

Patent trolls serve valuable role in innovation, expert says

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So-called patent trolls may actually benefit inventors and the innovation economy, according to a Stanford intellectual property expert.

Stephen Haber, a Stanford political science professor, suggests in new research that concerns about too much litigation involving patents is misguided.

A patent troll is a person or company that buys patents – without any intent to produce a product – and then enforces those patents against accused infringers in order to collect licensing fees. Some say the resulting litigation has driven up costs to innovators and consumers.

To the contrary, Haber said, his research with Stanford political science graduate student Seth Werfel shows that trolls – also known as patent assertion entities, or PAEs – play a useful intermediary role between individual [inventors](#) and large manufacturers.

Their study focused on why inventors choose to sell their patents to PAEs rather than license their technologies directly to manufacturers. The asymmetry in financial resources between the inventor (small) and the manufacturer (large) is a key motive for doing so.

"A primary reason why individual patent holders sell to patent assertion entities is that they offer insurance and liquidity," wrote Haber, the A.A. and Jeanne Welch Milligan Professor in the School of Humanities and Sciences.

In an interview, Haber said, "If there's something like patent trolls that exist that are supposedly bad, but you observe a lot of them, you have to ask yourself, what role do they play in making a market work?"

Costs of litigation

Haber and Werfel's study was based on a survey experiment of Bay Area inventors and entrepreneurs. To test the hypothesis that financial constraints affected the decision of individuals to sell to PAEs, the researchers randomly varied the cost structure of litigation, with some subjects being told they had to choose between hiring a lawyer at an hourly rate or on a contingent fee basis.

For inventors, contingent fee litigation eliminates upfront costs as well as potential financial losses, Haber said. As a result, it may be seen as insurance for an inventor selling his patent to a PAE.

The researchers also surveyed the risk preferences and loss aversion of the participants. The assumption was that those more prone to avoiding financial losses – inventors more so than entrepreneurs – would be more likely to sell to a PAE.

The findings showed that those hiring contingency fee lawyers were 40 percent less likely to sell to a patent troll, while the effect for entrepreneurs was statistically insignificant.

The results show that inventor demand for patent trolls is associated with perceived financial constraints, according to Haber, the Peter and Helen Bing Senior Fellow at the Hoover Institution at Stanford University, where he directs Hoover's working group on [intellectual property](#).

Haber explained that the imbalance in financial resources between individual patent holders (inventors) and large manufacturers prevents

those inventors from credibly threatening to litigate against infringement.

"First, individuals may not be able to cover the upfront costs associated with litigation. Second, unsuccessful litigation can result in legal fees so large as to bankrupt the individual. Therefore, PAEs offer a way for individual inventors to guarantee profits from their patents without having to engage in costly litigation," Haber said.

Without patent trolls, Haber said, inventors would be more limited in the innovation ecosystem.

As he said, "It not like someone puts a gun to someone's head and says, 'Sell me your patent.'"

After all, investors face an inherent risk as soon as they file their patent – which describes the product – and certainly when they show it to a manufacturer. "Somebody else could copy it," he noted.

Policy implications

Haber suggests that America's patent system is the best in the world, and that policymakers should not rely on claims that patent trolls and lawsuits discourage innovation and commercialized technology.

"They should demand robust evidence that the current system is slowing down innovation. That evidence does not exist," he wrote in a prior article.

Haber explained that large corporations produce many patent-intensive products – like smartphones.

For example, a smartphone contains thousands of patented components –

but the manufacturer may not own many of them. And so, it must negotiate for the right to use them. The less a manufacturer pays to use technology patented elsewhere, the higher the profit it can make. And the manufacturer will greatly benefit, of course, if it pays nothing at all, he added.

While the number of patent lawsuits has increased by about 60 percent since 2000, as Haber acknowledged, the increase reflects a dynamic economy. In fact, today's courts are in a process of clarifying intellectual property and contract rights during a period of "disruptive technology," he said.

Finally, he said, robust innovation has brought a dramatic decline in prices for patent-intensive products – and that is the metric that American consumers care about, not the number of lawsuits between manufacturers. For instance, since 1992, the quality-adjusted price of telephone equipment has fallen by 6.7 percent, televisions by 14.4 percent and portable computers by 26.7 percent a year, according to Haber.

He said the role of patent trolls is more complex than many imagine. "It is often simplistically portrayed, and often from the point of view of a large manufacturer."

More information: Haber, Stephen and Werfel, Seth H., "Why Do Inventors Sell to Patent Trolls? Experimental Evidence for the Asymmetry Hypothesis" (February 9, 2015). Available at SSRN: ssrn.com/abstract=2552734

Provided by Stanford University

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