



Startups Need Comprehensive Patent Reform Now



STOP TROLLS.

#FIXPATENTS



Startups and small businesses develop breakthrough technologies that fuel innovation and drive economic growth and job creation.

In fact, research shows that startups are responsible for all net new job growth in the United States.

Unfortunately, ***patent trolls represent a serious threat*** to the future of startups and innovators everywhere. In fact, startups and small companies bear the brunt of the trolls' systemic abuse.



THE TROLL PROBLEM

**82% of troll activity targets small
and medium sized businesses**

Essentially professional plaintiffs, patent trolls profit off an inefficient litigation system and an environment saturated with bad patents. Patent trolls don't create any products or services. Instead they hoard and assert aging, poor quality patents that cover basic features of the Internet, many of which shouldn't have been issued in the first place.

Trolls exist for the sole purpose of suing and threatening inventors, entrepreneurs, and innovative businesses.

When faced with a lawsuit and potentially millions of dollars in legal fees, years in the courtroom, many startups choose to simply pay a fee to settle and make the case go away—even if they are innocent. This cycle of settlements keeps patents unchallenged and funds the trolls' continued activity.

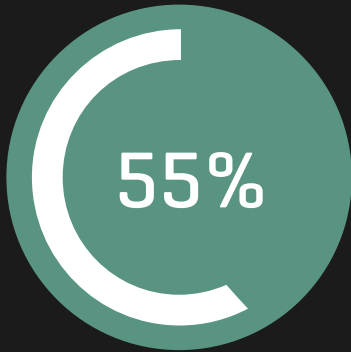
This adverse impact has ripple effects throughout the innovation ecosystem.



Why It Matters

Startups are responsible for all net job growth over the last 30 years and the rise of the patent troll model is threatening that continued growth.

The Troll Toll is Big for Startups



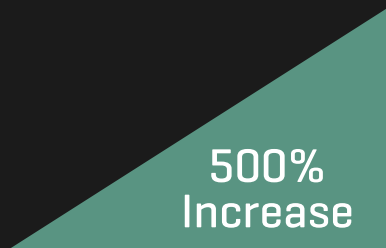
Percent of troll suits that are filed against **small businesses and startups**



Cost to hire a patent lawyer to **evaluate demand letter claims**



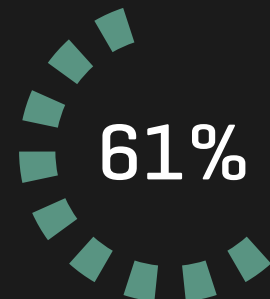
VC investment lost due to troll threats



The increase in **troll suits filed per year** over the last decade



All surveyed VCs indicated that presence of a patent demand could **deter investment**



Percent of patent suits in 2014 **attributable to trolls**

The Urgency is Real.



Troll Stories from Startups

Smart Ride's Story

San Francisco, CA



Smart Ride

Aaron Bannert is the founder of Smart Ride, a smartphone app that provides real-time travel information for public transit riders throughout North America. The application provides a public benefit, making transit more efficient and riders' lives easier. Smart Ride quickly met with success: 20% growth rate month to month and a positive cash flow.

The day Aaron received a demand letter from ArrivalStar, he couldn't believe what he was seeing. The patent in question claimed to broadly cover tracking device technology that provides a user with updates; however, the design was for an analogue phone from the 90s, light years away from the technology used in a smartphone. Aaron was convinced of his app's non-infringement. Moreover, the claims should have been irrelevant because Smart Ride's source for real-time data (NextBus) was already a licensor of ArrivalStar's patents.

But that didn't matter to ArrivalStar's negotiators. ArrivalStar was targeting any and all companies that use tracking information, whether or not they actually infringed. Aaron was served in San Francisco for a lawsuit in Florida, a state which he had never even visited. Attorneys estimated that even an initial response to the patent complaint would cost **\$50,000 to \$100,000**, even though it only cost ArrivalStar a few hundred dollars to file the complaint. And Aaron was told it would cost **\$1-2 million to defend the case** to the end.

