

# Patent Assertion Entities (PAEs) Under the Microscope: An Empirical Investigation of Patent Holders As Litigants

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## Summary

Today, a certain type of patent litigant—the non-practicing entity (“NPE”), also known as a patent assertion entity (“PAE”), patent monetization entity (“PME”), or simply patent troll—is the target of much public debate, if not venom. The debate centers upon whether PAE participation in the patent system is detrimental to society. The government appears swayed that PAE participation is largely or entirely negative, and PAEs are now the subject of a possible FTC investigation, pending legislation before Congress, and even comments from the President of the United States. Indeed, President’s Council of Economic Advisers asserted in a June 2013 report that there has been an explosion of PAE litigation from 2010 until 2012. But is the factual assertion by the President’s report an accurate characterization of total PAE litigation activity? Is the more general prevailing view on PAEs correct? We believe that the fundamental barrier to understanding the current debate is the lack of granular and transparent data on PAE litigation behavior.

Accordingly, we personally hand-coded all 7,500+ patent holder litigants from calendar years 2010 and 2012, and we are releasing this data to the public. In our coding, we drill down and finely classify the nature of the litigants, beyond the simple PAE or non-PAE definitions. Releasing this data to the public that unpacks the definition of NPE can provide better illumination to policy makers, researchers, and others interested in the patent litigation system.

The data reveals the following findings.

- Consistent with the President’s report, the *raw* number of patent lawsuits filed by non-operating companies substantially increased from 2010 to 2012. However, the President’s report does not consider an important change to patent litigation made by the America Invents Act (AIA). The AIA, adopted in 2011, changed the joinder rules relating to patent litigation by

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prohibiting patent holders from including multiple, unrelated defendants in a single lawsuit based on commonly-asserted patent(s). Instead, after the AIA, patent holders must file separate lawsuits against each unrelated defendant.

- Contrary to the assertions in the President's report, we do *not* find an explosion in PAE litigation between 2010 and 2012. Rather than solely focusing on the raw number of lawsuits as the President's report did, a more appropriate inquiry should focus on the *total number of patent litigants*, both patent holders and accused infringers, *in order to gauge more accurately the actual number of patent disputes between parties*. This is necessary because the AIA, adopted in 2011, changed the joinder rules relating to patent litigation by prohibiting patent holders from including multiple, unrelated defendants in a single lawsuit based on commonly-asserted patent(s). Instead, after the AIA, patent holders must file separate lawsuits against each unrelated defendant.
- After considering the total number of patent litigants, we found almost no difference between 2010 and 2012. In other words, the "explosion" of PAE litigation between 2010 and 2012 is simply a mirage.
- There is considerable diversity among the types of non-practicing entities in both 2010 and 2012. Of note, individual inventors enforcing their own patents accounted for approximately 9% of unique patentees in both years.
- Some technologies appear to have more litigation by non-practicing entities. Consistent with other reports, we find that the Computers and Communications field (using NBER categories) has a substantially higher proportion of suits brought by non-operating companies (including individual inventors) than the Drugs and Medical field.
- To permit others to evaluate our coding and to use the data for other studies, we have made the data set available at [www.npedata.com](http://www.npedata.com).