

Trademark Trolls

In recent years, intellectual property (IP) infringement allegation scenarios have become worsened by a common problem, the much-publicized Patent Assertion Entities (PAEs), a.k.a. “patent trolls,” who are notorious for suing companies for the sole purpose of mining licensing fees, often regardless of the lawsuit’s merit. IP-related lawsuits generated by PAEs make up 62% of all IP infringement lawsuits filed.

What exactly is a patent troll?

While there is no universal definition of a patent troll, there are some common features which make identifying them a bit easier. Generally, patent trolls are entities that have patents or patent portfolios, and use them primarily for the purpose of licensing to others. Typically they derive very little, if any, revenue from making, using or selling the patented product or service. These entities are more likely to be labeled a “patent troll” because they acquire patents through a commercial transaction rather than through the customary course of research and development.

So, what is a trademark troll?

“Trademark trolls” operate similar to patent trolls. Like patent trolls, trademarks trolls buy trademarks with the sole intent to threaten and/or sue entities, again with the sole purpose of extracting licensing fees. Trademarks are used to identify and distinguish goods from those of another; and they are intended for those entities using, or those with a bona fide intent to use, the mark in commerce. A company that acquires or creates trademarks for the sole purpose of enforcing them would not use or have a bona fide intent to use the mark(s) in commerce, and would have difficulty legitimately enforcing their marks.

How does a trademark troll turn into a bully?

The term “trademark troll” does not accurately describe the activity of “trademark bullies,” however. Instead of just aggressively asserting patent rights, trademark bullies use overly assertive tactics to

enforce trademark rights beyond the scope of protection that trademark law actually provides. The tone of a cease and desist letter or the inclusion of a complaint can quickly cross the line from being reasonably forceful to unnecessarily hostile. Trademarks are generally limited to the goods and services for which they are registered, but some entities may improperly attempt to enforce their trademarks against products in other goods and services categories which don’t directly relate to the actual intended use that the trademark is registered to cover.

How IPISC can help

IPISC provides IP specific insurance policies to help policy holder’s defend against charges trademark infringement, whether frivolous or not, and policies to help enforce trademark rights against those infringing. Following are the products that IPISC offers to help fund the high cost of IP litigation:

Products:

Abatement Insurance: a unique, plaintiff’s Policy, which help enforce the policy holder’s IP rights.

InventPro™ Abatement Insurance: a Policy designed specifically to accommodate inventors and small companies having 1-3 Patents and/or Trademarks.

Defense Insurance: a Policy which helps to defend the policy holder against charges of infringing another’s IP rights.

Multi-Peril IP (MPIP) Insurance: a first party Policy for the loss of an insured IP lawsuit, and is for any entity with an IP risk covered under the Abatement and/or Defense Policy. The Rider is included with every standard Abatement and/or Defense Insurance Policy.

For additional information, please contact your IPISC account representative or visit our new website at www.patentinsurance.com.