



## Patent Trolling in India: A Threat to Innovation?

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### Abstract

As Intellectual Property (IP) frameworks spread worldwide, the growing concern over patent trolling is becoming more prominent. Although India has not experienced patent trolling yet, its presence in other countries like the US and China, along with fintech, AI, and pharmaceuticals, and NPEs (Non-Practicing Entities) and patent monetization, increases possible risks in India. This study examines whether the pre-existing framework of the Patents Act, 1970, is resilient enough to face as well as prevent the risks in the future and assesses the factors that may allow patent trolling in India. The paper also examines material disputes dealt with by the Indian courts and suggests specific changes. The study makes the case that India can maintain an innovation-driven patent system while preventing opportunistic enforcement from spreading by using this combined strategy.

**Keywords:** Patent trolling, artificial intelligence (AI), intellectual property (IP), fintech, judicial oversight.

### Introduction

Innovation often starts with small ideas that later become major technological breakthroughs. From the early invention of simple lenses to today's Global Positioning System (GPS), precision medicine, and digital communication technologies, progress depends on sharing knowledge. Patent trolls are also called non-practicing entities (NPEs), patent assertion entities,

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or patent sharks. They aim to take advantage by acquiring patents, not to innovate or commercialize inventions, but to create revenue through litigation or threats of licensing<sup>2</sup>.

Generally, they target obvious patents, intimidating companies to settle instead of defending against expensive legal claims. Small firms and Start-ups are often at risk of weak claims, which can be very costly. Though rare exceptions do exist in which trolls help individual inventors against large corporations, the overall effect is largely negative since it diverts resources from research and creates a chilling effect on innovation.

Over the past twenty years, research on patent trolling has expanded quickly, particularly in areas where litigation-based monetisation has become common. The United States, where the phenomenon initially gained widespread attention, is where much of the foundational research originates.

Early research by academics like James Bessen, Michael Meurer, and Mark Lemley<sup>3</sup> demonstrated how NPEs used ambiguous and excessively broad software patents to demand settlements, impose high costs, and discourage investment in R&D. These studies served as the foundation for larger discussions regarding litigation reform and patent examination standards. It also demonstrated a direct connection between low-quality patents and the growth of opportunistic enforcement<sup>4</sup>.

Much research has also been conducted on the American policy response. The America Invents Act<sup>5</sup>, stricter pleading requirements, fee-shifting clauses, and state-level demand-letter laws have all been examined by commentators as ways to curb abusive behaviour.

Another important field of study has been case law. Enforcement strategies of NPEs have been influenced by decisions such as *eBay v. MercExchange*<sup>6</sup> and *NTP v. RIM*<sup>7</sup>, which have been widely discussed for restricting automatic injunctions and defining extraterritorial reach. This

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<sup>2</sup> Introduction to Patent Trolling, *available at*: <https://www.investopedia.com/terms/p/patent-troll.asp> (last visited on November 15, 2025).

<sup>3</sup> *How Judges, Bureaucrats, and Lawyers Put Innovators at Risk* (Princeton University Press 2008); Mark A. Lemley, 'Are Universities Patent Trolls?' (2007) 18(3) *Fordham Intellectual Property, Media & Entertainment Law Journal* 611.

<sup>4</sup> 'It's Time to Stand Up to Patent Trolls', *WIPO Magazine*, *available at*: <https://www.wipo.int/en/web/wipo-magazine/articles/its-time-to-stand-up-to-patent-trolls-39077> (last visited on November 15, 2025).

<sup>5</sup> Leahy-Smith America Invents Act 2011, Pub L No 112-29, 125 Stat 284.

<sup>6</sup> *eBay Inc v MercExchange, LLC*, 547 US 388 (2006).

<sup>7</sup> *NTP, Inc v Research In Motion Ltd*, 418 F 3d 1282 (Fed Cir 2005).

collection of research demonstrates that the early growth of patent trolling in the United States was fuelled by a combination of weak patents, high litigation costs, and extensive remedies.

