

A Reimagination of Patents Licensing: A solution to combat patent trolls

Recent years have witnessed the alarming rise of patent trolls and their disruptive impact on small and medium-sized enterprises (SMEs). Patent trolls are companies that profit from licensing and litigation based on their patents, rather than actively producing or utilizing the patented technology themselves. These predatory entities weaponize patents to exclude competition and extract exorbitant licensing fees through litigation. The resulting burden on businesses, particularly SMEs, is immense, both in terms of time and cost. SMEs often prefer a quick settlement, of a high price license, then a lengthy legal battle. Traditional methods like compulsory licensing and working requirements have proven inadequate, often having significant negative externalities. A new approach is needed to strike a balance between private gain and social benefit while minimizing the drawbacks of patent negotiations.

To address this pressing issue, the United States Patent and Trademark Office (USPTO) should implement a patent license fee mandate that requires patent owners to disclose a 'reasonable' licensing fee in their patent applications. This disclosure would help eliminate the costly process of negotiating licensing fees and curb the exploitative practices of patent trolls. The term 'reasonable' is intentionally open-ended to allow courts to definition and scope based on the context of individual cases.

To ensure the effectiveness of the patent license fee mandate, several critical components should be clarified. First, patent owners should be required to publicly file their license fee information with the USPTO upon application approval. This information would be readily accessible through the patent office to promote transparency. Second, businesses should have the flexibility to update their licensing fees periodically, such as quarterly or even monthly, for a small fee. This flexibility to adjust the fee allows businesses to accommodate fluctuations in the business cycle. Note that the businesses could peg their licensing fee at a set price or a set price adjusted for inflation. Finally, the mandate should allow litigation not only between private entities but also involving public institutions, with the understanding that the definition of "reasonable" may vary based on the nature of the entities involved. It is important to emphasize the selective use of determining "reasonable" patent licensing fees should promote business practices, while higher thresholds may be required for public cases to prevent misuse and ensure process integrity.

While a real-world experiment to test this policy would be ideal, it would be immensely difficult to conduct. Therefore, we could examine the world of football transfers which provides a parallel case to understand the impact of disclosing transfer, or licensing, fees. The negotiation of transfer fees in football transfers, similar to patent licensing fees, leads to inefficiencies and externalities within the system. These negotiations can be protracted, lasting days, weeks, or even years, as one side seeks to minimize the price and the other endeavors to maximize the fee.

In recent years La Liga, the Spanish football league, has implemented a policy mandating the disclosure of transfer fees in player contracts. Analyzing the effects of this policy change can offer valuable insights into the benefits and weaknesses of a patent license fee mandate.

When considering research design and data, conducting a case study or a series of case studies that examines the negotiations of players transfers departing from and arriving at La Liga teams provides a feasible and insightful analysis. While a cross-sectional time-series analysis would be ideal, it may be immensely difficult, if not impossible, to obtain accurate data for such analysis. Therefore, a case study or interview approach provides the best opportunity to investigate the effects of this policy change. Overall, this analysis would provide policy makers with valuable insights from a real-world natural experiment that parallels the potential adoption of a patent license fee mandate.

A patent license fee mandate offers a promising alternative to combat patent trolls and the negative consequences of patent negotiations than traditional methods (compulsory licensing or working requirements). Drawing inspiration from La Liga's transfer fee policy, policymakers can assess the viability and potential impact of this reform. By enhancing transparency and reducing the burden of licensing negotiations, this mandate can promote a more efficient and equitable innovation ecosystem. It is high time for the USPTO to consider this progressive approach and pave the way for a transformative future in intellectual property rights.