

Trolling the Patent Trolls

5.30.14

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A “patent troll” is an entity whose sole business is to collect and license patents. When it cannot extort the license it wants, the troll is likely to file an infringement suit. A troll does not create or do anything beneficial with the patents it owns. Trolls are a major problem in the American patent system. They clog court dockets with frivolous law suits and raise the cost of doing business for all patent owners.

When President Obama signed into law the America Invents Act in 2011, the new law made some substantial changes to the American patent filing system. At the time the law was signed most people involved in the business of patents were happy with the changes, but some were still concerned that the new laws did not do enough to counteract the rise of patent trolls. As of early 2013, all of the provisions of the America Invents Act are in effect and since they went into effect, the President has announced more changes that will be coming to address the concerns regarding trolls.

President Obama announced that seven proposals intended to contain and limit the effect of trolls are being submitted to Congress. The proposals are aimed at: (1) increasing demand letter transparency; (2) fixing transparency; (3) expanding the Patent and Trademark Office’s transitional program for covered business method patents; (4) protecting end users; (5) changing the International Trade Commission standard for obtaining an injunction; (6) permitting more discretion in the awarding of fees to prevailing parties in patent cases; and (7) changing the rules for the ITC in hiring administrative law judges. Of course, the downside to legislative proposals is that it cannot be known what form the proposals will be in when and if they finally pass through Congress. Additionally, there is no way to know how long it will take for any of the proposals to actually pass through Congress.

As a way of addressing this uncertainty, President Obama also announced that the White House will be taking five executive actions. The five executive actions are intended to (1) tighten functional

claiming; (2) fix transparency; (3) empower downstream users; (4) expand outreach and study; and (5) strengthen the enforcement of exclusion orders. As executive actions, the impact of moves made by the White House will be felt before those of the legislative proposals.

While the intentions of the President are good for the American patent system, only time will tell what impact they actually make on trolls. If the President's goal of limiting patent trolls is reached then all individuals and businesses who own patents will benefit. Consequently, this is a developing area of law that patent owners will want to keep an eye on.