



Taking a stand against patent trolls

Patent trolls are entities that don't create anything themselves, but instead buy up patents and use them offensively. Trolls tend to make broad claims of infringement based on patents of questionable validity. Most defendants choose to settle because patent litigation is risky and expensive—and trolls often offer settlement amounts that are far cheaper than a lawsuit. Businesses lose both time and money, and innovation suffers.

Patent trolls take advantage of vague, broad software patents to go after targets including big technology companies, tiny startups, end users, and Main Street businesses. One troll, Innovatio, went after hotels and cafés for running Wi-Fi. Another, Lodsys, went after developers of apps that featured any "click to buy" or "click to upgrade" functionality.

A troll called Personal Audio even claimed to have a patent on podcasting and has sued artists and publishers, big and small. EFF fought back and invalidated the troll's patent, but Personal Audio is appealing that decision.

EFF is on the forefront of reforming the patent system in Congress, in the courts, and at the Patent Office. We need meaningful reform to make sure patents foster innovation instead of harming it.

A Glance Inside a Real Patent Troll:

MPHJ, the "Scanner Troll"

In late 2012, businesses started receiving letters from strange sounding companies—companies with names like BriPol, HarNol, and AllLed. These letters alleged that the businesses were infringing a series of patents on scanning to email.

These businesses—who had never realized that using a typical, networked office scanner was apparently patent infringement—found themselves staring in the face of a threat: pay up or lawyer up. The trolls were asking for \$1,200 per employee, a sum that many small businesses and nonprofits simply couldn't afford to pay. It turns out the companies sending these demand letters were branches of actual patent owner: MPHJ Technology Investments, LLC. Operating through shell companies helps patent trolls create a web of

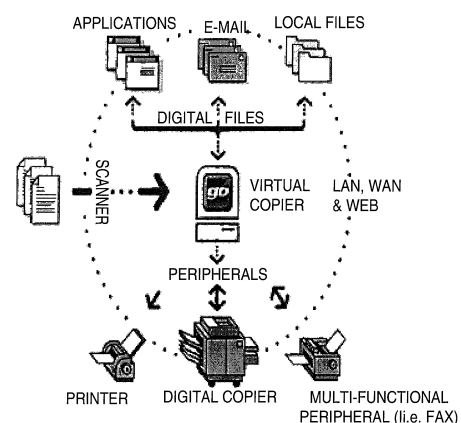


FIG. 28

confusion, preventing recipients from understanding the truth behind their extortionate claims.

Members of Congress, seeing the scanner troll target thousands of their constituents, started pushing for much-needed patent reform. And the Federal Trade Commission launched its own investigation into MPHJ's deceptive practices.

16,465 small businesses received letters from MPHJ. And 9,000 letters claimed that most businesses sought a license promptly; however, when the first 7,366 of those letters were sent, MPHJ hadn't sold a single license.

Ultimately, MPHJ received only 17 licenses. But the price of these 17 licenses was thousands of small businesses going through the stress and expense of facing a threat of patent litigation.

Trolling Effects: A Demand Letter Database

trollingeffects.org

The current U.S. patent system, especially in the world of software, is unsustainable. We need a system that actually fosters innovation—or at least one that gets out of the way. Ultimately, money spent to pursue unnecessary patents and manage improper patent lawsuits amounts to a tax on companies, innovators, and the economy. That money would be better spent on the valuable work of creating, producing, distributing, and promoting real innovations.

Many patents exist that are vague, overbroad, or so unclear that bad actors can easily use them to threaten innovators. This is particularly true with software where inventions can be as abstract as a single-click to purchase or the idea of sorting your Facebook friends into groups.

These patents often fall into the hands of patent trolls, who don't make anything themselves but use lawsuits and threats of litigation as their main source of income. Companies, unwilling or unable to spend millions of dollars on legal fees, are pressured into settling.

This is why EFF, along with a broad coalition, has launched Trolling Effects to address the broken patent system.

Fighting Back Against Patent Trolls

Trolling Effects (**trollingeffects.org**) is a resource to empower would-be victims of patent trolls through a crowdsourced database of patent demand letters and a clearinghouse for information on the troll epidemic. The site allows demand letter recipients to post the documents online, find letters received by others, and research who is really behind the threats. The site also features comprehensive guides to the patent system and a blueprint for patent reform. Journalists, academics, and policy makers may also access Trolling Effects' data for researching the patent system.

Trolling Effects is a project of the Electronic Frontier Foundation, with support from the following partners: App Developers Alliance; Ask Patents; Computer & Communications Industry Association; Consumer Electronics Association; Engelberg Center on Innovation Law & Policy at NYU School of Law; Engine Advocacy; Open Technology Institute; Public Knowledge; PUBPAT; and the Samuelson Law, Technology & Public Policy Clinic at Berkeley Law.

EFF is a member-supported non-profit. Join today at eff.org/join

Join the fight against patent trolls: trollingeffects.org