

# Dominating the Patent Landscape: The Rise and Impact of Patent Assertion Entities

In the rapidly evolving realm of intellectual property, Patent Assertion Entities (PAEs) have emerged as formidable players, asserting their rights over patents without actively manufacturing or selling the related products or services. This article delves into the complex world of PAEs and examines their significant impact on competition policy and the legal landscape.

## What are Patent Assertion Entities?

PAEs, also known as non-practicing entities (NPEs), are companies that acquire patents primarily for the purpose of asserting them against alleged infringers, typically through litigation. They do not engage in the commercialization of the patented inventions themselves.



## Patent Assertion Entities and Competition Policy

by D. Daniel Sokol

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The rise of PAEs has been attributed to several factors, including the increasing complexity of patent law, the proliferation of patents, and the availability of litigation funding. PAEs often target companies with deep pockets, such as large technology firms and manufacturers.

## **Competition Policy Concerns**

The growing dominance of PAEs has raised concerns among competition authorities worldwide. PAEs are frequently accused of engaging in practices that stifle innovation and harm competition, including:

- **Patent Trolling:** Acquiring and asserting patents that are of questionable validity or relevance, solely for the purpose of extracting licensing fees from infringers.
- **Patent Thickets:** Accumulating large portfolios of patents that cover overlapping technologies, making it difficult for businesses to innovate without infringing on multiple patents.
- **Forum Shopping:** Filing lawsuits in jurisdictions known for being favorable to patent holders, regardless of where the alleged infringement occurred.

These practices can create barriers to entry for new businesses, stifle investment in research and development, and increase the cost of goods and services for consumers.

## **Legal Framework Governing PAEs**

Recognizing the potential anti-competitive effects of PAEs, several jurisdictions have enacted laws and regulations to address their activities. These measures include:

- **Anti-Patent Trolling Legislation:** Laws that impose heightened pleading requirements on PAEs, making it more difficult for them to file frivolous lawsuits.
- **Fee Shifting Provisions:** Laws that allow courts to award attorney's fees to defendants who successfully defend against PAE lawsuits.
- **Patent Office Reforms:** Changes to patent examination procedures aimed at reducing the issuance of invalid or overly broad patents.

However, the effectiveness of these measures in curbing PAE activities remains a subject of ongoing debate.

## **Impact on Innovation and Technology**

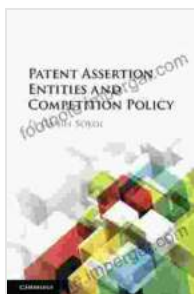
The proliferation of PAEs has had a significant impact on the innovation landscape. Some argue that PAEs encourage innovation by providing incentives for inventors to obtain patents, knowing that there is a market for their inventions. Others contend that PAEs stifle innovation by creating a climate of fear and uncertainty, discouraging businesses from investing in research and development.

The impact of PAEs on technology development is particularly concerning in the context of standard essential patents (SEPs). SEPs cover technologies that are essential for implementing industry standards, such as those governing mobile communications and video streaming. PAEs that hold SEPs can potentially exert significant control over the development and dissemination of new technologies.

Patent Assertion Entities have emerged as dominant players in the patent landscape, challenging the traditional roles of inventors and manufacturers.

While PAEs can play a legitimate role in enforcing intellectual property rights, their activities have also raised concerns about their impact on competition policy and innovation. Understanding the legal and policy frameworks governing PAEs is crucial for businesses, policymakers, and legal professionals seeking to navigate this complex field.

The ongoing evolution of the PAE landscape presents both challenges and opportunities for shaping a fairer and more competitive intellectual property ecosystem. By striking a careful balance between protecting intellectual property rights and promoting innovation, policymakers and regulators can foster a thriving and equitable technology market for the benefit of all.



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