Thesis – Increased patent law suits are responsible for the intervention of government, in American business innovation.

ABSTRACT

Patents are a legal and viable way innovators can document their publically or otherwise marketed products or services. With the recent boom of the Information Technology industry and the nature of it being largely conceptual, generalized or vague patents have left the market susceptible to capitalization and exploitation. This has resulted in an economic spike and government has deemed it necessary to intervene.

INTRODUCTION

Patent law was originally designed to protect the innovator from theft of concepts, goods, or services. It was also an attempt to let the general population, of the residing country, know about the existing commodity; so that, creative efforts were not frivolously spent on existing inventions.

Over the years, conceptual ideas have become a part of the business market. But, patents have not been designed with these commodities and their specific intents. This lack of exactness, has left the patent market susceptible to abuse. The most common abuse is seen from Patent Assertion Entities within patent law and the American government has not only observed the economic spike, but is moving to take governing action to either reduce or eliminate the threat to homogeneous patent law activity.

**There’s a significant increase in patent cases**

In today’s economy, technological advances are prevalent and at an all-time high. As businesses are established and grown, there’s a relevant concern for patenting their product, service, or other and sometimes, multiples of one or more of each.

One of the more financially significant patent cases was the Apple infringement case against Samsung, dating back to April, 2011. In this case, Apple accused Samsung of violating twenty four patents combined, including uses of their hardware or software. More specifically, Apple claimed that their patents were willfully copied by Samsung. This willful copying is not only a patent infringement, but also illegal and a judge has the legal right to increase the total awarded fee up to three times the amount of the lawsuit. [5]

Any governing entity or agency pays attention to spiking activities within its jurisdiction. These spiking activities can either be positive or negative and are usually indicators of concern. In American government, a spike in real estate – for example – could not only affect the national market, but also the global market. This was seen in the recession of 2008. According to a patent litigation study conducted by authors, Chris Barry, Ronen Arad, Landan Ansell, and Evan Clark, there have been significant spikes in the patent sector of the American business market. “Both the number of patent cases filed and the number of patents granted continued to grow rapidly in 2013— by 25% (to almost 6,500 cases) and 7% (to almost 300,000 patents), respectively, over 2012.” [4]

According to a Bloomberg article by Susan Decker, investors have observed and found a way to take advantage of the spiking patent market. Companies like VirnetX who have realized their potential growth via patent rights, has been exploited by some investors and see wins not only in litigation, but also in stock options. [7]

**There’s a significant reduction of IT innovation**

Most Patent Assertion Entities (PAE) law suits are concentrated in Information Technology (IT) and according to one estimate, 82% of PAE defendants were sued on the basis of software patents. This has caused growing concerns amongst investors and innovators in and out of the IT market.

Innovators who fear inadvertently infringing existing patents may reduce innovative activity or take costly steps to defend against law suits claiming infringement, leaning to fewer resources available for wages, job creation, and innovation of new products and services.

Additionally, there is an increased number of computer and communication patents whose wider scope makes them more easily abused. One patent may be designed for a particular invention, but because of its loose definition, it may be argued to other inventions. This activity has been the epitome of the spiking being observed in the patent industry, by the American government.

**Patent trolls are more prevalent than ever**

The first American patent was issued on July 31, 1790. It was issued to Samuel Hopkins who was born in Vermont, but resided in Philadelphia, Pa when he was awarded the patent. Since then, there have been a total of over 6 million patents granted to various individuals or entities. [9]

The patent infringement cases seen by the US Supreme Court have been observed as early as the turn of the 19th century. These cases were not common and only used when there was sufficient evidence to prove the patent holders case. The accused were typically charged a fee for violating the patent. By the 20th century, there were over 1 million patents issued. Although there were law suits for patent violations, they were not being capitalized on for having a wide scope and thus did not create an economic spike. [10]

By 1997 patent infringement cases had become a recognized threat to businesses within IT, the term ‘patent troll’ had been coined. [12]“Patent trolling—the aggressive assertion of weak or meritless patent claims by non-practicing entities—is a frequent target of disdain from open source enthusiasts.” [8]

The occurrences and values of the rewards had slowly increased over the years, but it wasn’t until the inclusive time span of 2006 – 2012 that an economic spike was observed by American government. In 2012, there were over 2,900 infringement cases filed by patent trolls, nationwide. [11] “The highest court in the US has recently decided the issue is worth looking into. Three cases have already been heard, but decisions are, as usual, still a ways off.” [8]

CONCLUSION

In order to combat the extreme costs of litigation from, patent infringement, the number of instances thereof, and their dollar value, the American government should implement litigation that puts limits on patents. This could be accomplished by the United States Patent and Trademark Office (SPTO) requiring companies to be specific about the particulars of what their patent covers as well as the infringement claim or claims.

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[2] <http://science.howstuffworks.com/innovation/everyday-innovations/patent-trolls2.htm>

[3] <http://www.whitehouse.gov/sites/default/files/docs/patent_report.pdf>

[4] <http://www.pwc.com/en_us/us/forensic-services/publications/assets/2014-patent-litigation-study.pdf>

<http://money.cnn.com/2006/03/03/technology/rimm_ntp/>

<http://www.kslaw.com/library/newsletters/IntellectualProperty/2012/March/Article4.html>

[5] <http://www.patentlyapple.com/patently-apple/2014/05/apple-wins-patent-infringement-case-against-samsung-that-could-be-worth-more-than-360-million-when-this-is-all-over.html>

[6] <http://www.wired.com/2014/06/supreme-court-deals-major-blow-to-patent-trolls/>

[7] <http://www.bloomberg.com/news/2012-11-07/apple-told-to-pay-368-2-million-to-virnetx-in-patent-trial-1-.html>

[8] <http://opensource.com/law/14/4/us-supreme-court-on-patent-trolling>

[9] <http://www.uspto.gov/news/pr/2001/01-33.jsp>

[10] <http://en.wikipedia.org/wiki/History_of_United_States_patent_law#Other_notable_dates>

[11] <http://en.wikipedia.org/wiki/Patent_troll#Legal_and_regulatory_history>

[12] <http://www.iam-magazine.com/blog/detail.aspx?g=cff2afd3-c24e-42e5-aa68-a4b4e7524177>

"VirnetX Soars After $368.2 Million Verdict Against Apple."*Bloomberg.com*. Bloomberg, n.d. Web. 08 Aug. 2014. <http://www.bloomberg.com/news/2012-11-07/apple-told-to-pay-368-2-million-to-virnetx-in-patent-trial-1-.html>.