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PATENT TROLLS – WHAT BUSINESSES NEED TO KNOW

This article is the first of a two-part series regarding patent infringement.

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One day, you receive a letter from a company or law firm accusing your business of patent infringement. The letter states that in order to avoid a costly lawsuit, you must pay the company a licensing fee. You ask yourself whether this is some type of scam and you consider simply throwing the letter away because you have never heard of this company and you don't believe your business has violated anyone's patent rights. If this scenario sounds familiar, then you may have already received a similar letter. If it doesn't, this could be your first experience with what is known pejoratively as a patent troll.

What Are "Non-Practicing" Entities?

In general, Non-practicing Entities (NPEs) are individuals or entities that do not manufacture products or offer services based on the patents they own. However, it is important to distinguish between different types of NPEs. Many NPEs are simply entities that own patents on technology that they do not intend to produce, but instead foster innovation through licensing and technology transfers. These entities can be corporations, research centers, or investors.

In contrast, other NPEs base their entire business model on aggressively targeting businesses by asserting, or threatening to assert, in court, invalid or patents of questionable value, in exchange for extracting a license fee from the targeted business. Often, these patents are purchased at a relatively low cost from

companies who may need cash, or who may not intend to act on the technology developed, or who are simply in bankruptcy. This article addresses only the latter type of NPE, otherwise known as the "patent troll."

How Do Patent Trolls Operate?

While patent trolls sometimes file lawsuits against alleged infringers immediately, they often target businesses by sending letters threatening litigation if the alleged infringer does not pay a license fee. These letters frequently contain references to one or more patents with broad, generalized descriptions of the alleged infringement. Often the license fee demanded is tens of thousands of dollars, far less than it would cost to defend against a patent infringement suit. The letters often provide a deadline to pay the license fee. This initial letter is sometimes followed up by a second letter demanding payment in exchange for avoiding costly litigation.

In part two, we will discuss which are the most common targeted businesses, and what steps to take when your business receives a demand letter. For additional information, please contact the authoring attorney.

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