Research on China presents a divergent perspective. Research analysing thousands of infringement cases indicates that while NPE is substantial, the majority of Chinese NPEs are individual inventors or small enterprises, rather than structured PAEs (Patent Assertion Entities). Researchers note that troll-like behaviour, such as filing lawsuits repeatedly and not enforcing them right away, has been seen early on, especially in fast-moving fields like electronics and telecom. However, China has a pro-patentee environment, which means that the government and the system favour patents. In cases of patent infringements, the courts award serious damages. Technologies essential to the standard are growing rapidly. Therefore, all these factors could make companies more likely to assert their patents aggressively in the future.

The academic research on India is still limited to date, but it is expanding continuously when compared to the United States and China. The structural safeguards of the Patents Act, such as compulsory licensing, the working requirement of Section 146, and limitations on software patents of Section 3(k), are the object of early research. These characteristics, according to academics, have shielded India from widespread troll activity. However, more recent writing highlights new vulnerabilities brought about by India's growing patent portfolio, the emergence of fintech and high-tech industries, and the government's drive for patent monetization. Case studies like *Spice Digital and Samsung v. Somsasundaram Ramkumar*<sup>8</sup> have been used to show how Indian courts examine dubious patents and stop their abuse.

A growing body of research also looks at international strategies like the Internet of Things (IoT) network, FRAND commitments, and defensive patent pools that are intended to combat trolls. Researchers stress that India may be drawn more and more into assertion trends that come from outside its borders as patent markets become more globalized.

Three overarching themes are established by the current body of research. First, settings with lax examination requirements, a large number of software patents, and expensive litigation are conducive to patent trolling. Second, when patent markets grow and enforcement becomes financially appealing, even robust legal protections may be undermined. Third, India's safeguards have been effective thus far, but the nation's evolving innovation landscape calls for more vigilant observation and proactive change. This paper expands on the areas of inquiry by

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<sup>8</sup>*Spice Digital Ltd and Samsung Electronics Co., Ltd. v. Somasundaram Ramkumar*, 2011 SCC OnLine Mad 2733.

examining early warning indications within India's patent ecosystem and analysing whether current frameworks will be sufficient in the forthcoming ten years.

There are far-reaching consequences of patent trolling for the economy and policy, including innovation, market dynamics, and legal statutes. In the United States, the patent troll companies send wide-ranging demand letters to businesses, asserting claims of infringement of patents even in cases of negligible to zero grounds. These letters often coerce companies to settle quickly. Here, the major complication is that even though the claims are baseless, the cost of litigation remains higher than the cost of settlement. This practice diverts significant financial and managerial resources from research and product development, affecting a fundamental part of innovation.

When loud public protests, media interaction happened, and industries took a stand for change, then the lawmakers and courts finally stepped in and took action. The development of reforms, including the America Invents Act, along with state-level laws regulating abusive and coercive demand letters, was introduced to increase the level of transparency, discourage trivial claims, and protect businesses from unsolicited litigation costs.

By contrast, China offers a different but informative case. One study of more than 3,400 patent infringement cases found evidence that some 44 percent involved NPEs. The vast majority of such NPEs, however, were individual inventors or otherwise small entities rather than organised patent assertion companies, highlighting a unique ecosystem of innovation-driven enforcement. The study identified early signs of troll-like behaviour, such as serial litigation against smaller firms and delayed enforcement tactics, showing that even in jurisdictions with strong pro-patentee policies, exploitative practices can arise. These patterns suggest that patent trolling is not confined to any single legal environment but can develop incrementally in virtually any system where patents are valuable, market rivalries are keen, and enforcement mechanisms allow for opportunistic actors<sup>9</sup>.

India has not faced big problems related to patent trolling because its laws have safeguards that prevent such allegations. While the Patents Act of 1970 does not refer to patent trolls, it provides obligations that make trolling difficult in practice. Under Section 146(1), for instance, owners have to show their inventions are actually worked in India. If a patent remains

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<sup>9</sup> R. Palangkaraya and E. Webster, "Patent Assertion Entities in the Pharmaceutical Sector: A Threat to Innovation?", (2021) 59 *Computer Law & Security Review* 105491, available at: <https://www.sciencedirect.com/science/article/abs/pii/S0267364920301229> (last visited on November 16, 2025).

unutilized for three years, it may be opened for compulsory licensing, which removes the incentive to stockpile patents for purely enforcement purposes.

