



Background

Over the past few years, financial institutions in multiple states have experienced a dramatic increase in the number of bad faith assertions of patent infringement, in the form of demand letters from non-practicing entities (NPEs). These firms, commonly referred to as “patent trolls,” acquire and house obscure or dormant patents, and then blanket an industry with demands for licensing fees. Financial institutions are then encouraged to settle for amounts that typically would be less than the cost of litigation, or even legal review of the claim for merit. There is generally very little research done by the patent trolls prior to mailing out their “bad faith” demand letters, which are vague and include little to no information on the actual patent (ie: number, who owns the patent, where the infringement is occurring, etc.).

Patent Trolling

Effect

Issues surrounding patents are primarily federal. However, legislation was introduced last session to make bad-faith patent trolling a less attractive activity in Michigan. Following the lead of similar bills in other states, the legislation would have helped to protect companies and financial institutions, and in particular smaller entities who are often the targets of patent trolls, from these extortionist techniques.

Credit Unions commonly obtain ATMs from technology service providers. Credit unions are considered “end-users” of the product. As end-users, when a credit union receives the product, technology providers rarely step into a lawsuit in place of their customers when financial institutions are threatened with demand letters simply for purchasing a product for use in their regular business operations. Often the amounts demanded in settlement are less than it would cost outside counsel to review the matter, and considerably less than hiring IP counsel to advise on and litigate against a claim – meaning many are simply paid to end the threat.

The legislation was written to help deter the frivolous and exploitive activity of patent trolling by further defining and prohibiting a bad-faith assertion (demand letter) of patent infringement. The legislation also provided remedies for such, by providing powers for the Attorney General to bring civil actions against patent trolls, and would have authorized a promulgation of rules to implement new authorities provided for in the legislation.

Status

Senate Bill 289 was recently introduced by Senator Margaret O’Brien, which make Michigan a much less attractive place for patent trolls. Michigan is currently one of more than thirty states to have introduced and/or passed patent trolling legislation.

The MCUL and other interested parties had worked closely with the sponsor on last session’s legislation. We are continuing to pursue a solution and anticipate a bill to be introduced this session to address the issue of patent trolling.