Audience: IT Expo – new software businesses and government decision makers

INTRODCUTION

Today American innovators, in IT, have access to many public Application Programming Interfaces (APIs). Many APIs fall under existing patents that Patent Assertion Entities, or Patent Trolls, acquire to sue small businesses for patent infringement. The problem is, Patent Trolls are reducing IT innovation.

The generalized design and acquisition of patents is a problem that needs to be addressed. This problem needs to be solved because, Patent Trolls, which are non-producing entities, have caused an economic spike in the market and a decrease in IT innovation (Stevenson et al).

**Cap patent returns**

Currently the laws that govern existing patents allow Patent Assertion Entities to sue different companies for patent infringement with a singular patent. By constricting the way that laws allow patent holders to capitalize on their returns from investments, Patent Trolls will lose interest in seeking litigation for many infringement claims (Lemley 2008).

To advocate Congress to change patent laws, software businesses need to work with government officials by taking these next steps:

* Sign a petition stating concerns for excessive fines for patent infringement.
* Write letters to government officials, like local legislation, making them aware of the threats of Patent Assertion Entities and how this affects business.
* Contact local news broadcaster and explain to them the impact of case losses via patent infringement.

In order for this solution to meet success, persistence is key and volume of communications to appropriate channels, government or the public, must be significant.

**Reduction of litigation costs**

Currently, litigation costs exceed, on average, $1 million and last approximately six months. On the high end, costs can exceed $2 million with a time lapse of about one year. By reducing costs due to litigation between patent owners and technology innovators, more businesses will be willing to negotiate the litigation processes without forfeiting the innovation of new technology (Saunders).

The following are steps businesses need to take in effort to reduce these costs:

* Forge business alliances to battle costly patent infringement cases.
* Create policies to set standards for business practices and associated fees for API utilization between non-patent holding entities and those that hold patents.
* Conduct market analysis for entities holding patents to technologies that already exist and seek permission to utilize said technologies.

A self-funded startup may be intimidated by such large costs, but these steps are a way to build business defenses against Patent Trolls and eventually reduce risks for all innovators. They also do not require lengthy or potentially costly processes involving government.

**Clearly designed patents**

Due to the fact that most of the software developed and patented is of a conceptual nature, many patents have been loosely designed and written. This has left room for a broad range of arguments to support patent infringement cases. By clearly designing patents with high standards of non-obviousness and originality, Patent Trolls will be less of a threat for new businesses.

The following are steps businesses need to take in effort to better design their patents:

* Consult with software developers to best define the technology to be patented.
* Consult with the patent office to ensure that the new patent meets the criteria for non-obviousness
* Consult with patent attorneys to ensure the technology is defendable in court.

Designing a patent of this type may cost additional time and be less defendable for patent infringement, but this will help increase innovation and reduce the risks of being sued for patent infringement.

CONCLUSION

To increase innovation in the IT industry, start with clearly designing patents which define a high standard of non-obviousness and originality. Then, move to reduce costs due to litigation between patent owners and technology innovators. Lastly, constrict the way that laws allow patent holders to capitalize on their returns from investments. Successes in these three areas will not only increase innovation in the market, but will also reward those entities with new business, clients, and opportunities for growth.

BIBLIOGRAPHY

Stevenson, Betsey, Maurice Obstfeld, and Jason Furman. *PATENT ASSERTION AND U.S. INNOVATION* (n.d.): n. pag. June 2013. Web. 19 Aug. 2014. <http://www.whitehouse.gov/sites/default/files/docs/patent\_report.pdf>.

Lemley, Mark A. "Are Universities Patent Trolls?" Fordham Intellectual Property, Media &

Entertainment Law Journal 63, no. 1 (2008): 611-631.

Saunders, Adam. "Patent Troll Cases Heard by US Supreme Court | Opensource.com." US Supreme Court Hears Three Patent Trolling Cases. Opensource.com, 30 Apr. 2014. Web. 11 Aug. 2014. <http://opensource.com/law/14/4/us-supreme-court-on-patent-trolling>.