DEVIL’S ADVOCATE:
An Examination into the Representation of
Disfavored Plaintiffs in District Court Patent Proceedings

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INTRODUCTION

Patent Trolls, known also as Non-Practicing Entities (“NPEs”) or Patent Assertion Entities (“PAEs”), make money by licensing patents that they lawfully own. Most trolls are not involved in extensive research and development efforts; instead, they acquire active patents and then monetize their patent portfolio by licensing the technologies in the patents or by filing lawsuits against potential infringers. Trolls may acquire these patents from bankrupt companies or may purchase the patents from companies who participate in research or development of the relevant technologies. In recent years, patent trolls have found enormous success and profit in monetizing their portfolios. Although the definition of what type of entity constitutes a “patent troll” has shifted, there are still strong negative feelings within the patent community regarding patent trolls.

Patent Trolls have a significant effect on patent litigation. In the past five years, Trolls have filed approximately 60% of all patent disputes in U.S. District Courts. Patent Trolls generally act within the high-tech space. Could the type of representation that they are receiving have an impact on how the patent community perceives trolls? A Patent Troll most often acts as the plaintiff in a lawsuit; would the patent community see Trolls differently if they were represented by a strong and well respected firms as opposed to general practice firm motivated entirely by a contingent fee?

The goal for this piece is to compile and report empirical data in combination with anecdotal evidence regarding if, and how, type of representation affects the patent community’s view of certain NPEs.

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I. WHAT IS A PATENT TROLL?

A. What is a Troll?

A Patent Troll, known more formally as a Non-Practicing Entity (“NPE”), Patent
Monetization Entity (“PME”),² or a Patent Assertion Entity (“PAE”),³ is challenging to define. United Patents, a company emboldened to fight any wrongdoing by Patent Trolls, defines NPEs as any company which derives the majority of its total revenue from patent licensing activities.⁴ The NPE business model often does not focus on researching, developing or commercializing patented inventions; instead, NPEs focus on buying and asserting patents through litigation or demand letters.⁵ NPEs often assert their patents against firms that have independently developed an infringing product unaware of the existence of the NPE’s patent.⁶ Thus, a NPE makes money by (1) maintaining a portfolio of patents that they lawfully own but often did not contribute to the creation of the original invention, (2) locating potential infringers in the marketplace, and (3) then filing lawsuits against those infringers or negotiating licensing deals with those infringers. Trolls exist in other spaces, including copyright and trademark, but the focus of this paper is specifically on patent trolls.⁷

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⁶ Brian T. Yeh, supra. See also FEDERAL TRADE COMMISSION, THE EVOLVING IP MARKETPLACE: ALIGNING PATENT NOTICE AND REMEDIES WITH COMPETITION 50–51 (2011)
⁷ Although they make significantly less of an impact, trolls also exist in both the copyright and trademark spaces. For example, in 2010, a Las Vegas startup called Righthaven purchased several copyrights to the Las Vegas Review Journal and sued at least 86 website owners for copyright infringement, seeking $75,000 in damages and forfeiture of the website domain names. See http://www.abajournal.com/news/article/attack_dog_group_buys_newspaper_copyrights_sues_86_websites/. See also: https://fightcopyrighttrolls.com, https://www.law360.com/articles/612235/don-t-underestimate-the-copyright-
Entities considered Trolls are often thought of in contrast to operating companies that derive most of their revenue from product sales or other services. Universities, non-profits, governmental agencies, and non-governmental organizations are also not typically thought of as Trolls.

B. How do we Classify Trolls?

The vast majority of Patent Trolls can be classified by their size. In this paper I will focus on three different sized entities; individual trolls, small company trolls, and, the largest group, patent assertion entity trolls. First, individual trolls are entities owned or controlled by an individual inventor who is primarily focused on monetizing inventions and patents developed and owned by that individual inventor. Three examples of individual entities as classified by Unified Patents who filed cases in the Patent Trial and Appeals Board (“PTAB”) between July 1, 2016 and August 31, 2017 include Arun Agarwal, Daniel L. Flamm, and T-Rex Property AB. Individual trolls accounted for 9.8% of all NPE litigation in District Courts in the United States in 2016. Unified Patents defines small companies as entities whose original activity was providing products and services but now is primarily focused on monetizing its own patent portfolio. Three exemplars of small company trolls, as classified by Unified Patents, who filed cases with PTAB between August 1, 2016 and August 31, 2017 include Alacritech, Inc., Creative Spark, LLC, and Realtime Data LLC. Small company trolls accounted for 6.6% of all