ArrivalStar was effectively exploiting the US legal system to extort a settlement from Aaron, with no apparent intention of going to court. He knew he couldn't afford to win the lawsuit. So he negotiated with the troll for a settlement.

Dealing with the troll cost Aaron three months of full-time work on Smart Ride, at a point in the company's life when it was crucial to get a product out in order to compete. **Though he worked double time to catch up, the resulting delays allowed other apps a leg up in the market and proved devastating to Aaron's small startup.**

*He knew he
couldn't afford to
win the lawsuit.*





Ordr.in's Story

Brooklyn, NY



ordr.in

David Bloom never thought about patent trolls as a threat to business when he left his “regular job” to finally start his own company. A husband and father of two, David founded an innovative software startup called Ordr.in that would revolutionize the way restaurant industry clients use data to streamline their businesses. The company quickly won awards and captured funding from many sources, including Google Ventures. Awarded a place among Business Insider’s “Silicon Alley 100,” David’s company was on an upward trajectory and continued to grow.

That’s when Ordr.in was targeted by a patent troll, which claimed to own patents covering any use of menu generation technology. Other startups, as well as industry giants like Apple, Pizza Hut, and Marriott, were sued as well. David responded with a detailed explanation of how the patents obviously and demonstrably didn’t relate to his business. But the troll refused to back off. Faced with either an unjust settlement or a potentially ruinous trial, David crossed his fingers and chose to go to court.

It cost David nearly **\$100,000 in legal fees** just to get the troll to describe specifically how Ordr.in allegedly infringed its patent. This is information any legitimate plaintiff would have detailed in its original filings, but withholding it is a common tactic trolls employ to run up the cost of legal defense. The case was eventually stayed pending review of the troll’s patents by the US Patent and Trademark Office. But the damage was already done.

The lawsuit scared off clients, wasted resources and cash, and stunted hiring efforts when the company most needed to grow. David was forced to shutter Ordr.in. A company that once employed 20 people, supported the growth of other businesses, and contributed to the economy became yet another victim of the growing troll problem.

“Patent law is so distorted that the courts have become the weapon of choice for patent extortionists.”

- David Bloom



Life360's Story

San Francisco, CA



Chris Hulls and *Alex Haro* are the creators of Life360, a mobile app that uses messaging and location sharing capabilities to help keep over 55 million families safe and connected.

Their company had been approached by trolls in the past, and had always chosen to settle; given that they were working on big deals or in the midst of fundraising, the timing was never right to take on a litigation fight. But in May 2014, after growing their network to millions of families and raising \$50 million in total capital, Life360 was hit with yet another patent troll suit. Florida-based Advanced Ground Information Systems (AGIS) claimed that its patent covered any technology that marks the location of a person on a map and enables calls to that person's phone.

This time, Chris and Alex decided to fight back. They took the case to a jury trial, and won a verdict of non-infringement on all counts. Yet it cost them *over \$1.5 million* to defend themselves - and *they have no reasonable recourse to recover that money.*

That \$1.5 million could have provided salaries for 10 new jobs, but was instead spent defending against a baseless lawsuit. Moreover, it cost the team several months in lost productivity and potential partnerships where the threat of lawsuits made companies hesitant to partner with Life360.

"IF WE GO TO TRIAL, I'M GOING TO PUT YOU OUT OF BUSINESS."

AGIS [Patent Troll]



Aerialink's Story

Bettendorf, IA



Chris Currie, CEO of Aerialink, Inc. never thought patent trolls would be a threat to his startup. When he founded the company in 2002, he was focused on providing mobile communications services to businesses, enabling better connectivity and collaboration. The Aerialink Service powers small startups and large enterprise clients such as telecom carriers, mobile phone manufacturers, the United States military, and online service providers.

The Iowa-based company was sued by troll Messaging Gateway Solutions LLC (MGS) in June 2014 over two very bad patents. MGS claimed their technology covered translating an Internet HTTP request into a short message; in other words, sending a message using the same basic HTTP protocol that the entire Internet uses.

