

Troll Patrol: Officials Want To Address Patent Troll Problem In Conn.



Milford intellectual property lawyer Michael Blake

When Milford intellectual property lawyer Michael Blake got a call last year from a small business facing a sudden legal crisis, he wasn't exactly sure what sort of problem they were up against.

Blake's client was Southeastern Employment Services in Old Lyme, which finds jobs for disabled people. It had received a "cease and desist" letter from a company in Texas. FoINer LLC claimed it was the owner of a patent the Connecticut business was infringing upon. The patent in question, Blake said, was for the scanning and emailing function on Hurley's copier machine.

"It was a patent troll," said Blake. "This company said it wanted \$75,000. The organization had bought a patent solely for the purpose of enforcing the patent, to try and get payment from people who may be infringing on it."

The job placement company is hardly the first Connecticut business to encounter such a situation. Formally known as "patent assertion entities," or PAEs, patent trolls are firms or individuals that don't build or sell anything. They buy available patents, typically for parts of technology-related products such as copy machines or wireless routers, and then threaten to sue people or companies for using them.

Among those publicly voicing complaints about patent troll lawsuits in Connecticut are Sikorsky Aircraft, ESPN and Foxwoods casino. Smaller businesses affected include doctor's offices and real estate firms. Elected officials, such as

Connecticut Attorney General George Jepsen, have heard the complaints and are urging Congress to rein in patent trolls by passing pending patent law reform measures.

In the business world, the problem is considered so severe that the general counsel of Kayak Software Corp., recently described PAEs as "today's Mafia," referring to the extortion-like threats in cease and desist letters. When confronted with a patent enforcement claim, companies must decide whether to spend an average of \$1.75 million to defend patent infringement claims in court, or pay an average of \$300,000 or less to settle the claims out of court.

At Reid and Riege in Hartford, IP lawyer Mary Mintel said she's represented "multiple" Connecticut businesses over the past year that were targeted by patent trolls. In all of those cases, the litigation threats were brought against users of "common business technology," such as wireless internet service and copier machines.

"The striking aspect of these cases has been the fact that practically any business could be targeted," she said, adding that patent trolls she's encountered were merely "fishing" for unwitting businesses that would be willing to pay for a settlement. "In my experience, the patent trolls in Connecticut have targeted smaller businesses. Those that are large enough to obtain a \$20,000 settlement from, but not so large that the business would have the resources to fight back if the matter progressed to litigation."

Attorneys say the problem is much worse than it appears. That's because most of the time, in-house legal departments make a cost-benefit analysis and opt to quietly handle the demands by paying the party asserting a claim. Most of the time, you never hear about them, said John Horvack Jr., of Carmody Torrance Sandak & Hennessey.

For a small business, that's not always an option. However, Blake's client got lucky. The job agency stood up to the troll, wrote a letter seeking more information, and managed to relax after FolNer's lawyers said there would be no further action needed. "After a few months of ignoring my request, I got an email from their lawyer, who was in Texas, saying he was not going to pursue this at this time," Blake said. "They didn't say why."