10 Unified Patents, www.unifiedpatents.com
13 Unified Patents, www.unifiedpatents.com
NPE litigation in District Courts in the United States in 2016. Patent Assertion Entities, the largest group classified, undoubtedly has the greatest impact on patent litigation and it is often PAEs that suffer from the poor reputation associated with trolls. PAEs are entities whose primary activity is licensing patents. PAEs acquire most of their patents from another entity. Three PAEs include IP Edge, LLC, Intellectual Ventures, and Monument Patent Holdings. Many PAEs are comprised of a number of entities under their control; for example, IP Edge LLC is comprised of 78 entities in a variety of spaces, including Carnition LLC in the e-commerce and software market sector and Voxathon LLC in the automotive sector. Intellectual Ventures LLC yields results for 281 entities for 2 ultimate parents. Entities include Intellectual Ventures Holding, Intellectual Ventures Fund 9 LLC, and Intellectual Ventures Holding 17 LLC. PAEs accounted for 83% of NPE litigation in District Courts in the United States in 2016.

II. WHY DOES EVERYONE HATE PATENT TROLLS AND WHAT EFFECT DO THEY HAVE ON PATENT LAW?

A. History of Patent Trolls

Patent Trolls emerged alongside the technology industry around the turn of the 21st century. Before Trolls dominated patent litigation, the majority of suits were between

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16 Unified Patents, www.unifiedpatents.com
17 Unified Patents, www.unifiedpatents.com
18 Unified Patents, www.unifiedpatents.com
19 RPX Insight, www.insight.rpxcorp.com, search for “IP Edge LLC” as an ultimate parent entity
20 RPX Insight, www.insight.rpxcorp.com, search for “Intellectual Ventures LLC” as an ultimate parent entity
21 RPX Insight, www.insight.rpxcorp.com, search for “Intellectual Ventures LLC” as an ultimate parent entity
competitor operating companies. Patent trolls have had the attention of Congress, the press, and the public since 2006, when a successful suit by Patent Troll NTP Inc. nearly shut down all Blackberry Wireless service in 2005. Trolls gained notoriety in claiming widespread and common technologies such as the internet and email capabilities. Moreover, Trolls recently have claimed exclusive ownership of pervasive technologies such as downloading videos from the web or any type of notification that a package has been shipped.

A 2011 empirical study of Patent Trolls revealed that Trolls lose 92% of merits judgments in court. An updated study by the same authors found that operating companies’ success rates in adjudicated patent cases is more than twice that of the success of Trolls. Specifically, operative companies were successful in 30.6% of their patent suits, whereas Trolls were only successful in 14.4% of their cases. However, it is important to recognize that approximately 90% of patent demands involving Trolls do not make it to trial; understanding that

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most defendants do not want to embark on risky and costly litigation, observers believe that
Trolls often offer to settle for amounts well below litigation costs to make the business decision
fairly easy for the defendant, however this more anecdotal than proven.31 Although scholars
cannot settle on a value, estimates for the cost that Patent Troll activity cost defendants and
licensees was estimated to be as high as $29.0 billion US dollars in 2011.32

B. How Did the Industry Arrive on “Trolls”?

The term “Patent Troll” was coined at Intel in 2001 as a label for litigants asserting
patents that they owned but did not practice.33 An Intel Corporation Vice President had been
sued after referring to such litigants as “patent extortionists” and settled on “Trolls” as less
defamatory.34 Intel coined the term “Trolls” in that, in terms of nursery rhymes and childhood
stories, trolls hide under bridges and wait for someone to attempt to cross a bridge to collect a
toll. Likewise, in patent law, “a troll hides under bridges, metaphorically speaking, waiting for
companies to produce and market products, that is, to approach and cross the bridge. The ugly,
evil troll then leaps up and demands a huge toll, that is, a licensing fee settling actual or
threatened patent litigation, litigation that could result in an injunction halting the product line.”35

In avoiding the derogatory connotation that “Trolls” might carry, Patent Assertion Entity is the term of choice for both Congress and the Federal Trade Commission. The term “Non-Practicing Entity” is too broad of a term, in that it inherently includes universities or other random investors. Thus, the accepted non-pejorative term is “Patent Assertion Entities,” yet the term “Patent Trolls” is widely used by those who follow patent law despite its lack of precision.