Patentees also must file an annual statement explaining how a patent is utilised under Section 146 (2) of the Patents Act, 1970<sup>10</sup>. If patentees fail to do so, they may be fined, and in some cases, may face criminal penalties, which prevents entities that hoard inactive patents just to use them later in lawsuits.

Apart from these conditions, India's patent system is built in a way that prevents misuse. In general, software inventions usually cannot be patented in India. So, the overly broad patent claims that are often exploited by patent trolls in other countries are unlikely to succeed here. The post-grant opposition system provided for under Section 25(2) allows competitors and the public to oppose weak or overbroad patents within one year of grant. Compulsory licensing provided under Section 92 ensures that patents are put to a social use in such areas as pharmaceuticals, where non-working negatively affects access and affordability. Courts can also be assisted under Section 115 in appointing scientific advisors to assist in comprehending technical issues, thereby aiding in avoiding misuse of overbroad or ambiguous claims in litigation<sup>11</sup>.

The practical application of such safeguards is demonstrated by cases such as *Spice Digital and Samsung v. Somasundaram Ramkumar*<sup>12</sup>. They show that India's patent system successfully filters out subpar claims and provides a strong defence against the risk of harsh enforcement, guaranteeing that the system rewards real innovators rather than speculative assertion entities.

Despite these protections, India's quickly growing patent ecosystem may create vulnerabilities. In addition to the rise in patent applications, the growth of high-tech industries like artificial intelligence (AI), semiconductors, and software-related businesses, as well as patent aggregation, create conditions that may lead to troll-like behaviour. These developments pose a crucial question for stakeholders and policymakers: could patent trolling start to jeopardize innovation, take funds away from R&D, and undercut the patent system's intended incentives as India's technology landscape develops?

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<sup>10</sup> Patents Act 1970, s 146(2); Patents Rules 2003, r 131.

<sup>11</sup> K. Nagamothu, "Patent Trolls: Navigating the Fine Line Between Innovation and Exploitation in India's Legal Landscape", *Intepat IP Blog*, available at: <https://www.intepat.com/blog/patent-trolls-navigating-the-fine-line-between-innovation-and-exploitation-in-indias-legal-landscape> (last visited on November 18, 2025).

<sup>12</sup> *Spice Mobiles Ltd v Somasundaram Ramkumar*, [2012] SCC OnLine IPAB 100 : [2012] IPAB 99, Intellectual Property Appellate Board.

This essay contends that although India has not yet experienced widespread patent trolling, the nation's expanding patent filings, quick technological development, and growing intellectual property aggregation create an environment where abusive practices may occur. In a rapidly changing innovation ecosystem, current protections like the exclusion of software patents, post-grant opposition under Section 25(2)<sup>13</sup>, mandatory licensing under Section 92<sup>14</sup>, and the appointment of scientific advisors under Section 115<sup>15</sup> may be insufficient. Based on an analysis of the domestic legal framework, sector trends, and international experiences, India's patent system requires anticipatory measures, clear policies, and perpetual monitoring, rather than unsolicited litigation costs, to ensure that it remains a tool for supporting genuine technological advancement.

### **What is Patent Trolling? A Global Perspective**

Patent trolling is a practice of obtaining patents beforehand for the purpose of enforcing them against the alleged infringers, instead of utilizing them to create goods and services for public welfare and innovation. It has been observed more in environments where there is an aggressive enforcement of patents on companies for their own financial benefits, like the United States. Without the intention of advancing technology, their main goal is to profit from licensing fees or lawsuit settlements.

#### **i. Non-Practicing Entities (NPEs) and Patent Assertion Entities (PAEs)**

NPEs are entities, universities, or companies that prioritize making money off of patents through litigation or licensing over creating goods or services. Although many NPEs have been labeled as "patent trolls," some of them legitimately assist research institutions and inventors in safeguarding their inventions and making money from patents that might otherwise go unused. These organizations can facilitate the dissemination of technology and promote additional innovation by bridging the gap between invention and commercialization.

There are generally three types of NPEs. Holding companies acquire patents in emerging or high-demand sectors, licensing them or taking legal action against infringers. Examples include

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<sup>13</sup> Patents Act, 1970 (India), s 25(2).

