invention patented has been worked in India. This measure will be a guard against patent trolling as it will make sure that patents are not being utilized as mere litigation or settlement extracting firearms. The NPEs, who do not produce or use their patents, may find it more difficult to prove their rights in India where they are not able to demonstrate that their patents are being used in a way that promotes the Indian economy. This need has an indirect positive impact on small businesses in that it discourages the enforcement of patents speculatively⁷.

The provisions of the patent system in India also involves the compulsory licensing, which permits the government to give licenses to third parties to produce and market a patented invention without the consent of the owner of the patent provided some conditions. compulsory licensing may be awarded in cases when the patent is not worked in India and when patented product is not provided at the affordable price. This is to encourage the public use of patents, so that patents do not go to waste with NPEs holding patents without actually advancing innovative products. In the case of small businesses, these mechanisms can preserve access to

⁷ Colleen Chien, Santa Clara Law santa clara law Digital Commons Faculty Publications Startups and Patent Trolls (2012), <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1554&context=facpubs> (last visited Apr 1, 2026).

the market and minimize the chances of the business being pushed out by the aggressive patenting policies.

India does not yet experience the same extent of patent trolls that exists in the U.S. in respect of litigation. Also, courts of India have been conservative in their attitude to patent litigation and have been concerned with safeguarding the interest of the people and also because patents are not utilized to innovation. Nevertheless, with India still growing in the field of technologies and innovation, it might be that the nation may experience a trajectory of more patent troll activities, especially in the telecommunication and software sectors. This would be disproportionate to the small businesses which are more susceptible to expensive and complicated patent conflicts. To overcome this possible hurdle, India might have to think about a few additional reforms, like coming up with less cumbersome ways to verify the legitimacy of patents and more radical ways of discouraging spurious lawsuits.

V. CONCLUSION

The biggest menace to innovation and business development, particularly to small and medium-sized enterprises (SMEs) is patent trolls or Non-Practising Entities (NPEs). They put tremendous financial strain on businesses by using loopholes in the law and through aggressive litigation. Lack of resources means that SMEs are usually compelled to settle disputes at the expense of research, development and growth. Besides the monetary cost, patent trolling has a chilling effect to innovation. This uncertainty about being sued makes startups unwilling to create new technologies, particularly those with complicated patenting frameworks. This reduces competition, and limits technology. Although, countries such as India, the United States, Europe and the United Kingdom have instituted reforms to address this, there remain gaps in ascertaining that the small businesses are well addressed. Therefore, more robust legal systems, better- quality patents, and more affordable systems to settle controversies are demanded to discourage patent trolling and encourage a more innovative and competitive business geography.

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