C. What Effect do Trolls Have on Patent Law?

1. Proportion of Patent Infringement Suits Filed by Patent Trolls

Trolls make an enormous impact on patent law; today, it is estimated that Patent Trolls file approximately 60% of all new patent disputes. This number has ballooned; studies show that the percentage of patent litigation asserted by plaintiffs who do not make their own products increased from approximately 25% in 2007 to almost 60% in 2012. Moreover, in the U.S. Government Accountability Office’s report, the estimated number of defendants sued by patent trolls more than tripled from 834 in 2007 to 3,401 in 2011 with no significant difference in the number of defendants pursued by operating companies.

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39 See Unified Patents, www.unifiedpatents.com, report that “approximately 60% of all new patent disputes filed in [U.S. District Courts] in Q3 2017 were attributed to NPEs.”

2. What Industries are Affected by Trolls?

“High-Tech” patents are for those technologies relating to software, hardware, and networking.\textsuperscript{44} Patents classified as “medical” patents are for technologies relating to pharmaceuticals, medical devices, or other health related technologies.\textsuperscript{45} Lastly, “other” industries can include technologies related to mechanical, packaged goods, sporting equipment, and any other area outside of high-tech and medical practicing.\textsuperscript{46} In examining all patent litigation filed between Q1-Q3 2017, the most patent suits filed in the District Courts were in the “High Tech” sector, with 1,631 filed, equating to 58.6%. 379 suits were filed in the medical industry, or 13.6%, with 773, or 27.8%, stemming from patents related to other industries.\textsuperscript{47} However, in contrast, nearly 90% of patent troll litigation between Q1 2017 and Q3 2017 involved High-Tech patents.\textsuperscript{48} Only 3.3% of patent litigation filed by patent trolls related to medical technologies, with the remaining 6.7% falling under other industries.\textsuperscript{49}

III. WHO REPRESENTS TROLLS?

A. Patent Assertion Entities

Litigation from Patent Assertion Entities accounted for 83% of NPE litigation in the United States in 2016, and thus PAEs play an enormous role in patent law and litigation. In reviewing who represents PAEs, I will evaluate a sample of four of the most litigious PAEs in the United States in 2016; these entities are IP Edge, LLC, Leigh M. Rothschild, Monument Patent Holdings LLC, and Sportbrain Holdings LLC. Each of these parent entities oversees numerous related entities, but the data below reflects representation of all of the related entities in all patent suits as plaintiff in the defined time period. Classification of each of these entities as PAEs comes from Unified Patent’s classification.

1. Representative Sample

This representative sample of Patent Assertion Entities is based on RPX’s data compiling the 10 NPEs who filed lawsuits against the most defendants in the first half of 2017. Of the top five, I will analyze four: IP Edge, LLC, Leigh M. Rothschild, Monument Patent Holdings, and Sportbrain Holdings LLC. Each of these entities plays a significant role in patent litigation in U.S. District Courts.

IP Edge, LLC

IP Edge, LLC considers itself an expert in “patent monetization.” Touting on its website that it has “generated over US $60M in licensing revenue to date,” IP Edge is a

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51 See Unified Patents, https://www.unifiedpatents.com/
53 IP Edge, LLC., About, http://www.ip-edge.com/about/
54 IP Edge, LLC, Services, http://www.ip-edge.com/services/
notoriously litigious entity. Broken down into 78 entities, IP Edge was the most litigious Troll of the 1st half of 2017, filing 25 campaigns against 163 defendants. Between August 1, 2016 and August 1, 2017, the 78 known entities of IP Edge filed a total of 442 patent cases as a plaintiff. The top 8 law firms that represented IP Edge in this timeframe are as followed: Corcoran IP Law, Ferraiuoli, Chaudhari Law, Zimmerman Weiser & Paray, Direction IP Law, Kizzia & Johnson, Stamoulis & Weinblatt, and Devlin Law Firm.

Leigh M. Rothschild

Leigh M. Rothschild ("Rothschild") believes that he is more personally suited to invent than to run businesses surrounding those inventions, yet still is the namesake for the litigious parent entity of 32 related entities. As an individual inventor, Leigh M. Rothschild boasts

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55 RPX Insight, www.insight.rpxcorp.com, search for “IP Edge LLC” as an ultimate parent entity. These entities not listed or defined on IP Edge’s website
57 LexMachina, www.lexmachina.com
60 RPX Insight, www.insight.rpxcorp.com, search for “Rothschild” as an ultimate parent entity. There is no discernable website for Leigh M. Rothschild’s business or most of the entities.
approximately 132 patents. A large portion of Rothschild’s entities are assignees for patents for which he was the inventor. Although Unified Patents lists Leigh M. Rothschild as a parent entity as a PAE, the structure of Rothschild is unique in that it is based on just Leigh M. Rothschild’s inventions and he might be misclassified.

