

## IDENTIFYING PATENT TROLLS

Often, patent trolls make bad faith assertions of patent infringement. It can be difficult to determine whether an assertion was made in bad faith. This information is meant to help you make that determination, but not to provide a definitive answer.

Signs that suggest a person has made a bad faith assertion of patent infringement include:

- The demand letter lacks basic information about the assertion (patent number, patent owner's name/address, etc.)
- The patent owner fails to conduct a reasonable investigation to determine whether the target infringes before sending a demand letter
- The patent owner offers to license the patent at a price not based on a reasonable estimate of the value of such a license
- The assertion of patent infringement is deceptive or baseless
- The patent owner threatens legal action that is not intended to be taken

Signs that suggest a person has made a good faith assertion of patent infringement include:

- The patent owner conducts a reasonable investigation and finds that the target infringes before sending a demand letter
- The patent owner has successfully enforced the patent through litigation
- The patent owner makes a substantial investment in the development, sale, or production of a product covered by the patent

## COMMENTARY ON PATENT TROLLS

[Patent trolls] don't actually produce anything themselves. They're just trying to essentially leverage and hijack somebody else's idea and see if they can extort some money out of them.

-- *President Barack Obama*

Unfounded and bad faith claims of patent infringement undermine the system of intellectual property protections which is absolutely key to the innovation-driven economy that will keep Virginia Globally competitive."

-- *Attorney General Mark Herring*

No Virginia business owner should live in fear that they will go under because of the cost to defend a frivolous lawsuit brought by a patent troll.

-- *Delegate Israel O'Quinn*

## CONTACT INFORMATION

For more information about patent trolling or to report a patent troll, visit the Patent Troll Unit's website at:

[ag.virginia.gov/index.php/patents/](http://ag.virginia.gov/index.php/patents/)

### Additional Methods of Contact

Email:

[patents@oag.state.va.us](mailto:patents@oag.state.va.us)

Telephone:

**(804) 786-2071**

Mailing Address:

**Patent Troll Unit  
Office of the Attorney General  
900 East Main Street  
Richmond, Virginia 23219**



Attorney General  
**Mark R. Herring**  
Virginia Office of the Attorney General

# PATENT TROLLING

**"Bad Faith Assertions of Patent Infringement"**



Patent trolling is basically a 21<sup>st</sup> century shakedown that forces businesses to choose between costly litigation or ridiculous fees if they want the claim to go away.

--**Attorney General Mark R. Herring**

## CONTACT INFORMATION

Website:

[ag.virginia.gov/index.php/patents/](http://ag.virginia.gov/index.php/patents/)

Email:

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## THE PATENT SYSTEM

The patent system represents a bargain between inventors and the public—inventors receive the exclusive right to control their invention for a short period of time in exchange for public disclosure of their invention. The patent laws protect any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.



Official patent certificates.

A patent is an intellectual property right that gives the owner the right to exclude others from making, using, offering for sale, selling, or importing the invention. To obtain a patent, an inventor must file a patent application with the United States Patent and Trademark Office, the agency responsible for determining whether an invention satisfies the patentability requirements.

To enforce their rights, patent owners may bring a civil action for patent infringement against those who practice the invention during the term of the patent without the patent owner's permission. This civil action may result in the award of an injunction, damages, or other remedies.

## PATENT TROLLS

There is nothing problematic about good faith enforcement of legitimate patent rights—in fact, the patent system envisions such enforcement. Unfortunately, a growing number of patent trolls (or patent assertion entities) have begun to misuse the patent system for personal gain. Patent trolls do not manufacture or sell a product covered by their patent—rather, they enforce their patents in bad faith to extract unjustified licensing fees. Common bad faith enforcement practices include sending a demand letter without conducting an adequate investigation, making baseless allegations of patent infringement, sending deceptive or misleading demand letters, and offering a license at a nuisance price. This practice is commonly referred to as “patent trolling.”

Patent litigation is notoriously complex and expensive—a reality that patent trolls exploit. The alleged infringer must decide whether to pay the requested licensing fee, often while facing a threat of expensive litigation if they refuse to pay. For most alleged infringers, simply paying the licensing fee is the easiest and most economical way to get rid of the patent troll—even when they suspect the allegation is weak or meritless.

Patent trolling stifles innovation and has a negative impact on our economy. According to a 2012 study, patent trolling activity costs the U.S. economy roughly \$29 billion per year.

## OAG COMBATS PATENT TROLLS

In 2014, Attorney General Herring helped craft and broker compromise legislation to combat patent trolls and their bad faith practices. With broad, bipartisan support that legislation became Va. Code §§ 59.1-215.1 to -215.4, which prohibits bad faith assertions of patent infringement.



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**Governor Terry McAuliffe signs Attorney General Herring's legislation into law.**

The statute allows the Office of the Attorney General to investigate potential violations, to enter into agreements requiring patent trolls to end their abusive practices, and to bring suit against patent trolls to obtain a court order preventing future abusive conduct and to collect civil penalties.

For more information about identifying patent trolls and bad faith conduct, please see the Identifying Patent Trolls section of this brochure or visit the website for the Attorney General's Patent Troll Unit at:

[ag.virginia.gov/index.php/patents/](http://ag.virginia.gov/index.php/patents/)