



# Federal Government Broadens Response to Infringement Claims Made by Patent Assertion Entities, a.k.a. “Patent Trolls”

Client Advisories

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Domestic operating companies, large and small, should take note that, following up on the lead of the White House last month regarding the recent spate of patent lawsuits brought by Patent Assertion Entities (“PAEs”), the Federal Trade Commission (“FTC”) and United States Patent and Trademark Office (“USPTO”) have begun implementing and expanding upon the initiatives suggested by President Obama. Last month, the White House issued executive orders and made several legislative recommendations in an effort to improve incentives for future high-tech innovation. Many of these orders and recommendations directly target PAEs, companies that, in the words of the President, “don’t actually produce anything themselves.” Pejoratively known in the media as “patent trolls,” PAEs have engendered a broad federal response that should be followed closely by American companies that do produce.

In recent follow-up remarks, FTC Chairwoman Edith Ramirez, noting the [report of the Executive Office of the President on “Patent Assertion and U.S. Innovation,”](#) pledged to protect “small businesses from deceptive PAE practices using its Section 5 authority under the FTC Act.” The FTC defines PAEs as “firm(s) with a business model focused primarily on purchasing and asserting patents, typically against operating companies with products currently on the market.” This response is intended to stifle the growing threat of PAEs against consumers and businesses. As the Chairwoman noted, “PAE lawsuits are no longer filed primarily against IT firms. Retailers and financial services providers that incorporate software into their products and services are now common targets. Even hotels and coffee shops are not immune. The costs to consumers from PAE activity appear increasingly tangible and direct.”

Chairwoman Ramirez also remarked on recent announcements by the USPTO that it will begin the rulemaking process to implement the President’s directives. Among the executive orders last month, the President directed the USPTO to begin drafting rules requiring patent applicants and owners to regularly update patent ownership information when involved in proceedings before the USPTO in order to designate the patent owner’s “ultimate parent entity.” This approach is expected to dissuade PAEs from setting up shell companies in order to shield

certain activities, or, as the Chairwoman put it, “to require greater transparency concerning ownership of patents and patent applications.” The White House sees this reform as helping companies understand the full extent of the patents held by the ultimate parent entity, which may help operating companies in settlement negotiations.

This advisory addresses only a few of the initiatives covered by the President’s executive orders and legislative recommendations, and the follow-up by federal administrators. As recently as this past Monday, several bills have been introduced in both the House and Senate following up on the President’s legislative initiatives.

If you have any questions about the impact of these initiatives on operating companies, small or large, please contact **Archer’s Intellectual Property Group** through our patent attorneys, **Gregory J. Winsky**, Esquire, at (856) 616-2610 or [gwinsky@archerlaw.com](mailto:gwinsky@archerlaw.com), or **Jason Cotter**, Esquire, at (856) 354-3126 or [jcotter@archerlaw.com](mailto:jcotter@archerlaw.com).

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