



Trading Ideas IP Symposium, 30-31 July 2009, Singapore
Patent Trolls - Good or Evil?

Patent Trolls

: Variants of Industrial Evolution

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Patent Trolls & NPEs

- The Term
- Are Patent Trolls More Annoying?
- What Made Patent Trolls?
- What Patent Trolls Made?
- Business Models of NPEs
- Defenses Against Patent Trolls



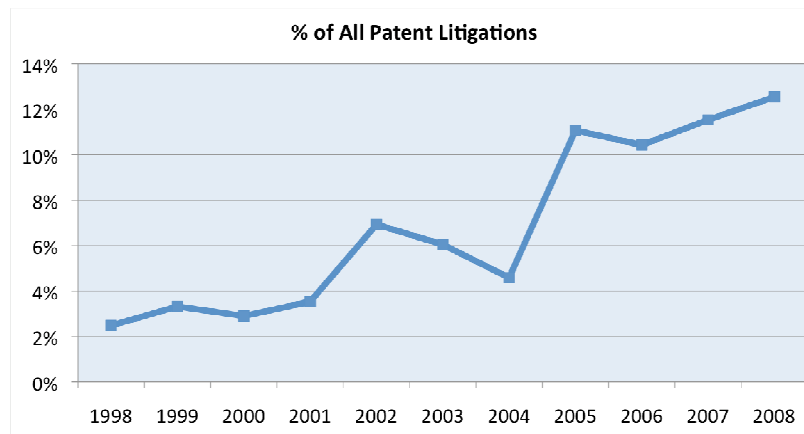
Patent Troll



- **Non-Practicing Entity (NPE)**
 - non-manufacturing patentee, patent marketer, patent dealer, invention capitalist
 - no manufacture or use & aggressive lawsuits
 - lack of counter-assertion vulnerability
- **Criticism**
 - Parasites on successful business
 - Patent system bottom feeders
 - Mold that grows on rotten meat



US Patent Litigations



Source: PatentFreedom 2009/01

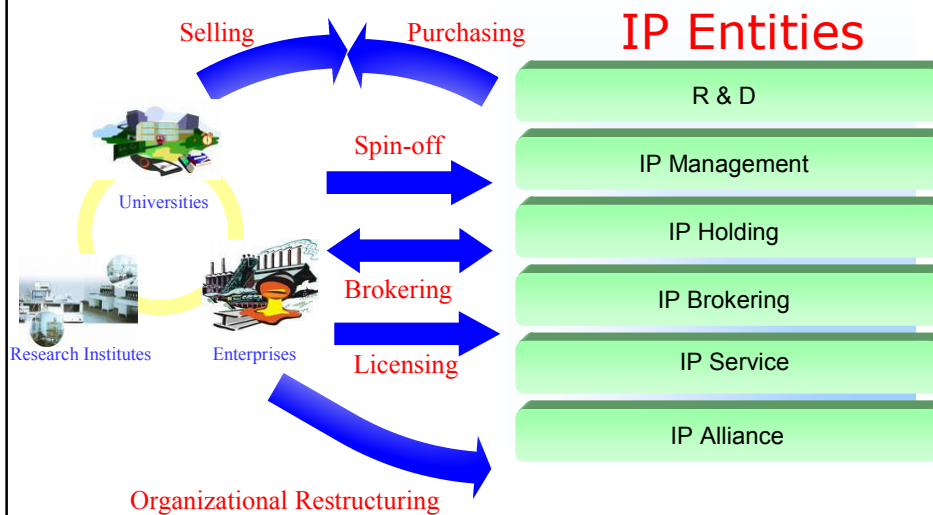


Anticompetitive Patent Use?

- **NPE: monetary goals, multiple targets**
 - As MUCH & SOON as possible
 - No Counter-Assertion
- **PE (Practicing Entity): business goals**
 - Antitrust/Misuse Practice v Right Exhaustion
 - Counter-Assertion



Organizational Restructuring





Non-Practicing Patent Owners

- **Universities, RI & Associated Entities**
 - Alumni association
- **Tech Companies**
- **Agents/Surrogates of Manufacturers**
- **Patent Alliances**
 - Standard Setting Organizations
 - IP Banks
 - Defensive Aggregation
- **Law Firms**



Licensing Fees

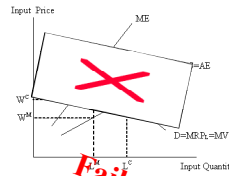
- **\$ 30,000 - \$100,000**
 - Hundred targets
- **\$200,000 - \$750,000**
 - Smaller number of companies
 - A fee below the cost of defense
- **\$10 million or more**
 - Big pay day, relative small number of targets



