

TechRoadmap *Directions*

Intellectual Property Issues of Interest to High Tech Companies

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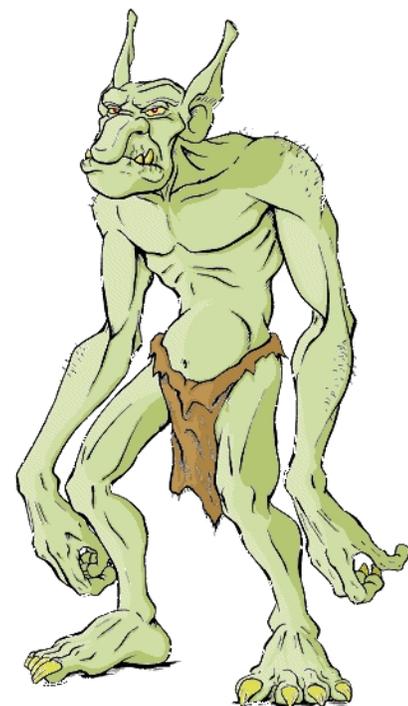
Welcome

Patent trolls (and patent examiners) are the favorite whipping boys of patent attorneys, licensing experts, and just about everybody else these days. But if you believe patents are intellectual *property*, carrying many of the same rights as physical *property*, then ask **why we heap calumny on a person enforcing patent rights** to make money, but honor (or at least envy) the likes of Donald Trump. To get my take on the issue, read "Trolling for Dollars".

• Troll is just a four letter word

Don't let the patent troll get you. Don't assume you have freedom to operate just because other people are using a technology.

Acting as your Director of Intellectual Property, TechRoadmap will work with your patent attorney to identify potential snares to your business plans to minimize your exposure to patent trolls.



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• Trolling for Dollars

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We would be happy to schedule a visit to your facility to help you review the good and not so good IP practices you use. Sign up on our web site with the link below.

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IP Links of Interest

- [US Patent Office](#) A host of useful, official information.
- [EKMS, Inc.](#) A strategic IP management partner of TechRoadmap.
- [The Patent Cafe](#) An on-line portal for IP matters.
- [AlvaMed, LLC](#) A medical device consulting company we work with.
- [Technology Insurance Special Risk](#) An specialist in insurance for technology companies - for example, patent insurance
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Ask a patent attorney to explain why we say he deals in intellectual property and he will list the **property rights that are common to your patent and your homestead**. The primary right is that of exclusion: you can prevent others from building your invention and you can kick trespassers off your land. You can buy, sell, or rent land; you can buy, sell or license patents. Your deed defines the boundaries of your land; your patent claims define the metes and bounds of your invention.

Yet, **when a person buys or licenses a patent** and proceeds to enforce those patent rights, **he risks being called a troll**, but **when a person buys land**, makes the squatters leave, and builds a nice hotel or apartment, **he's a developer**.

What's the difference? One argument is that a troll isn't building the invention; he's just extracting license fees without doing anything "productive". True, but that's no different to a landowner giving a long term lease to someone else who wants to run a business on the parcel.

Another argument is that trolls wait until an industry gets established before enforcing the patents. Again true, but the industry players should have checked to see if they had freedom to operate. Would you build a beach house on an empty strip of beach without finding out who owned it – or would you be surprised to find you've been evicted one day?

And then there's "Trolls use their economic resources to extort licenses from small players unable to risk going to trial". Unfortunately that's the capital in Capitalism.

Finally, people claim that trolls, by enforcing patents "just" to make money, are inhibiting the inventiveness that patents are supposed to foster. **The creative inventor got his or her money upfront from the troll, no development risk, no loss if the patent is found invalid**. Isn't that an incentive to get back to the lab and do more inventing? If the inventor sold out too cheaply, that's his bad business acumen.

Perhaps it would be better to limit the property rights of patents. Maybe we need a use-it-lose-it system or maybe, as will be decided in the Supreme Court in the eBay case, there should be a limit on injunctions in infringement cases. But in any case, patent trolls are just playing by the rules and perhaps we should listen to Philip Johnson, chief patent counsel for Johnson & Johnson, who is quoted on

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Businessweek.com saying "[If we start watering down the patent system... I'm worried about the future of our country. Beware of what you ask for, you might get it.](#)"

- **What Are Your Thoughts?**

Have you been affected by a patent troll? Are you a patent troll? And should we make changes in the patent system that limit the power of a troll? Let me know what you think.

- **Disclaimer**

Nothing in this newsletter should be construed as legal advice. TechRoadmap serves as an interface between companies and their legal counsel.