Rothschild has received intense media scrutiny for past lawsuits; for example, in 2014 one of his namesake entities, Rothschild Storage Retrieval Innovations LLC, filed a suit against Apple Inc., Samsung Electronics Co. Ltd., and LG Electronics Inc., amongst others claiming that their technologies that allowed users the ability to share groups of photos based on their geographic locations infringed Rothchild’s invented and patented technology. In September of 2017, a Rothschild entity sued 16 defendants in the Eastern District of Texas for using QR Codes that allow customers to scan the QR Code to access more information on a website.

Between August 1, 2016 and August 1, 2017, the 32 known Rothschild entities filed a total of 63 patent cases as a plaintiff. Two firms represented the Rothschild entities in 98% of their lawsuits; these two firms are Kizzia & Johnson and Ferraiuoli. The Ni Law Firm, Watson, and Law Office of Brendan C. Roth each also represented an entity in 1 case.

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61 Google Patents, search for inventor “Leigh M. Rothschild” or “Leigh Rothschild.”
62 See Google Patents Assignees and Inventors for Reigan Inventions Llc; Ariel Inventions Llc; Rothschild Trust Holdings, Llc, and Lmr Inventions, Llc.
65 LexMachina, www.lexmachina.com
**Monument Patent Holdings**

Monument Patent Holdings, LLC ("Monument"), founded by “IP transaction and advisory firm” Dominion Harbor Enterprises, is a parent entity with 48 related entities.

Monument’s entities have sued in a variety of fields, including suing food chains Dunkin’ Brands Inc. d/b/a/ Dunkin’ Donuts, Chick-Fil-A Inc., and 7-Eleven, Inc., asserting patents focused on internet-based geographic location referencing systems and methods and the method of creating, maintaining, and using a unified geographic database.

Monument has also been active in the technology field, suing Lenovo (United States) Inc. and Motorola Mobility LLC for numerous patents related to the use of “enhanced wireless handsets” including direct handset-to-handset communication.

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71 See Blue Sky Networks, LLC v. Lenovo (United States) Inc., et al.
Between August 1, 2016 and August 1, 2017, the 48 related entities filed a total of 21 patent cases as a plaintiff. Monument used a total of six law firms for these lawsuits.

![Pie chart showing representation of Monument's cases from August 1, 2016 to August 1, 2017]

**Sportbrain Holdings LLC**

Sportbrain Holdings LLC (“Sportbrain”), with only two related entities, owns patents related to the fitness and sports industries. In the early 2000s, Sportbrain entered the fitness market with a “personal fitness assistant,” but was quickly outpaced in the field of wearable fitness tracking devices. In 2016, the company shifted its focus to enforcing its patent that describes a system for monitoring a user’s physical data (including heart rate and number of steps) via a portable device and then wirelessly transmitting the data from the device to a server that provides feedback to the user of that device.

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72 LexMachina, www.lexmachina.com  
74 RPX Insight, www.insight.rpxcorp.com, search for “Sportbrain Holdings” as an ultimate parent entity.  
Between August 1, 2016 and August 1, 2017, Sportbrain and its 2 related entities filed a total of 56 patent cases as a plaintiff. Sportbrain used only one law firm, Rabicoff Law, as representation for all of these lawsuits. Rabicoff Law did not represent any campaign defendants.

2. Trends Amongst Representation of PAEs

There are some notable trends in examining representation of PAEs. First, most of these plaintiffs use a variety of firms to represent their interests. Generally, these firms represent them and not their litigation opponents. In this sample of data, the exception is clearly Sportbrain, who uses Rabicoff Law exclusively as representation for all of its lawsuits. It is important to note, though, that Sportbrain is unique entity in light of its history as a company that invested in R&D, produced its own patented product, and has now moved into what LexMachina classifies as a “High-Volume Plaintiff” in asserting that patent against a large number of defendants. Sportbrain is also classified as a PAE by Unified Patents in light of its recent focus into asserting

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77 LexMachina, www.lexmachina.com
its patent. However, in light of its active role in the development of the patented technology, Sportbrain may be misclassified by Unified Patents.

