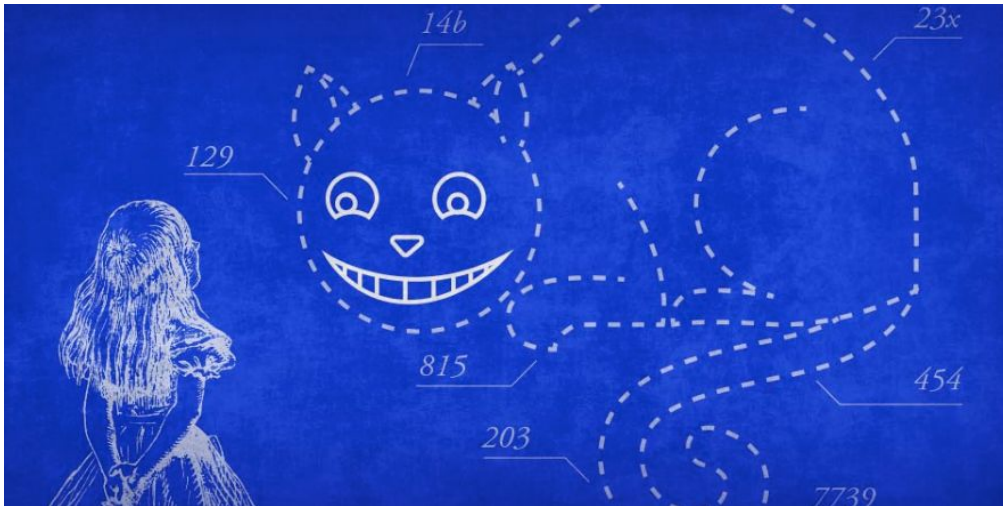


Taking A Stand Against Patent Trolls



EFF One-Pager
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Patent trolls are entities that don't create anything themselves, but simply threaten and bring lawsuits against those that do. Trolls tend to make claims of infringement based on broad patents of questionable validity. Most defendants choose to settle because patent litigation is risky and expensive—and trolls often offer settlement amounts that are far cheaper than a lawsuit. Businesses lose both time and money, and innovation suffers.

Patent trolls take advantage of vague, overbroad software patents to go after targets including big technology companies, tiny startups, end users, and Main Street businesses. One troll, My Health, went after telehealth companies based on a patent issued a century after telehealth first started. Another troll, DietGoal, went after developers of restaurant apps that showed picture menus.

A troll called Personal Audio even claimed to have a patent on podcasting and has sued artists and publishers, big and small. EFF fought back and invalidated the troll's patent. EFF is on the forefront of reforming the patent system in Congress, in the courts, and at the Patent Office. We need meaningful reform to make sure patents foster innovation instead of harming it.

A Glance Inside a Real Patent Troll: ArrivalStar/Shipping & Transit, the most prolific patent troll in America

In the 2000s, a patent owner called ArrivalStar started suing shipping companies for providing their customers with the ability to track packages. ArrivalStar's portfolio of patents related to “vehicle tracking” led to litigation against the big package shippers,



including FedEx, UPS and USPS. Those suits ended either in settlement or with ArrivalStar walking away.

Later, ArrivalStar (now called Shipping & Transit) began sending demand letters to small online retailers. Its demand letters basically alleged that sending a link to shipping information in shipping confirmation emails infringed its patents. Shipping & Transit would often demand these small companies pay a licensing fee far lower than the cost of litigation, but still a significant amount to many small businesses.

If a company didn't immediately pay, Shipping & Transit often sued, but would regularly dismiss its case if a defendant fought back. This meant that Shipping & Transit would avoid court scrutiny of its claims, but still impose significant costs on defendants. Throughout the course of its campaign, ArrivalStar and later Shipping & Transit, brought over 500 lawsuits, not one of which ever resulted in a court agreeing that the patents were valid and infringed.

Small businesses targeted by Shipping & Transit—who likely never thought that sending a typical shipping confirmation email could be patent infringement—found themselves facing a tough choice: pay up or lawyer up.

Saved By Alice: A Supreme Court Ruling Helps Software Innovation

In *Alice v. CLS Bank*, the Supreme Court ruled that an abstract idea does not become eligible for a patent simply by being implemented on a generic computer. This 2014 decision has significantly reduced the harm caused by vague and overbroad software patents. Before *Alice*, patent owners who had contributed little to the development of technology could lock up common sense business practices with patents. These kinds of software patents were especially popular with patent trolls who used them to attack startups and other productive companies.

The *Alice* ruling is a crucial tool for fighting back against these patent trolls. EFF's Saved By Alice project – found at eff.org/alice – collects stories from people whose businesses were helped, or even saved, by the *Alice* decision. These businesses range from sole-proprietorships, to mid-size startups, to large software companies. In each case, the business was threatened by a patent owner asserting a highly abstract software patent. Most were able to defend themselves by raising *Alice* early in the litigation. Without *Alice*, it is likely many would not have survived the high cost of patent litigation.

A few loud voices in the patent lobby are asking Congress to amend Section 101 of the Patent Act to overturn *Alice*. For example, the Intellectual Property Owners Association wants to make anything eligible for patent protection unless it exists in nature independently or “exists solely in the human mind.” This would open the floodgates to patents that simply tie an abstract idea to a generic computer. Without a sensible limit on patent eligibility, any business method that incorporates computer hardware or software, however tangentially, could be covered by a patent.

Ultimately, *Alice* recognizes the long-standing policy that patents should not take more benefit from the public than they contribute to the public store of knowledge. The decision should be applauded and defended.

The Electronic Frontier Foundation is the leading nonprofit defending digital privacy, free speech, and innovation. <https://eff.org>