<sup>14</sup> Patents Act, 1970 (India), s 92.

<sup>15</sup> Patents Act, 1970 (India), s 115.

Intellectual Ventures, which owns patents for innovations such as waterless washing machines and medical devices, and Acacia Technologies, which licenses patents on behalf of inventors. Usually, research organizations and universities create valuable patents but lack the resources to commercialize them. A technology-transfer office handles patent licensing or sales, as seen in institutions like South Korea's Electronics & Telecommunications Research Institute and Taiwan's Industrial Technology Research Institute. Patent pools are collective arrangements where multiple companies pool their patents related to a specific technology or standard and share licensing. This approach decreases infringement risks, reduces transaction costs, and encourages wider access to essential technologies. Examples include Sisvel and Avanci, NPEs that oversee standard-essential patents in telecommunications and connected devices.

Traditional functions of NPE entail the identification of prospective licensees, the acquisition of patents with legal and commercial values, and ensuring the patents protect basic technology standards. Advanced tools, such as PatSeer, consolidate global patent data, ownership information, and litigation histories that help the NPE make better-informed decisions and manage portfolios more effectively<sup>16</sup>.

PAEs are a type of NPEs and are often called “patent trolls”. They become patent trolls the moment they use patents only to pressure companies into paying settlements or licensing fees. The focus on using patents to make money and not promote innovation or invention in the market. But not all PAEs are patent trolls. Some genuinely fairly use their patents and help inventors make money from their patents. There is a very thin line between the fair use and the exploitation of patents.

Various mechanisms have been developed to deal with the risks created by opportunistic PAEs. LOT Network allows member companies immunity in lawsuits from PAEs if their patents are sold or otherwise transferred to such entities. Experienced judges, lower litigation costs, and clear damages rules help European jurisdictions keep speculative claims at bay. These various safeguards underscore the broader institutional and legal frameworks that underpin the delicate balance between patent enforcement and the protection of genuine innovation<sup>17</sup>.

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<sup>16</sup> What Are Non-Practicing Entities (NPEs) and How Do They Operate?, *PatSeer*, available at: <https://patseer.com/what-are-non-practicing-entities-npes-and-how-do-they-operate/> (last visited on November 22, 2025).

<sup>17</sup> What Are Patent Assertion Entities (PAE) and How Can You Protect Against Them?, *HCR Law*, available at: <https://www.hcrlaw.com/news-and-insights/what-are-patent-assertion-entities-pae-and-how-can-you-protect-against-them/> (last visited on 28 November 2025).

Overall, both NPEs and PAEs are complicated in their own ways. If they act in a responsible way, they help inventions reach the market and be used widely and efficiently. But when they act only to take advantage for their own good, they become “patent trolls”. The key here is to create a balance in the market and understand how to operate them effectively and efficiently, because that knowledge will make a positive impact on the market.

## ii. Legal Initiatives in U.S. Case Law and Public Interest

Courts in the United States have played a key role in setting boundaries on how patents can be enforced. Their decisions have helped protect patent owners and the public at large. This ensures that patent trolls do not get the advantage from the loopholes by slowing down the innovation and pressuring businesses.

The Federal Circuit considered, in *NTP, Inc. v. Research In Motion Ltd.*<sup>18</sup>, the alleged infringement of patents related to integrating email systems with defendant RIM's BlackBerry™ devices. The court made clear that patent claims can cover both wireless and wired systems and that using this patented method within the United States can serve as infringement, even when components of that system are out of the country. More importantly, however, this case established a significant precedent on the tighter territorial limits imposed on method claims. Second, the judgment shows how the courts can apply the broad reading of a patent claim and still narrow the scope of infringement liability. This has impacted subsequent litigation strategies and patent portfolio management.

The Supreme Court discussed in *eBay Inc. v. MercExchange*<sup>19</sup> the entitlement of non-practicing entities to permanent injunctions. It stressed that NPEs do not have an automatic right to such remedies, and courts must consider: irreparable harm on the plaintiff, whether monetary damages are adequate, the balance of hardships between parties, and the interest of the public. The decision opened the door for alternatives to injunctions, with ongoing royalty payments being a common option when a patentee is not commercially exploiting the invention. The Court emphasized that equitable relief was preferred over automatic injunctions, pointing out that patent enforcement needs to take into account larger economic and public effects as well, and cannot let opportunistic litigation unduly hinder market competition.

