



Patent Trolls: Patent Assertion Entities

Issue

A patent troll, also called a patent assertion entity (PAE), is a person or company that acquires patents for the sole purpose of suing operating companies. The patent trolls do not manufacture products or supply services based upon the patents in question, thus engaging in economic “shake downs.”

Recent estimates show business entities in the U.S. have incurred over \$29 billion in direct costs because of patent trolls.

What does this mean for the real estate industry?

In recent years, real estate brokers have been the subject of patent-infringement claims, especially regarding criteria-based searches for real estate properties.

Patent litigation defendants often end up settling the lawsuit—not because the plaintiff’s case has merit, but because the defendant does not have the resources (which can quickly escalate to six figures) to see the case through to final judgment.

The Texas REALTOR® position

Texas REALTORS® support the passage of legislation to prevent bad-faith assertions of patent infringement, in which a PAE seeks

to extort a license fee by harassing businesses for purportedly infringing on a patent.

Legislative outlook

While this issue must be ultimately be addressed by the U.S. Congress, several Texas legislators have expressed an interest in taking state-level action against patent trolls.

Historical perspective

Some firms that own patents but do not make products play an important role in the U.S. innovation ecosystem. For example, connecting manufacturers with inventors, thereby allowing inventors to focus on what they do best.

However, PAEs do not play this role. Instead they focus on aggressive litigation, using such tactics as: threatening to sue thousands of companies at once, without specific evidence of infringement against any of them; creating shell companies that make it difficult for defendants to know who is suing them; and asserting that their patents cover inventions not imagined at the time they were granted.¹

In 2014, the United States Congress heard 14 bills on patent trolls, but none passed.

In the absence of federal guidance, 15 states have passed business-friendly patent troll legislation and another 13 have legislation in process.

¹ Patent Assertion and U.S. Innovation Report – Executive Office of the President www.whitehouse.gov/sites/default/files/docs/patent_report.pdf