In examining the sample of highly litigious PAEs, there are a few firms that appear multiple times. These are: Kizzia & Johnson, Stamoulis & Weinblatt, and Ferraiuoli. Kizzia & Johnson, formerly known as Brown Fox Kizzia & Johnson, represents both entities of IP Edge and Rothschild. Based in Dallas, Texas, Kizzia & Johnson has filed over 110 patent litigation suits in each of the past three years, with the vast majority in the plaintiff-friendly Eastern District of Texas. Of Kizzia & Johnson’s top five active clients by number of open cases, LexMachina classifies two, Coding Technologies, LLC and Rothschild Patent Imaging LLC, as High-Volume Plaintiffs. RPX identifies Coding Technologies, LLC RFID Technology Innovations, and Rothschild Patent Imaging LLC as entities of Rothschild. RPX identifies Publishing Technologies LLC under Parent entity Bradley D. Liddle. Thus, all five of Kizzia & Johnson’s largest clients are entities owned by noted PAEs. Kizzia & Johnson has recently come under fire for its representation of Rothschild Connected Devices Innovations LLC (“RCDI”) in a case against

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80 See also Section V, where Stamoulis & Weinblatt appears as the third most active plaintiff’s counsel in Q3 of 2017.
82 LexMachina, www.lexmachina.com, summary of Kizzia & Johnson
83 Kizzia Johnson PLLC, Services, http://www.kjpllc.com/services.html
84 LexMachina, www.lexmachina.com, summary of Kizzia & Johnson
85 LexMachina, www.lexmachina.com, summary of Kizzia & Johnson. Top 5 Active Clients by number of open cases as of November 21, 2017: Coding Technologies, LLC; Publishing Technologies LLC; RFID Technology Innovations, LLC; Rothschild Patent Imaging LLC; Techno Licensing LLC.
87 RPX Insight, www.insight.rpxcorp.com
89 RPX Insight, www.insight.rpxcorp.com
Garmin International. After filing a patent infringement case, Kizzia, on behalf of RCDI, quickly made a settlement offer before discussing any legitimizing facts. Although a Judge in the Eastern District of Texas ultimately denied the request, Garmin International attempted to file for attorney’s fees, stating that RCDI had followed this pattern of filing suits and then offering settlements before allowing any discussion of legitimacy of the patent or relevant facts.

Stamoulis & Weinblatt, an “Intellectual Property and Delaware Corporate Law” firm based in Wilmington, appeared in analyses of both Monument and IP Edge’s representation. Of Stamoulis & Weinblatt’s top five active clients by number of open cases, LexMachina classifies four, Blackbird Tech, Coding Technologies LLC, Guada Technologies LLC, Kaldren LLC, as High-Volume Plaintiffs. Moreover, Unified Patents classifies Blackbird Tech LLC as a PAE. Stamoulis & Weinblatt serves as local counsel in many cases, including highly controversial cases involving noted PAEs. For example, in the case of Blackbird Tech LLC v. Cloudfare, Inc., Stamoulis & Weinblatt served as local counsel and assisted Blackbird Tech’s in-house team in representing the company.

93 LexMachina, www.lexmachina.com, summary of Stamoulis & Weinblatt. Top 5 Active Clients by number of open cases as of November 21, 2017: Blackbird Tech LLC, Coding Technologies LLC, Guada Technologies LLC, Kaldren LLC, Bareholdtech LLC.
94 LexMachina, www.lexmachina.com, party summaries for Blackbird Tech, Coding Technologies LLC, Guada Technologies LLC, and Kaldren LLC.
95 See Unified Patents, https://www.unifiedpatents.com/. Although they are recognized as Patent Owners in PTAB suits, there is no classification of entity status for Guada Technologies LLC or Kaldren LLC. Neither Bareholdtech LLC nor Coding Technologies LLC is recognized on Unified Patents as having filed PTAB proceedings, and thus is not classified as an entity.
96 See Blackbird Tech LLC v. Cloudfare, Inc., 1:17-cv-00283, (D. Del.).
97 See Blackbird Tech LLC v. Cloudfare, Inc., 1:17-cv-00283, (D. Del.).
founded by two former Big Law partners, has received significant negative press as “one of the most prolific patent trolls in the United States.”