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<sup>18</sup> *NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282 (Fed Cir 2005).

<sup>19</sup> *eBay Inc. et al. v. MercExchange*, L.L.C., 547 U.S. 388 (2006).

These cases make it clear that U.S. courts play an important part in detailing the limits to patent enforcement, particularly regarding non-practicing entities. These decisions set boundaries on damages, territorial scope, and equitable relief to offer protection for the real patent holders while at the same time providing checks against predatory practices by non-practicing entities that could stifle innovation.

### **iii. Mechanisms of Patent Troll Operations**

PAEs, often referred to as patent trolls, apply the economic value of patent rights instead of making or selling products or advancing any technology in their own right. They extract value from patent holdings without engaging in innovation by following a six-step approach in their activities.

First, patent trolls acquire patents from companies even if they are bankrupt or financially unstable, integrating the intellectual property that may have potential market value. Second, they conduct thorough research on companies and examine those that are most likely to have products or services that might infringe on the acquired patents and the businesses whose litigation costs may exceed the settlement costs. Third, when they have found the specific type of company, they issue demand letters threatening and pressuring the companies for settlement, often emphasising the risk and expense of opportunistic litigation.

The fourth step is to exploit the advantage of legal defence costs that are higher than the settlement costs of fighting a lawsuit in court. Fifth, when the targeted companies are unwilling to settle, through increased court time and legal involvement, the trolls increase the pressure and costs on them. Finally, this is how these trolls make a trap for the companies without contributing to product development, research, or public knowledge; they generate revenue merely from settlement and licensing fees.

This sequence imposes economic costs on companies and has a deterrent effect on innovation by diverting resources away from research and development. It is therefore crucial for policy-makers and businesses to understand these mechanisms to curb the risks imposed by NPEs.

#### iv. Reasoning Behind Declined Innovation

The innovation ecosystem is significantly hindered by patent trolling. The threat of litigation is emerging as companies and independent inventors are inhibited from undertaking new ideas or entering nascent markets. Startups and smaller businesses often postpone or give up on projects because of the possible expenses and dangers involved in defending patent claims. Patent trolling reduces resources that are available for R&D. Businesses spend money on legal defences, settlements, or licensing fees instead of investing in new product development, technological advancements, or market expansion. These diverted funds slow innovation and decrease overall economic efficiency.

Furthermore, it becomes more challenging for the real innovators to compete and even survive in the market due to the extra expenses imposed by patent trolls, which distorts competition. Even though there are some NPEs that are operating legally and assist inventors by licensing their patents and consequently exploiting innovation commercially. However, the overall effect of opportunistic patent assertion is extremely adverse. In this case, patents undermine the fundamental purpose of the IP framework by using litigation instead of technological advancements<sup>20</sup>.

### India's Patent Landscape, Challenges, And Impact

India's patent system is adhering to international IP standards while becoming more concentrated on promoting domestic innovation. In addition to protecting the inventor, the relevant legal framework guarantees that inventions are used practically for the benefit of the economy as a whole. The efficiency, quality, and general efficacy of the patent system are still determined by certain structural problems, despite efforts to improve this area.

#### i. Strengths

**Encouraging Innovations:** Because patents give inventors temporary exclusive rights, they are encouraged to devote time and resources to research and development. Startups and small businesses can benefit from initiatives like Startup India and the SIPP, which offer professional

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<sup>20</sup> Patent Trolls and Their Impact on Innovation and Economic Growth, *Sandalaw Offices*, available at: <https://sandalawoffices.com/patent-trolls-and-their-impact-on-innovation-and-economic-growth/> (last visited on November 23, 2025).

assistance, expediency, and fee reduction. By lowering entry barriers for innovators, these programs allow small businesses to effectively compete with large corporations in the development and marketing of new technologies.

