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Patent Trolls: Evidence from Targeted Firms

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[There are 2 versions of this paper](#)

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Abstract

We develop a theoretical model of, and provide the first large-sample evidence on, the behavior and impact of non-practicing entities (NPEs) in the intellectual property space. Our model shows that NPE litigation can reduce infringement and support small inventors. However, the model also shows that as NPEs become effective at bringing frivolous lawsuits, the resulting defense costs inefficiently crowd out firms that, absent NPEs, would produce welfare-enhancing innovations without engaging in infringement. Our empirical analysis shows that on average, NPEs behave as opportunistic patent trolls. NPEs sue cash-rich firms — a one standard deviation increase in cash holdings roughly doubles a firm's chance of being targeted by NPE litigation. We find moreover that NPEs target cash unrelated to the alleged infringement at essentially the same frequency as they target cash related to the alleged infringement. By contrast, cash is neither a key driver of intellectual property lawsuits by practicing entities (e.g., IBM and Intel), nor of any other type of litigation against firms. We find further suggestive evidence of NPE opportunism, such as forum shopping and targeting of firms that have reduced ability to defend themselves against litigation. We find that NPE litigation has a real negative impact on innovation at targeted firms: firms substantially reduce their innovative activity after settling with NPEs (or losing to them in court). Moreover, we neither find any markers of significant NPE pass-through to end innovators, nor of a positive impact of NPEs on innovation in the industries in which they are most prevalent.

Keywords: Patent trolls, NPEs, PAEs, Innovation, Patents

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