

# UNITED *for* PATENT REFORM

## Fact: Patent Litigation Reform Needed More than Ever

Opponents of reform argue that addressing abusive patent litigation behavior is unnecessary, claiming that several recent Supreme Court cases and new administrative procedures at the U.S. Patent and Trademark Office have led to a decrease in lawsuits. However, there is a large body of evidence that shows nothing could be further from the truth. Comprehensive patent litigation reform through legislation is still urgently needed for several reasons.

- **Patent litigation rates have been skyrocketing over the past decade.** In 2013, patent troll litigation reached a record high, up 13 percent over 2012 and more than a tenfold increase over the past decade.<sup>1</sup> Some opponents misleadingly claim that there was a 40 percent drop in patent suits from 2013 to 2014, but that statistic is based on a single, unrepresentative month—September 2014. According to the most recent data from Unified Patents, there were 13 percent more patent cases initiated in the first quarter of 2015 than last year and 29 percent more than in the fourth quarter of 2014.<sup>2</sup>
- **Patent trolls are thriving.** Neither the recent Supreme Court cases, nor the new administrative procedures at the Patent and Trademark Office has slowed down the patent trolls, which are still largely responsible for the skyrocketing number of patent cases. In the first quarter of 2015, patent trolls filed nearly 42 percent more lawsuits than in the fourth quarter of 2014.<sup>3</sup> In 2014, trolls accounted for 63 percent of all patent cases filed, according to RPX.<sup>4</sup>
- **At the same time, trolls are increasingly targeting new businesses.** Abusive patent litigation is no longer just a tech issue. Homebuilders, realty, startups, coffee shops, grocery stores, hotels, casinos, retailers, financial services, and even the auto industry have all fallen victim to patent trolls. Each year, trolls target more industry sectors. In an analysis of 2014 patent litigation cases, RPX found that 1,082 companies were targeted for the first time as defendants in patent infringement cases brought by a trolls.<sup>5</sup> Moreover, of the 3,768 unique entities that were first-time defendants in patent infringement cases in 2014, 2,072 were added to cases brought by patent trolls.<sup>6</sup>
- **Many patent troll lawsuits are against small companies.** Trolls specialize in picking on the little guys; more than half of the firms they sue have less than \$10 million in annual revenue.<sup>7</sup> These victims lack the resources to fight in court, even if they have a valid case. A study by Boston University researchers found that the average troll settlement costs a small or medium-sized company \$1.33 million, versus \$1.75 million per case for an in court defense.<sup>8</sup> Thus, it may not be surprising to learn that nearly 86 percent of patent lawsuits end in settlement, according to the Government Accountability Office.<sup>9</sup>

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<sup>1</sup> Lex Machina, Patent Case Filings (2015), <https://lexmachina.com/patent-case-filings-28-december-20-2014/>

<sup>2</sup> Unified Patents, Q1 2015 Patent Dispute Report, <http://unifiedpatents.com/q1-2015-patent-dispute-report/>

<sup>3</sup> Ibid.

<sup>4</sup> RPX, 2014 NPE Litigation Report, [http://www.rpxcorp.com/wp-content/uploads/sites/2/2015/03/RPX\\_Litigation-Report-2014\\_FNL\\_040615.pdf](http://www.rpxcorp.com/wp-content/uploads/sites/2/2015/03/RPX_Litigation-Report-2014_FNL_040615.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Colleen Chien, Startups and Patent Trolls (2012), <http://digitalcommons.law.scu.edu/facpubs/553>

<sup>8</sup> Bessen, James and Meurer, Michael J., The Direct Costs of NPE Disputes (2012), [http://www.bu.edu/law/faculty/scholarship/workingpapers/documents/Bessen\\_MeurerM062512rev062812.pdf](http://www.bu.edu/law/faculty/scholarship/workingpapers/documents/Bessen_MeurerM062512rev062812.pdf)

<sup>9</sup> Government Accountability Office, Report to the Congressional Committee, Intellectual Property: Assessing Factors That Affect Patent Infringement Litigation Could Help Improve Patent Quality (2013), <http://gao.gov/assets/660/657103.pdf>

- **Trolls are imposing substantial economic costs.** Patent trolls are hurting our economic recovery and forcing companies to divert money that would otherwise be spent to hire new workers, lower prices, and develop new products. As a result, targeted companies are left with few options but to settle instead of going through costly and lengthy litigation. In 2011 alone, a study found that patent litigation cost American businesses \$29 billion in direct payouts; when things like employee distraction and costs to shareholders are included, that number jumps to \$80 billion per year.<sup>10</sup>
- **And trolls are hurting venture capital.** A study by MIT investigated the indirect costs of patent litigation and found that litigation by frequent litigators—such as patent trolls—is associated with a direct and negative effect on innovation. According to the study, VC investment over the last five years "would have likely been \$21.772 billion higher... but for litigation brought by frequent litigators."<sup>11</sup>
- **As a result of patent trolls, companies—small and large—are spending less on research and development.** A study from Rutgers Business School, found that after a lawsuit, firms reduced their spending on research and development by 3 to 5 percent of operating expenditures, which translates into a reduction in spending of 19 percent.<sup>12</sup> Research from Harvard University and the University of Texas found that when a lawsuit brought against a public company by a patent troll was not dismissed, the firm, on average, cut research and development spending by \$211 million, a 48 percent reduction.<sup>13</sup>

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<sup>10</sup> Bessen, James and Meurer, Michael J., The Direct Costs of NPE Disputes (2012),

[http://www.bu.edu/law/faculty/scholarship/workingpapers/documents/Bessen\\_MeurerM062512rev062812.pdf](http://www.bu.edu/law/faculty/scholarship/workingpapers/documents/Bessen_MeurerM062512rev062812.pdf)

<sup>11</sup> Tucker, Catherine, The Effect of Patent Litigation and Patent Assertion Entities on Entrepreneurial Activity (2014), <http://cdn.arstechnica.net/wp-content/uploads/2014/06/Tucker-Report-5.16.14.pdf>

<sup>12</sup> Smeets, Roger, Does Patent Litigation Reduce Corporate R&D? An Analysis of US Public Firms (2014), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2443048](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443048)

<sup>13</sup> Cohen, Lauren; Gurun, Umit G.; and Kominers, Scott Duke, Patent Trolls: Evidence from Targeted Firms (2014) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2464303](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2464303)