Market Failure Creates NPEs



Demand



Supply

Patent Market

Patent asset

Info asymmetry

Uncertainty

Patent Troll

Patent legislation

Forum shopping

Validity

infringement & willfulness

Injunction

Damage



US Moves to Stop Trolls



• Legal Actions: Having Injunction Stayed

- *NTP, Inc. v. Research In Motion, Ltd.*
- *Eolas Technologies, Inc. v. Microsoft Corp.*
- *MercExchange, L.L.C. v. eBay, Inc*

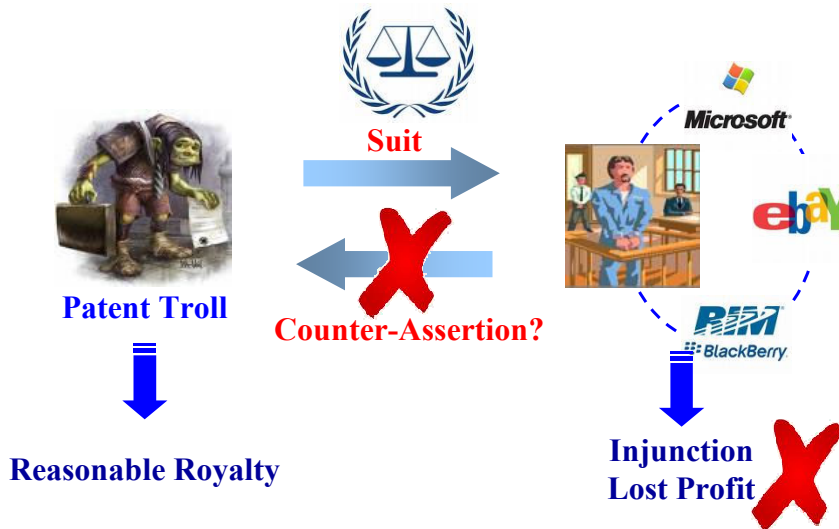


• New Legislation

- *The Patent Reform Act of 2005/2007/2008/2009*



Lawsuits of Patent Trolls



Patent System & Troll : what to blame

- Patent System: Inherently Imperfect
 - Patent Thickets, Examination Quality, Litigation,---
- Patent Reform Act of 2009 (S. 515/S. 610/H.R. 1260)
 - Patent infringement litigation for defendants
 - forum shopping
 - appeals
 - willful infringement
 - reasonable royalty
 - good faith

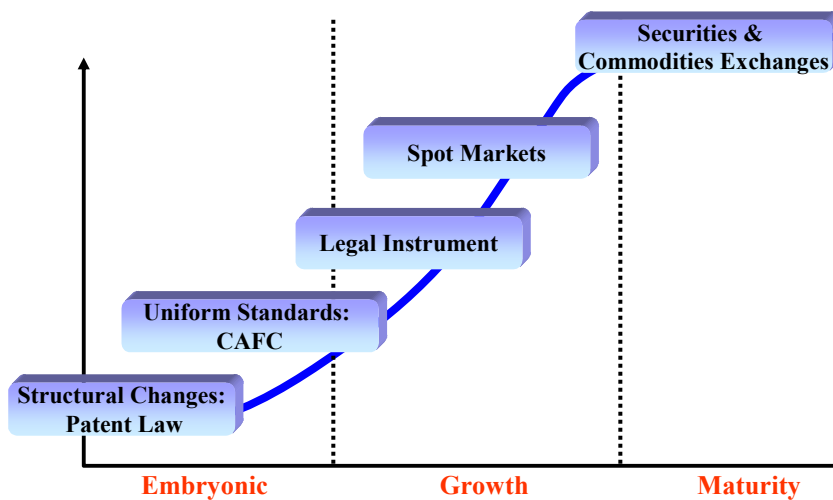


Defenses

- **Technology Alternatives**
 - *Design Around & Alternative Product/Process*
- **Patentability Challenges**
 - *Opposition & Invalidation*
- **Negotiation**
 - *Early Settlement & Royalty Establishment*
- **Collaboration & Club**
 - Defensive Patent Aggregation
 - *Allied Security Trust, RPX Defensive Patent Aggregation*
 - Standard Setting
- **Patent Infringement Insurance**
- **Patent Watch**
 - *Clearance Search*



Evolution of Patent Market





Conclusions

- **Good or Evil? Natural!**
 - Variants of Evolution
 - Diversified Business Models
- **Market Efficiency**
- **Patent Policy & New Legislation**
 - Compulsory Licensing
 - Legal Instrument: Injunctive Relief
 - Value Assessment