Chris didn't need a patent attorney to tell him that trying to fight MGS and taking them to trial would cost him **at least \$200,000**. The financial and operational cost would have posed a significant problem for his company, so he settled for a lot of money. And his business took a hit: resources from both finance and leadership teams were diverted to deal with the complex details of the suit, instead of focusing on company growth, employee hiring and product development.

He felt robbed, especially since he remained convinced that if had he seen the case through to the end, the patent would have been invalidated.

He wished the United States patent system provided greater certainty that the loser would have to pay the winner's fees. If that were the case, he would have been more likely to see the case through.

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X-Plane's Story

Columbia, SC



X-PLANE

Austin Meyer never thought he'd be the target of a patent troll. Austin is a fan of all things flying and that's why he created X-Plane, which has become the standard in flight simulation. X-Plane is both fun and popular, with tens of thousands of customers on desktops, and hundreds of thousands of customers on mobile devices. The application offers customers the means to learn the basics of flying and improve on their flight safety skills, and provides hours of recreational enjoyment as well.

Three years ago, patent troll Uniloc sued Austin, claiming that he (and eight other app developers) infringed on its patent by implementing the basic copy-protection system provided by Google for nearly all Android apps. But Uniloc didn't sue Google. It chose to go after small entrepreneurs that would be more likely to settle.

Uniloc's suit against Meyer makes 113 different infringement claims based on a single patent. After three years of fighting, Austin has so far been able to invalidate one of those claims. But it has cost him hundreds of thousands of dollars in legal fees and hundreds of hours in lost time. And now Uniloc has threatened to pursue a case against him based on two additional claims of the same patent.

At this rate, Austin could be trapped in litigation indefinitely. And the suit has prevented him from offering his latest app on Android, leaving him unable to reach an entire market of smartphone users.

"I am being sued for producing: So my smartest option is to not produce goods or services."

- Austin Meyer



TMSoft's Story

Arlington, VA



TMSOFT

Todd Moore never dreamed the biggest danger to his business would come from a patent troll. Several years ago, he started tinkering with app ideas after work and on weekends, before taking the plunge and founding his own company. Soon after, he launched White Noise, an app that helps both adults and infants sleep. It was a fast success, becoming a number one download on iTunes and receiving praise from the Today Show, the Washington Post, CNET, and many others. In fact, the application was so successful that Todd was able to quit his day job and fully commit himself to growing his company.

Todd also hosts a technology podcast called Tech 411. It had been featured by Apple and became the number one tech news show on iTunes. During one episode, he discussed a patent troll by the name of Lodsys that was going after independent app developers. Soon after the show was published, Todd was sent a demand letter from Lodsys, claiming his White Noise app infringed on Lodsys' patents by having a hyperlink that opened the iTunes App Store. TMSoft was being sued for employing basic Internet technology.

Lodsys proceeded to file a lawsuit and Todd was forced to defend himself, his company, and his app. He was all too aware that litigation could be costly, but he still declined Lodsys' offer of a quick **\$3,500 settlement** to be sent to an offshore account.

Lodsys ultimately dismissed the case and never even took it to trial. Yet Todd's attorney estimated the legal work he did was valued at \$190,000 before even setting foot in a courtroom.

“I risked my capital to build a business and invent great apps. [We need reforms] that will support legitimate patents, legitimate licensing and legitimate enforcement.”

- Todd Moore



FindTheBest's Story

Santa Barbara, CA

FindTheBest

As a serial entrepreneur in the tech community, **Kevin O'Connor** had seen patent trolls threaten business after business. But when a patent troll came after Kevin's company, FindTheBest, he knew he couldn't settle.

Kevin is a firm believer in transparency -- it's part of the reason why he started FindTheBest, a product that helps consumers make decisions using data that is both unbiased and contextualized. FindTheBest covers myriad areas from real estate to colleges, campaign fundraising to healthcare plans, and even dog breeds. Each relies on structured data to inform consumers in their research process.

When Kevin got a demand letter from Lumen View Technology, it was clear that not only did FindTheBest not infringe on the patent in question, but the patent shouldn't have even issued in the first place. It was a patent on "decision-making," a practice that has been in common use for millions of years. After months of trying to reason with the plaintiff's lawyer and the inventor, Kevin **pledged \$1 million of his own money** to challenge the troll in court.