**Working Requirement Form 27:** Indian law mandates that patent holders report regularly whether their patents are being "worked" or used in India. This has been done to make sure that granted patents don't do nothing useful. For example, if a pharmaceutical company has a patent for a medication that can save lives, it must either manufacture the medication in India or provide licensing information if it does not. As a result, this clause encourages the use of strategic patents to stifle innovation in important industries and discourages patent hoarding<sup>21</sup>.

**Compulsory Licensing:** In certain circumstances, such as national health emergencies, third parties may use patented inventions under the Indian patent system without the owner's consent. This strategy strikes a balance between the right to patent protection and the public interest. Based on the idea that patents would not impede the greater public good, one such well-known application involved pharmaceuticals that lowered the cost of necessary medications, especially life-saving HIV medications.

**Low Damages and Slow Litigation:** These factors serve as a buffer for startups and small businesses, even though they frequently act as disincentives for enforcement. These companies don't have to worry about aggressive lawsuits from more cunning patent holders when they innovate and enter new markets.

**Public Sector Patent Monetization:** The Indian government promotes the commercialization of patents created in publicly funded research institutions. In order to commercialize these innovations from research labs and universities, it promotes technology transfer and licensing agreements. By doing this, the government prevents the waste of publicly funded research and instead encourages economic growth.

## ii. Weaknesses

**Uncertain Patent Standards:** Software and business-method patents in India still have ambiguous patentability requirements. In fields like artificial intelligence (AI), fintech, and other

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<sup>21</sup> Positioning India in the Global Patent Ecosystem, *Conventus Law*, available at: <https://conventuslaw.com/report/positioning-india-in-the-global-patent-ecosystem/> (last visited on 25 November 2025).

software-related fields, innovators might not know what is patentable. Investment may be deterred, and cases that are on the verge of patentability may give rise to legal disputes.

**Inconsistent quality of examination:** A wide range in the abilities and availability of patent examiners can lead to weak, excessively broad, or excessively narrow patents. A patent application that shouldn't be approved because of prior art, for example, might still pass the examination in the absence of sufficient examiner resources, raising the possibility of disagreement or opportunistic litigation.

**The weakness of the opposition system:** Although post-grant opposition is available, the mechanisms for contesting patents are relatively few and underutilized, which reduces the ability to weed out inferior patents that could otherwise impede future innovation or prevent competitors from entering the market through unfair means. This is the root of the opposition system's weakness<sup>22</sup>.

**Backlogs in administration:** Despite efforts to digitize and reform related processes, patent applications often face considerable delays before examination and grant. This backlog delays commercialization, market entry, and practical impact.

### **Early Warning Signs of Future Patent Trolling in India**

In addition to general warning indicators, a number of trends in India's changing intellectual property landscape point to potential future developments in patent trolling. A greater pool of assets that can be targeted or traded has been made possible by the steady increase in patents in software, fintech, pharmaceuticals, and artificial intelligence. In addition to domestic companies, foreign assertion entities seeking opportunities in Asian markets, where enforcement costs may be lower and legal proceedings may take longer, are beginning to show interest in this expanding patent stock.

Some Indian companies have begun to act more like non-practicing entities, which is a more subtle but significant change. These businesses purchase dormant or underutilized patents from failing startups, established tech firms, or inventors who are unable to make their creations

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<sup>22</sup> India's Patent Landscape: Status, Challenges and Way Forward, *IAS Gyan*, available at: <https://www.iasgyan.in/daily-current-affairs/indias-patent-landscape-status-challenges-and-way-forward> (last visited on 26 November 2025).

profitable. Although this pattern is not harmful in and of itself, it can become problematic if acquisition is followed by aggressive licensing demands instead of true innovation.

Recent disputes in fields like digital payments and Aadhaar-linked technologies demonstrate how industries with fast technological and regulatory development can be hotspots for assertion activity. For example, fintech is vulnerable to broad or overlapping patents because it sits at the intersection of software, data, and financial regulation.

Government programs that encourage patent monetization and the growth of patent markets are encouraged for commercialization, but they may unintentionally lead to speculative trading. There will be more strategic purchasing to enforce rather than to innovate as patents gain value on their own. In such a setting, startups are especially vulnerable. The majority of them operate in highly competitive innovation spaces, frequently operate on thin margins, and rely on ongoing funding. They may be persuaded to make speedy settlements by a single demand letter or threat of licensing to prevent losing investor trust or depleting their limited funds.

