Patent law OR Copyright laws VS innovation

**Abstract**

Americas’ strength in the global market has been seen through innovation.

Although America still produces new technologies and advocates for small business growth,

legislative action has been slow to meet the needs of the ever changing IT industry. Designed to abolish acts of malicious or illegal activity, it’s the legislative branch’s duty is to make law to protect and serve the people and the businesses within her borders. The patent has become a standard for innovative businesses for a variety of reasons. Being over used, the patent is becoming less effective and corporations, with enough capitol, see the most benefit of owning patents. In Addition, costs associated with challenging the patent system are too large for small business owners to tackle on their own. Legislative leaders need to know that the patent attorneys are taking advantage of their roles as knowledgeable attorneys.

Introduction

America’s patent laws, are directly responsible for the reduction of innovation seen in its small business market. Patents are designed to protect people and their interests from being used for profit or gain by others, for a set period of time. Launching a business takes considerable effort, but to launch a business without infringing on existing patent laws is becoming near impossible, in the IT industry.

**Defending patents in court**

**Small businesses do not have financial flexibility**

Because of the value of the lawsuits, small businesses do not have the financial flexibility to argue large, costly, cases. Not only is patent litigation expensive, to the defendants, but it also adds an additional risk factor and is disruptive to these businesses. Many PAEs (Patent Assertion Entity or Patent Trolls) “strategically set royalty demands well below litigation costs in order to make the business decision to settle an obvious one.”[1]

In 2011, PAEs had grossed approximately $29 billion from “defendants and licensees.” Research studies suggest that less than 25 percent of these funds are resultant directly from innovation. Some small business start-ups barely make $1 million in their first year of business. For a small business, of this type, being charged a fee of $250,000 versus taking on a law suit, of a significantly higher amount, is the right business decision. Patent trolls depend on this. Other business see no point of being in business, for this very reason.

Common practices indicate the licensing amount is calculated, directly, against costs of litigation. Defending a patent infringement claim is not cheap; the defense costs for a patent litigation claim may exceed $1million to merely proceed through the discovery phase. The expense to fully defend a patent litigation claim to trial may exceed $2million. [2]

**Small business focus is not litigation**

Because of the lack of human resources, small businesses don't have the bandwidth (roles) to accept the new responsibilities of seeking legal justice(s) and follow through with intent. Many small business have 50 or less persons on their staff, at any given time. These roles are to aid the business in building new features, support, customer relations, etc. They are not, typically, involved in law and certainly not litigation law; therefore, the proposition of carrying on with an expensive trial is unappealing.

By contrast to their targets, PAEs have nothing to lose and much to gain by litigating aggressively. Unlike most other patentee-plaintiffs, PAEs pursuing infringement suits “do not risk disruption to their core business” because “patent enforcement is their core business.”[1]

PAEs are comprised of either an individual attorney or a group of attorneys. They do not build products and are not responsible for innovation or ingenuity for marketable purposes.

**Small businesses are taken advantage of**

Because of the lack of experience or knowledge, small businesses are taken advantage of by patent law firms.. Critics assert that PAEs undermine the purposes of patent law—promoting innovation by providing incentives to invest in development and commercialization of inventions—and injure companies that play a vital role in the American economy. [1]

Each of the PAE complaints ensnares entire industries by asserting that industry standards, adopted and incorporated by all manufacturers, infringe their patents. Where injunctive relief is available to PAEs, what commentators call the “patent holdup” problem arises as PAEs leverage the threat of an injunction in royalty negotiations to “capture far more than the intrinsic value of their invention. [1]

**Conclusion**

In order to combat the decrease in innovation, America should consider phasing out duplicate court proceedings, in the patent litigation process. This could be accomplished by increasing the overall patent weight. Currently, obtaining patents is too simple and they do not have a financial cap. Further research should investigate the appropriate levels of funds that may be acquired for infringement rights.

**Citations**

[1]An Overview of the “Patent Trolls” Debate

[2]Coursey, C. (2009). Battling the Patent Troll: Tips for Defending Patent Infringement Claims by Non-Manufacturing Patentees. American Journal Of Trial Advocacy, 33(2), 237-249.

[3] "- ABUSIVE PATENT LITIGATION: THE ISSUES IMPACTING AMERICAN COMPETITIVENESS AND JOB CREATION AT THE INTERNATIONAL TRADE COMMISSION AND BEYOND." *- ABUSIVE PATENT LITIGATION: THE ISSUES IMPACTING AMERICAN COMPETITIVENESS AND JOB CREATION AT THE INTERNATIONAL TRADE COMMISSION AND BEYOND*. N.p., n.d. Web. 06 May 2014. <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80459/html/CHRG-113hhrg80459.htm>.