

Assessing Patent Troll Demand Letters: A New Tool in the Fight

By [Joseph D. Kuborn](#)

On February 20, 2014, the White House introduced a new series of measures intended to help curtail lawsuits filed by “patent trolls”. A patent troll, also referred to as a non-practicing entity (NPE), is defined as a person or company that enforces patent rights against accused infringers in an attempt to collect licensing fees, but the entity does not manufacture products or supply services based upon the patents in question. One of the most interesting and potentially useful aspects of these new measures is the Patent Litigation Online Toolkit available on the United States Patent and Trademark Office website www.uspto.gov.

History

In June 2013, President Obama announced an initiative to provide improved incentives for future innovation in the fields that generate high tech patents. As part of this announcement, President Obama stated

“Patent trolls are increasingly targeting Main Street retailers, consumers and other end-users of products containing patented technology — for instance, for using point-of-sale software or a particular business method. End-users should not be subject to lawsuits for simply using a product as intended, and need an easier way to know their rights before entering into costly litigation or settlement. The PTO will publish new education and outreach materials, including an accessible, plain-English web site offering answers to common questions by those facing demands from a possible troll.”

Over the past decade, patent owners have become increasingly aggressive in enforcing their patent rights as part of a money making business model. Many patent owners have embraced the predatory tactic of sending demand letters to a large number of companies to inform these companies about alleged patent infringement. These demand letters typically include both an allegation of infringement and an offer for a payment of a license fee to avoid threatened litigation. The demand letters are sent with an assumption that the threatened party will pay the

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FIRM NEWS

Two New Partners Announced - As of January 1, 2014, Tambryn K. VanHeyningen and Benjamin R. Imhoff have become partners at Andrus Intellectual Property Law.

Andrus Celebrates 75th Anniversary - We are pleased to be celebrating the 75th anniversary of our firm this year. The firm was founded by Elwin A. Andrus on October 1, 1939 and is the longest-operating IP boutique in the state of Wisconsin.

Peter T. Holsen Included in BTI's 2014 Client Service All-Stars List - Peter Holsen was one of a select group of U.S. attorneys named to the [BTI Client Service All-Stars](#) list, which recognizes innovative attorneys that leverage market changes to stand out with corporate counsel and deliver superior client service. Corporate counsel distinguish these attorneys as the BTI Client Service All-Stars. This elite group of standout attorneys— identified solely through unprompted client feedback—are recognized as delivering the absolute best client service.

Christopher M. Scherer Appointed to AIPPI Special Committee - Chris Scherer has been appointed to the International Association for the Protection of Intellectual Property's (AIPPI's) Special Committee on Standards and Patents by the AIPPI Reporter General. The primary task of the Committee is to monitor, study and advise on the current situation and specific issues with regards to standards and patents in different jurisdictions around the world.

Andrus Sponsors Judges Night - Andrus was proud to be an event sponsor of the Milwaukee Bar Association's Judges Night event held at the Grain Exchange in Milwaukee on February 4, 2014. The popular event allows MBA members the unique opportunity to interact with members of the federal and state judiciary as well as with other bar members.

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license fee to avoid the cost of potential patent litigation.

Threatened companies were left with few options to fight against the patent troll or to assess the validity of the threat made in the demand letter. Until now.

See the topics below for answers to common questions:



USPTO Toolkit

The screenshot above shows the [Toolkit](#) interface that is now accessible on the United States Patent and Trademark (USPTO) website. While the toolkit provides links to general information about patents and patent infringement, the icon "I GOT A LETTER..." provides a link to several third-party websites that allow a threatened company to search to see if others have received the same demand letter and to determine if others have been sued by the same patent owner or on the same patent.

One of the third-party websites linked to from the USPTO website is run by the legal analytics company Lex Machina. The data analytics platform behind the demand letter webpage was developed by the computer science department and law school of Stanford University and is offered free of charge to

parities threatened with a patent lawsuit.

The Lex Machina website asks the user to enter information from the demand letter into pre-defined fields and to optionally upload a PDF copy of the demand letter. The information requested as part of the initial data entry screen includes identification information about the company receiving the letter, the name of the company that sent the demand letter, the name of the law firm that sent the letter on behalf of the patent holder and any patent numbers that were asserted in the demand letter.

Once this information is entered, the Lex Machina website compiles the information and delivers a summary report. A sample demand letter analytics report can be viewed on the website. The analytics report includes information about the company that sent the demand letter, information about the law firm that sent the letter and information about the patents asserted.

The information about the company that sent the demand letter includes how many demand letters the company has sent and have been reported, how many patent cases it has filed and, of these filings, how many of these cases have gone to trial. The report also indicates the ten most recently filed cases, which includes information about the defendant in the cases and where these cases were filed.

The information about the law firm representing the patent owner is similar and includes the number of cases filed, the number of cases that went to trial and

a listing of the ten most recent cases.

The patent section of the report provides information about how many times the patent was asserted, how many open cases include the patent and whether or not the patent has been found invalid or unenforceable.

Although the information described above will be useful to a company receiving a demand letter, the report also provides a listing of other companies that have appeared in cases involving the patents asserted in the demand letter as well as a listing of the five law firms that have most commonly opposed the company sending the demand letter. Contacting either the companies or law firms that are currently fighting against the same patents and patent troll could be very valuable when deciding how to respond to the demand letter.

In addition to the link to the Lex Machina website, the USPTO "Resource and Glossary" page provides links to other third-party websites that provide information related to the patents asserted and related letters from the patent holder.

The USPTO Toolkit provides a single, convenient location for a company to compile a good amount of initial information after receiving the demand letter and before contacting their own legal representation.

Conclusion

Although the USPTO Toolkit will not, by itself, stem the tide of demand letters and patent infringement lawsuits filed by non-practicing patent entities (NPEs), the toolkit provides threatened parties with a new weapon in their arsenal to combat NPEs.