

Are Trolls Moving North to Canada?



The practices of Patent Assertion Entities (PAEs), often pejoratively referred to as “patent trolls”, are increasingly becoming an issue of concern.

Responding to the situation, the USPTO, in concert with the White House, has recently announced several measures aimed at combatting PAEs, including providing online resources to businesses and individuals facing threats and taking various steps to prevent overly broad or otherwise flawed patents from being issued.

Unlike in the U.S., PAEs historically have not been a concern to innovative companies and individuals doing business in Canada. A number of factors may explain this. First, and perhaps most obvious, is the substantially smaller settlements that a PAE can expect to collect in Canada as compared to the U.S. Our market is smaller and damages are lower, so PAEs are not able to “squeeze” as much out of a business or individual. In addition, certain aspects of the Canadian court system may act as disincentives to PAEs. These include the fact that costs are typically awarded against the unsuccessful party, and the absence of jury trials for patent infringement cases.

Recent developments have changed the perception that Canadian businesses are safe from the predatory practices of PAEs. Most notable is the appearance on the scene of a company called Dovden Investments. Dovden appears to be based in the United Kingdom and holds the rights to several patents related to vehicle trafficking technology. According to www.IPPpractice.ca, Dovden started about 28 patent infringement actions between mid 2012 and

mid 2013, representing about 35 percent of all patent actions filed in Canada during that time. The parties being sued include public transit authorities and individual mobile app developers. In response to the slew of lawsuits, one public interest group, the Canadian Urban Transit Association, has filed an impeachment action against Dovden in an effort to invalidate Dovden’s patents.

The reaction of the Canadian government to the PAE threat has been slow, which is perhaps understandable given the complexity of the issues. Nevertheless, the potential for future government action has been acknowledged. The Canadian Intellectual Property Office (CIPO) and Industry Canada (a governmental department) have requested feedback from the business community, Canadian legal practitioners and others regarding the impact of PAEs in Canada as well as possible solutions. In general, the types of solutions being discussed include: (i) having higher disclosure requirements in demand letters and/or in court pleadings and (ii) creating public databases where those who receive demand letters can upload information. This is in addition to more dramatic solutions such as the introduction of new patent legislation. Canadian practitioners will also be monitoring the situation in the U.S. and assessing the effectiveness of any measures taken there.

In conclusion, the recent emergence of PAE activity in Canada has begun a conversation in earnest about how best to deal with the threat these entities pose to businesses and individuals. However, until additional PAEs come out of the woodwork, it seems unlikely that Canada will see any significant policy shifts in the near future. ■



Adam Bobker
Partner | Toronto
416.957.1681
abobker@bereskinparr.com

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