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# Tax the Patent Trolls

James E. Bessen and Brian J. Love

USA TODAY, July 24, 2013<sup>1</sup>

When Representatives Judy Chu (D-CA) and Darrell Issa (R-CA) introduced the [Stopping the Offensive Use of Patents Act](#) on Monday, it marked the [seventh Congressional proposal](#) this session to fight the tide of lawsuits filed by "patent trolls" — companies that buy up old patents and sue anyone who might arguably use the technology described therein. Last month President Obama also [took action](#) to "protect innovators from frivolous litigation," making changes at the Patent Office as well as legislative recommendations of his own.

Though the patent system was designed to spur innovation, many fear that today it often does the opposite due to the high cost and frequency of patent litigation. Patent trolls now [file the majority](#) of patent suits, draining businesses of [\\$29 billion](#) in out-of-pocket expenses in 2011 alone. Also, patent trolls often cast an incredibly wide net, intentionally ensnaring small business and retailers that never dreamed they would be sued for patent infringement and, thus, generally cave rather than fight dubious allegations. One troll has demanded [\\$1,000 per employee](#) from businesses using scanners attached to computer networks; another has [sued hundreds of companies](#) for including store locator maps on their websites; yet another has demanded payment from thousands of smartphone app developers. Few businesses, it seems, are safe from the possibility of suit.

As Congress and the White House consider how to fix the patent troll problem, they should consider what has worked elsewhere in the world. Excessive patent litigation is a particularly American problem. No other developed nation has as many patent lawsuits. The United Kingdom, for example, has just 1% as many.

Fortunately, proposals under consideration already take a cue from other nations: several target frivolous patent litigation by forcing the loser to pay the winner's legal costs, a practice that is currently very rare in the U.S. but routine [virtually everywhere else in the world](#). Such a rule would make it risky for a patent troll to file suit without first establishing that it has a good chance of winning.

However, current bills miss another important reason that trolls aren't much of a problem overseas: In most other nations, it is expensive to hang on to old patents. Patents owned by trolls are generally old — [twelve years on average](#) — when finally asserted in court. Many such

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<sup>1</sup> Available at <http://www.usatoday.com/story/opinion/2013/07/24/tax-patent-trolls-lawsuits-column/2578675/>

patents were originally filed to protect inventions that long ago became obsolete, and today hold value only because they were written so broadly that they arguably can be interpreted to cover technologies developed much later by other inventors.

To shackle the dead hand of old inventions, other countries charge patent owners annual fees that must be paid to keep the patent from expiring. This way, only patents directed to truly valuable inventions are kept in force for the full twenty years of the patent term. Obsolete patents expire sooner, generally before they fall into the hands of those who would misuse them.

The U.S., by contrast, [requires only three renewal payments](#) and even those are relatively small. It costs [over 10 times more](#) to keep patent rights in force in major European countries. If U.S. renewal fees were increased to this level, trolls' patent holdings would shrink and their expenses would grow. Businesses that buy up thousands of old patents for the purposes of assertion would have to pay millions of dollars a year just to renew their portfolios.

Would such a change also burden current inventors? Not if the fees are kept low when patents are new, as is done in most countries. Only years later, when the inventions have proved their value (or lack thereof), would fees rise and even then only to amounts that are tiny compared to the profits made on important pharmaceutical or industrial inventions.

Fixing the patent troll problem will no doubt require multiple reforms, and we support those that are presently on the table. But why not add new patent renewal fees to the list? It's an easily implementable and modifiable change supported by decades of experience in other nations. We urge Congress to consider it.

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