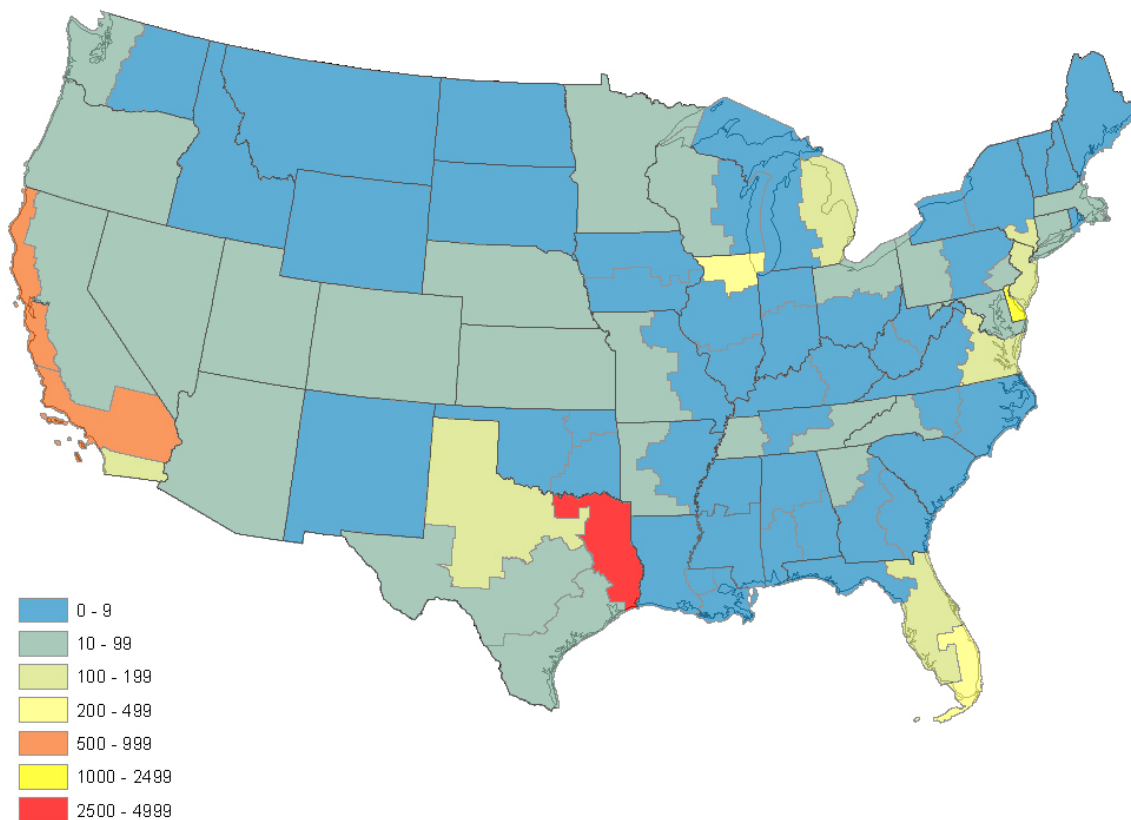


New study exposes growing problem of patent aggregators and negative impact on innovation

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Geography of NPE Litigation



This map shows the geography of all patent infringement litigation filed by Non-Practicing Entities (NPEs) against publicly traded firms in the United States from 2005-2015, tabulated by U.S. Federal Court District. Non-Practicing Entities are firms that derive the majority of their income from litigating patents.

Credit: Cohen et al., *Science* (2016)

Research to be published in *Science* on April 29, 2016 shows how cash-hungry patent trolls are squelching innovation when the American economy depends on it more than ever. What should be done?

The new study, co-authored by Professor Lauren Cohen of Harvard Business School, Professor Umit Gurun of the University of Texas at Dallas, and Dr. Scott Duke Kominers, a Junior Fellow at the Harvard University Society of Fellows, examines the sharp rise in [patent](#) litigation in the United States during the past decade, with 2015 marking one of the highest patent lawsuit counts on record.

In theory, the rise in patent litigation could reflect growth in the commercialization of technology and innovation, as lawsuits increase proportionately as more and more companies turn to intellectual property (IP) protection to safeguard their competitive advantages. In reality, however, it's a very different story. The authors point out that the majority of recent patent litigation has been driven by "nonpracticing entities" (NPEs)—firms that generate no products but instead amass patent portfolios just for the sake of enforcing IP rights.

Cohen, Gurun, and Kominers discuss new, large-sample evidence adding to a growing literature that suggests that NPEs—in particular, large patent aggregators—on average act as "patent trolls," suing cash-rich firms, seemingly irrespective of actual patent infringement.

Patent trolling has a negative impact on innovation activity at targeted firms. Cohen, Gurun, and Kominers estimate that after settling with NPEs (or losing to them in court), companies on average reduce their research and development (R&D) investment by more than 25 percent.

These results, Cohen, Gurun, and Kominers say, indicate a need to change U.S. intellectual property policy, particularly to screen out trolling early in the litigation process.

Although since 2010 the U.S. Congress has considered more than a dozen bills aiming to reduce patent trolling, most of the proposed policy changes focus on after-the-fact punishments for bringing lawsuits that are declared to be frivolous (or "extraordinary") after court proceedings.

For example, H.R. 9, the "Innovation Act," which is currently on the docket, provides for mandatory fee-shifting for patent lawsuits that the courts determine are not "reasonably justified." In reality, however, the average costs of patent litigation are large (\$1 million to \$4 million) and the process is drawn out. Even with the prospect of post-trial fee shifting, [patent litigation](#) targets may thus find it cost-effective and less disruptive to simply settle with NPEs, even in unfounded lawsuits. According to the authors, this is not a sufficient solution.

So what should be done? Cohen, Gurun, and Kominers say that policies should screen out trolling at or before the time of patent assertion. The authors recommend advance review procedures that would provide preliminary evaluation as to whether the plaintiff's infringement claims are reasonable and whether the asserted patents are of high quality. Such advance review could cripple trolling, they conclude; pre-litigation review can separate good NPEs (and, more generally, good patent lawsuits) from bad. Legitimate infringement claims will be encouraged, whereas trolling will be screened out. This would greatly benefit innovative companies and help them propel the U.S. economy to greater heights.

More information: "The growing problem of patent trolling," *Science*, [DOI: 10.1126/science.aad2686](https://doi.org/10.1126/science.aad2686)

Provided by Harvard Business School

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