FindTheBest has been largely successful in its ongoing fight. In November 2013 - after spending six months and **roughly \$200,000** in legal fees and hundreds of work hours by employees focused on the case - the judge invalidated Lumen View's patent. In May 2014, the judge ruled, in a rare application of fee-shifting rules in an "exceptional case," that Lumen View should have to pay FindTheBest's expenses.

But the drama is ongoing as FindTheBest attempts to recoup those fees from Lumen's asset-less shell companies and continues to pursue its RICO case against those involved in the patent infringement case.

"The reality is that being awarded fees and collecting fees are two entirely different things."

- Kevin O'Connor

Jump Rope's Story

Chicago, IL



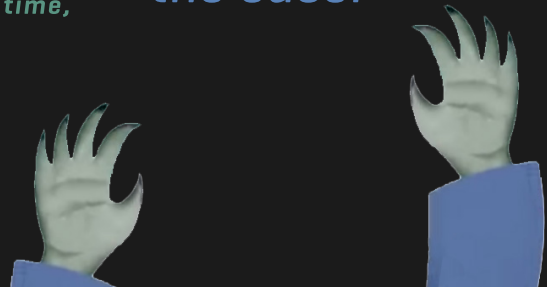
jumprope

Had **Peter Braxton** known that he would have to confront and fight troll litigation, he probably wouldn't have started his company in the first place. An Air Force veteran and former Combat Pilot, Peter founded Jump Rope using money he saved while working at Credit Suisse and funds raised from friends and family. Jump Rope is a smartphone application where users can pay a dynamic price to skip the line and gain immediate entrance to museums, sporting events, nightclubs and bars. The platform provides a time-saving, transparent and hassle-free service for its users.

Less than one month after launching Jump Rope, Peter was approached by patent troll Smart Options, which claimed that Peter's app infringed its patent on reserving the future purchase of goods. Peter decided to fight back, and funded the litigation personally – **spending more than \$250,000**. Fortunately, a federal judge found that not only did Jump Rope not infringe, but that Smart Options failed to perform even minimal due diligence prior to the suit, and required Smart Options to pay part of Jump Rope's legal fees. Smart Options appealed the decisions and threatened retaliation, telling Peter it would sue Jump Rope using a different patent in its portfolio, keeping him **"in court for the rest of his life."** Peter and Jump Rope won again at the appellate level, but not before spending thousands more on the appeal – costs that were unrecoverable due to the terms of the case.

All in all, the case cost hundreds of thousands in legal fees, discouraged millions in potential investment capital and, most importantly, led to three years of lost operational time, due to a frivolous and meritless lawsuit.

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We are calling on Congress to pass comprehensive patent reform this year. We need robust legislation that:



— Requires transparency of **basic details about the alleged infringement** [e.g. what patent and which claims are allegedly infringed, how a patent is infringed, what products allegedly infringe] and a patent's ownership information; startups need to know exactly who is threatening them and with what patents so they can better evaluate how to respond.

Reasonably **limits unnecessary, expensive discovery**, to help incentivize startups to fight the trolls in court since discovery is often leveraged early in a lawsuit to force defendants to settle for a price cheaper than defending an entire case.



— Enables judges to **require bad actors, defendants or plaintiffs, to pay the prevailing party's attorney fees** and other costs incurred; the promise of seeing some of that money back at the end makes securing the resources to fight a patent suit easier for a startup.

Protects innocent end users of technology from infringement claims by allowing technology manufacturers to step in and defend the allegations.



Congress must act to protect innovation, and the startups that are creating good jobs all across the country.

Bad actors are manipulating the patent litigation system at the cost of innocent startups and technology consumers. To stop this, we must pass comprehensive legislative reform that will strengthen our patent system. Only then can we continue to build innovative products and spur economic growth in the United States.

Resources

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Engine

Engine [engine.is] is a non-profit organization that supports the growth of technology entrepreneurship through economic research, policy analysis, and advocacy on local and national issues.