Although Blackbird Tech was built on the premise of having in-house expertise rather than using external patent counsel, Stamoulis & Weinblatt’s association with the noted troll likely has a negative effect on Stamoulis & Weinblatt’s reputation.

Ferraiuoli LLC, located in San Juan, Puerto Rico, primarily represents clients in patent matters. Unlike Kizzia & Johnson and Stamoulis & Weinblatt, who have top clients for whom they handle many cases, Ferraiuoli boasts a large client list with very few cases covered for each client. For example, in looking at the top five active clients by numbers of open cases as of November 21, 2017, the top client, Olive Shade LLC, has only three open cases and uses Ferraiuoli as representation for all three. In examining the top five active clients, LexMachina characterizes three of them as High-Volume Plaintiffs. Those three entities are Rothschild Digital Confirmation, LLC, Coho Licensing LLC, TainoApp, Inc. Moreover, Unified Patents classifies Coho Licensing LLC as an PAE in the high-tech sector. Although Ferraiuoli LLC is considered a powerful and influential law firm in Puerto Rico, they also serve as counsel for

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100 Ferraiuoli, About Us, http://www.ferraiuoli.com/about-us/
101 LexMachina, www.lexmachina.com, summary of Ferraiuoli LLC
102 LexMachina, www.lexmachina.com, summary of Ferraiuoli LLC. Top 5 Active Clients by number of open cases as of November 21, 2017: Olive Shade LLC, Rothschild Digital Confirmation, LLC, Coho Licensing LLC, Spider Search Analytics LLC, TainoApp, Inc.
103 LexMachina, www.lexmachina.com, summary of Ferraiuoli LLC.
106 See Unified Patents, https://www.unifiedpatents.com/. There is no information on Unified Patents with regards to the remaining top four clients.
patent cases throughout the country. For example, in the cases of Anuwave LLC v. Chase Bank LLC, filed in the District of Delaware and the District of Colorado, Ferraiuoli, along with co-counsel Stamoulis & Weinblatt, represented Anuwave.  

B. Small Company Entities

1. Representative Sample

There are 22 NPE Small Entities, as classified by Unified Patents, who had petitions filed against them in the Patent Trial and Appeals Board (“PTAB”) of the United States Patent and Trademark Office (“USPTO”) between August 1, 2016 and August 31, 2017. These 22 entities will serve as my sample for analysis. In all, these entities filed and acted as plaintiffs in a total of 58 patent cases in U.S. District Courts between August 1, 2016 and August 1, 2017. The category of “Other Firms” includes firms that each represented one of the small entities in a single case.

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109 Although this is not a truly random sample as there might be something that might distinguish these entities from plaintiffs whose patents were not challenged in the USPTO in the relevant time period, there is no reason to believe that the choice of litigation counsel would be different.

110 LexMachina, www.lexmachina.com

C. Individual Entities

1. Representative Sample

There are 11 Individual patent trolls, as classified by Unified Patents, whose patents were challenged by petitions in the Patent Trial and Appeals Board (“PTAB”) between June 1, 2016 and August 31, 2017.\(^{112}\) These 11 entities will serve as my sample for analysis.\(^{113}\) In all, these entities filed and acted as plaintiffs in a total of 35 patent cases in U.S. District Courts between July 1, 2016 and August 31, 2017.\(^{114}\) The category of “Other Firms” includes firms that each represented one of the small entities in a single case.\(^{115}\)

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\(^{113}\) Although this is not a truly random sample as there might be something that might distinguish these entities from plaintiffs whose patents were not challenged in the USPTO in the relevant time period, there is no reason to believe that the choice of litigation counsel would be different.

\(^{114}\) LexMachina, [www.lexmachina.com](http://www.lexmachina.com)

\(^{115}\) LexMachina, [www.lexmachina.com](http://www.lexmachina.com), Law Firm Analytics Report
2. Trends Amongst Representation of Small and Individual Entities

In examining trends related to the representation of the random samplings of both small and individual entities, two firms play prominent roles; these firms are Russ August & Kabat and Ward & Smith Law Firm. Russ August & Kabat, based in Los Angeles, has a team of 26 attorneys who handle intellectual property matters. Handling predominantly patent matters, of Russ August & Kabat’s top five active clients by number of open cases, LexMachina classified four as High-Volume Plaintiffs. These four entities are Realtime Data LLC, IPA Technologies Inc., XR Communications, LLC, and XR Communications, LLC dba Vivato Technologies HVP. Although Realtime Data LLC is recognized as a Patent Owner on Unified, there is no listing of entity type for Realtime Data or information as to the entity type of

