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Public Sector Takes Sides in Patent-Troll Fight.

Transit agencies and public universities have a lot at stake while corporate heavyweights clash over state and congressional efforts to rein in "patent trolls."

Proposals before Congress to crack down on so-called patent trolls have pit major tech companies against each other. But they can be just as divisive in the public sector, too.

To see why, just take a look at the central Illinois cities of Champaign and Urbana, which are home to the state's flagship public university.

The local bus agency was forced to settle with a so-called patent troll who claimed the intellectual property rights to technology that helped passengers track the arrival times of buses. Now the agency is weighing its options after receiving a threatening letter from a patent holder who claims exclusive rights to sell equipment for recording video on buses.

"Honestly," says Karl Gnadt, managing director-designate of the Champaign-Urbana Mass Transit District, "I think this legislation is just a baby step toward taking care of the real problem, and that is just a broken patent system."

But two miles from the headquarters of Gnadt's agency, Lesley Millar-Nicholson heads an office that licenses and protects the intellectual property generated at the University of Illinois' main campus. She worries the proposals would reduce the university's mission of "taking the research, getting it out and trying to actually have an impact on the world."

"The universities pretty much have fairly limited budgets with which to both protect and enforce intellectual property," Millar-Nicholson says. "Further barriers to being able to do that on a level playing field make it even harder."

Patent trolls are getting more aggressive, which is a major reason that states and localities—just like small businesses and nonprofits—are suddenly tangled up in patent fights. Lawsuits filed by patent trolls increased from 731 in 2010 to more than 2,500 in 2012, according to the White House.

The term "patent troll" is used widely, but it can be difficult to distinguish them from other aggressive patent holders, especially when public officials are attempting to write legislation.

Generally, patent trolls are holders of vague patents who do not use the protected technologies themselves. Instead, they demand payment from alleged infringers in the hope that their targets will settle rather than defend themselves in court.

2014 State Patent-Troll Bills

Last year, Vermont was the first state to pass a law directed at "patent trolls." This year, legislatures in at least a dozen states have passed similar measures.[Alabama](#)[Georgia](#)
[Idaho](#)
[Maine](#)
[Maryland](#)
[Oklahoma](#)
[Oregon](#)
[South Dakota](#)
[Tennessee](#)
[Utah](#)
[Virginia](#)
[Wisconsin](#)

Last year, Vermont became the first state to allow defendants to countersue alleged patent trolls for abuses after a company sent demand letters to two non-profit groups that serve the disabled for allegedly infringing on patents allowing scanned documents to be sent via email. This year, at least a dozen state legislatures (see table) passed laws also attempting to curb patent abuses.

State attorneys general also have stepped up legal pressure on alleged trolls, using consumer protection laws. The attorneys general of 41 states and Guam also asked congressional leaders in February letter to make sure that state laws and state courts could still be used to handle cases against patent trolls.

"Federal legislation should confirm that state courts have personal jurisdiction over entities that direct unfair or deceptive patent demand letters into the state," they wrote.

The U.S. House passed a measure in December to discourage patent abuses on a 325-91 vote. The legislation, dubbed the Innovation Act, would require patent holders to disclose more information when bringing enforcement actions in court. It would allow manufacturers to intervene in patent lawsuits brought against their customers.

Most controversially, the measure would also require patent holders who lose their case to pay the attorney fees for the prevailing party, unless the court determines that the award would be "unjust" or that the patent holder's claim was "reasonably justified in law and fact."

A group of senators is now working on its own patent legislation, which it expects to release next week.

Proponents of the House measure say the changes would at least reduce the number of lawsuits brought by patent trolls.

"There's so much money in it, it's not going to stop," says Matt Levy, patent counsel for the Computer and Communications Industry Association (CCIA). "But the goal is to make it less attractive."

But major research universities, including many public schools, say "loser pays" proposals and other measures to discourage patent abuses would also make it harder for universities to pursue legitimate claims.

“Not only does (fee shifting) present a strong disincentive for universities to enforce their patents, but it will substantially increase the perceived risk to potential licensees and venture capitalists of investing in university patents,” wrote the Association of American Universities in a statement.

“We’re already struggling,” adds Millar-Nicholson from the University of Illinois. ABrookings Institution study found that 84 percent of research universities lost money in 2012 on their technology licensing offices. Adding to the cost of litigation and discouraging lawsuits, Millar-Nicholson says, would put universities “on the back foot.”

“Universities are not patent trolls. We are not out there to get a quick buck or sue individuals without merit. But we have to have (patent lawsuits) in our bag of tricks. In fact, any patent owner has to have that tool in their bag of tricks,” she says.

The proposals before Congress could also undermine other congressional priorities, she says. The federal government funds much of the research at major universities, and it requires universities to take ownership of and license inventions produced by federally funded research.

That licensing boosts the economy by launching start-up companies, creating jobs and advancing technology, Millar-Nicholson says. “It’s like the ripple effect. It’s a small pebble in a big pond.”

But in the same central Illinois community, patent trolls are blamed for hurting a small business that worked with Champaign-Urbana’s transit agency.

The local mass transit district was one of at least 11 agencies around the country to get a demand letter from ArrivalStar, which threatened to sue the agencies if they did not pay money to license its patented technology predicting bus arrivals.

The central Illinois agency settled without paying money, Gnadt says. But its vendor, a local company laid off five workers and abandoned its software business as a result. The transit agency hired new workers to take on the extra work.

But settling patent lawsuits “is almost always a sound economic decision” for transit agencies, says James LaRusch, general counsel for the American Public Transportation Association, a trade group.

When ArrivalStar wrote transit agencies in Toledo, Ohio and Raleigh, North Carollina, for example, it indicated it would allow the agencies to license its technology for $150,000. Metra, the commuter rail agency in the Chicago area, settled with ArrivalStar for $50,000. King County Metro in the Seattle area agreed to pay $80,000.

But going to court, LaRusch says, would likely cost a transit system millions of dollars.

APTA faced a similar problem. It could not afford to take action against ArrivalStar until the Public Patent Foundation, a non-profit legal services agency at the Benjamin N. Cardozo School of Law in New York City, offered to help.

Public Patent’s lawyers represented APTA in a lawsuit filed against ArrivalStar last June.

APTA claimed that public transit agencies were essentially arms of the states that created them and therefore could not be sued for patent infringement because the 11th Amendment gives states sovereign immunity. The group also argued that ArrivalStar’s patents were invalid and unenforceable.

The parties settled and agreed to keep the terms confidential. But LaRusch said ArrivalStar agreed

not to pursue the transit agencies or their vendors.

The APTA settlement came too late for the Champaign-Urbana MTD, whose vendor already laid off workers. Now, Gnadt says, his agency faces a different type of patent threat, which he calls “threat marketing.”

For example, Gnadt says, his agency recently received a letter from a company that sells video equipment for buses. The letter says its competitors’ merchandise violates the company’s patents, but that the Champaign-Urbana agency could avoid legal problems by buying its equipment instead.

Gnadt says he is encouraged by the activity on Capitol Hill to discourage patent trolls. “It’s a beginning effort to take care of (the problem),” he says, “but in of itself, it does not eradicate the problem.”

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