



Intellectual Property Patent Trolls

Patent Trolls, also known as Non-Practicing Entities or Patent Assertion Entities, are set up to generate revenue through patent enforcement. They do not have any products or services of their own, meaning the nature of patent troll disputes are very different to dealing with competitors. They are most active in the technology and software sectors, targeting organisations of all sizes.



Case example

IP dispute

Qwerty is an international software organisation based in San Francisco. It offers a 3D mapping product that can be used when planning construction and renovation projects. The company has grown rapidly with the help of funding and now has a revenue of around USD80m, a significant proportion of which is generated by a couple of large customer contracts within the US.

Qwerty has recently become the target of a well-known patent troll. The company has received multiple warning letters, in which the troll has alleged infringement of more than 20 patents. Most of these patents are for interlinked technologies covering the use of databases and digital delivery of data, but the number of rights being enforced means it is challenging to rebut the claims. The letters seek substantial damages of USD2.8m and threaten legal action if ignored. Qwerty's in-house legal team has not dealt with a patent troll before, and the company is concerned that if the dispute progresses, it will be a significant drain on resources and could spook key clients.

Impact of IP policy

Qwerty purchased an IP policy from Tokio Marine Kiln (TMK), which can provide cover for allegations that your organisation is infringing Intellectual Property rights held by a third party. As soon as the warning letters were received, Qwerty notified TMK. The policy responded and provided Qwerty with access to expert legal advice from a firm that specialises in dealing with patent troll claims. Qwerty was able to utilise this firm to get a steer on the patent troll's strategy, as well as its own choice of legal counsel, who were familiar with Qwerty's Intellectual Property (IP), product range and business plan.

The demand was ultimately negotiated down to USD800k, with a further USD455k spent on legal fees and associated costs. The case did not proceed to court. TMK reimbursed Qwerty regularly throughout the process for all representative fees and expenses and the six-figure settlement amount (above the excess, net of co-insurance and subject to all policy terms and conditions).

Key takeaways

- Patent trolls do not only target the corporate giants; 50% of cases are leveraged at companies with less than USD25m revenue.
- IP litigation can be very expensive, even if the case never makes it to court.
- As IP disputes are highly strategic in nature, they often strike just as a company is becoming successful. This can force executive attention away from strategy and success and into litigation management.
- An IP insurance policy from TMK can provide financial peace of mind, alongside access to a wealth of expertise in handling IP disputes.