117 LexMachina, www.lexmachina.com, summary of Russ August & Kabat. The top five active clients by number of open cases as of November 22, 2017 are: Realtime Data, IPA Technologies Inc., Arendi S.A.R.L., XR Communications, LLC, and XR Communications, LLC dba Vivato Technologies.
119 Realtime Data LLC, About, www.realtimedata.net/about.html
any of Russ August & Kabat’s top five clients.\textsuperscript{120} Russ August & Kabat was accused of misconduct in representing SPH America LLC in a suit against a Korean patent company Huawei Technologies, Co., LTD.\textsuperscript{121} Although the Judge ultimately denied the motion, the motion included harsh accusations of misconduct in hiding knowledge that the patent was invalid.\textsuperscript{122} However, Russ August & Kabat has had many recent major victories; for example, in December of 2016, a California federal jury found that Apple’s iPads and iPhones infringed two patents belonging to Russ August & Kabat’s client, Core Wireless Licensing SARL.\textsuperscript{123} This verdict has stood despite Apple’s argument that the jury misinterpreted the patents and calculated damages based on a flawed model.\textsuperscript{124}

Ward & Smith Law Firm,\textsuperscript{125} based in Texas, on its website touts its extensive experience in the U.S. District Court in the Eastern District of Texas.\textsuperscript{126} Having filed over 200 patent cases in 2012 and 2013 and over 100 patent cases in 2014 and 2015, Ward & Smith Law Firm is prominent in patent litigation.\textsuperscript{127} Of Ward & Smith Law Firm’s top five active clients with open cases as of November 22, 2017, LexMachina classifies all five as High-Volume Plaintiffs.\textsuperscript{128}

\textsuperscript{120} See Unified Patents, \url{https://www.unifiedpatents.com/}. There is no information on Unified Patents with regards to the remaining top four clients.
\textsuperscript{125} Known as “Ward, Smith, & Hill, PLLC” on their website. LexMachina offers more than 30 ways that Ward & Smith Law Firm has appeared in PACER.
\textsuperscript{126} Ward, Smith & Hill, PLLC, \url{https://wsfirm.com}
\textsuperscript{127} LexMachina, \url{www.lexmachina.com}, summary of Ward & Smith Law Firm. Cases Filed by Year.
\textsuperscript{128} LexMachina, \url{www.lexmachina.com}, summary of Ward & Smith Law Firm. The top five active clients by number of open cases as of November 22, 2017 are: Uniloc Luxembourg S.A., Uniloc USA, Inc., Realtime Data
Ward & Smith Law Firm has received significant press for securing enormous verdicts against technology giants like Apple\textsuperscript{129}, and recently received press for its involvement in Allergan, Inc v. Teva Pharmas., USA, Inc., where Allergan sold its patent for blockbuster dry-eye drug Restasis to the Saint Regis Mohawk Tribe.\textsuperscript{130} Ward & Smith represented Plaintiff Allergan, Inc. along with lead counsel from Fish & Richardson, P.C.. Moreover, the founder of the firm, T. John Ward Jr., is the son of noted former U.S. District Judge for the Eastern District of Texas, T. John Ward.\textsuperscript{131} Judge Ward established the “rocket docket” handling of intellectual property matters in the Eastern District of Texas in 2001; by expediting the handling of intellectual property disputes combined with notoriously plaintiff-friendly juries, the Eastern District of Texas became the most popular venue for patent litigation in the country.\textsuperscript{132} After retiring from the bench, Judge T. John Ward joined Ward & Smith, leading the firm’s litigation practice.\textsuperscript{133}

It is noteworthy that, in comparing representation of individual and small entities with the representation of PAEs, there are likely more firms acting as local counsel. For example, Ward & Smith is local counsel in many of its cases, just as it is in \textit{Allergan Inc. v. Teva Pharmaceuticals}.\textsuperscript{134} However, when examining the large PAEs, there are less firms that represent local counsel. Large PAEs might have different business models in that they sue in

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\textsuperscript{132} \textit{See also TC Heartland LLC v. Kraft Foods Group Brands LLC} for May 2017 Supreme Court decision establishing changed venue rules for patent disputes in the United States.


notoriously “troll-friendly” districts including the Eastern District of Texas and use lawyers in those areas and who are intimately familiar with those courts as lead counsel. However, in light of T.C. Heartland, there will inevitably be a shift in venue that will bombard the patent savvy District of Delaware, where an enormous number of companies are eligible to face suit.

Likewise, small or individual entities may be more prone to use counsel that they are comfortable with in their own metropolitan area as lead counsel and use local counsel only because they are necessary. Moreover, in examining why even the local counsel might be different, it could first be differences in cost and volume.

By using four of the most litigious PAEs in both 2016 and 2017, I may have skewed results because they are remarkably litigious entities. However, in using very litigious entities, it is my hope that because of the sheer volume of cases that they file they will offer a representative sample of firms who act on behalf of PAEs.

IV. WHAT FIRMS ARE MOST ACTIVE PLAINTIFF’S COUNSEL IN PATENT CASES?

A. The Most Active Plaintiff’s Counsel

![Graph of Most Active Plaintiff's Firms Filing Patent Disputes in Q3, 2017]
The above graph represents the law firms that filed the most patent disputes in U.S. District Court in Q3, 2017. The list is predominantly full of intellectual property boutiques filing on behalf of their patent troll clients. For example, the top three firms, Stamoulis & Weinblatt, Devlin Law Firm, and Rabicoff Law, appear in my analysis above as representatives for four of the most litigious PAEs in the nation.

In evaluating whether these firms primarily represent patent trolls or whether they represent other groups of clients, I examined the top three active clients by number of open cases for each law firm according to LexMachina as of November 22, 2017. If the top 3 clients were classified as High-Volume Plaintiffs on LexMachina or NPEs on Unified Patents, I classified them as trolls.

<table>
<thead>
<tr>
<th>Firms that Primarily Represent Patent Trolls</th>
<th>Firms That Don’t Primarily Represent Trolls</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Stamoulis &amp; Weinblatt</td>
<td>- Morris Nichols Arsht &amp; Tunnell</td>
</tr>
<tr>
<td>- Devlin Law Firm</td>
<td>- Saul Ewing Arnstein &amp; Lehr</td>
</tr>
<tr>
<td>- Rabicoff Law</td>
<td></td>
</tr>
<tr>
<td>- Kizzia &amp; Johnson</td>
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<tr>
<td>- Ni Law Firm</td>
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<td>- Nelson Bumgardner</td>
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<tr>
<td>- Corcoran IP Law</td>
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<tr>
<td>- Chaudhari Law</td>
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</tbody>
</table>

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137 See LexMachina, [www.lexmachina.com](http://www.lexmachina.com).

B. Who Else do the Top 3 Active Plaintiff’s Counsel in Q3 2017 Represent?

The top 3 most active plaintiff’s counsel in Q3 2017 were Stamoulis & Weinblatt, who represented 78 plaintiffs in patent litigation, Devlin Law Firm, who represented 55 plaintiffs in patent litigation, and Rabicoff Law, who represented 48 plaintiffs in patent litigation. ¹³⁹

1. Stamoulis & Weinblatt

[redacted for brevity]

2. Devlin Law Firm

[redacted for brevity]

3. Rabicoff Law

[redacted for brevity]

C. Who Do the Firms That Do Not Primarily Represent Patent Trolls Represent?

1. Morris, Nichols, Arsht & Tunnell

[redacted for brevity]

2. Saul Ewing Arnstein & Lehr

[redacted for brevity]

V. DOES REPRESENTATION AFFECT PERCEPTIONS OF PATENT TROLLS?

Representation likely does not have an impact on any negative perceptions of patent trolls; likewise, the ill-will is likely associated with the general patent troll business model. The

trend with representation seems to fall with sizes of entities; whereas Kizzia & Johnson tended to represent larger PAEs, both Ward & Smith and Russ August & Kabat play significant roles in the representation of small and individual entities. Moreover, in attempting to classify patent trolls, some are still hesitant to focus on business model and instead examine volume of suits. For example, in contrast to Unified Patents who openly classifies entities as patent trolls and then breaks them down by size, LexMachina classifies entities as “High-Volume Plaintiffs” based purely on the frequency and volume of filed suits.

Moreover, in examining the most active patent plaintiff’s counsel, there is a stark contrast between those firms who primarily represent Trolls, including Stamoulis & Weinblatt, and those firms who primarily represent operating companies, including Saul Ewing Arnstein & Lehr. Saul Ewing is unique in that they are not a specialized IP firm, whereas the vast majority of other firms analyzed throughout the paper focus in IP or the vast majority of their matters are within IP.