When combined, these patterns do not yet indicate that trolling is pervasive in India, but they do indicate the structural circumstances that could lead to its emergence. More clear-cut guidelines are required to guarantee that the developing patent ecosystem continues to encourage innovation as opposed to exploitation, surveillance, and stricter examination criteria.

## **Recommendations For India**

India can actually alleviate and counteract patent trolling by elevating the general quality of patents, securing operational protections, and promoting actual commercial use of patented technologies. The country is lucky to have many built-in safeguards, but a few targeted adjustments would greatly improve the system's ability to withstand abuse. When taken as a whole, these can ensure that patents encourage innovation rather than being utilized as instruments of coercion and litigation.

### **i. Legal and Policy Reforms**

After all, the best defence is built on stronger patents. Patents that are too general or poorly written are less likely to be overlooked thanks to ongoing, high-quality review. It would be advantageous to have more thorough training for examiners, more accurate inventive step

guidelines, and uniform practices across patent offices<sup>23</sup>. Software-adjacent technologies in particular need to be examined more closely because assertion entities have often exploited ambiguous or function-based claims<sup>24</sup>. When the system only allows well-defined, genuinely innovative inventions, trolls find the entire ecosystem less appealing.

**Strengthen pre-grant and post-grant opposition:** Opposition procedures are one of India's best ways to filter out weak patents, but they need more technical expertise and efficiency. The creation of a more specialized Opposition Board with more access to scientific information would lead to better decision-making. Faster turnaround times and greater transparency would also help businesses challenge questionable patents before they are exploited as legal fodder. When these mechanisms are effective, they reduce the long-term risks for innovators.

**Reinforce compulsory licensing and working requirements:** Although India's working requirement discourages the hoarding of unused patents, its implementation is uneven. Genuine innovators can be distinguished from the organisations that gather patents by using more potent reporting standards, substantial penalties for non-compliance, and recurring inspections in compliance with Section 146(1). If the mandatory licensing timeline were reevaluated, especially if a patent is not used for an extended period of time, technologies would not be restricted or bought for conjectural purposes.

**Introduce a post-patent review system:** In order to achieve this, patent holders would have to show that their invention is being used during a recurring review at each stage of transfer or renewal. This prevents trolls and speculative buyers from obtaining dormant patents. Furthermore, a system such as this encourages patent holders to actively license or market their inventions.

**Prevent the abuse of injunctions:** Interlocutory injunctions remain one of the most effective tools in trolls' toolbox because they threaten to cause an immediate disruption. Courts can lessen this pressure by adopting a more measured approach when the plaintiff is a non-practicing entity with no commercial activity. A test that considers working requirements, the public interest, and the balance of convenience should be put in place to ensure that injunctions are only granted when they are genuinely justified.

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<sup>23</sup> Patents Act, 1970 (India), ss 8, 10, 12.

<sup>24</sup> Gopika Mahesh, *Scope of Patentability of Software in India: A Comparative Study* (LL.M. dissertation, National University of Advanced Legal Studies, Kochi, 2025) available at: <chrome-extension://efaidnbmnnnibp-cajpegglefindmkaj/http://14.139.185.167:8080/jspui/bitstream/123456789/1693/1/LM0224008%20GO-PIKA%20MAHESH.pdf> (last visited on November 28, 2025).

**Cap damages in troll-like situations:** If damage caps were put in place by law or regular judicial practice, trolls' financial power would be diminished. When the potential damages are reasonable and proportionate, trolls can no longer coerce businesses into quiet settlements out of fear of inflated financial loss. By doing this, abuse is reduced without compromising law enforcement.

**Promote open innovation and FRAND licensing:** In industries where technology is standardized, such as digital payments or telecommunications, FRAND commitments ensure fair and open access. When FRAND commitments are made more transparent, standard-setting organizations are helped to maintain open licensing databases, and patent pledges or open-innovation frameworks are promoted, it becomes more difficult for assertion entities to abuse standard-essential patents.

## ii. Procedural and Administrative Measures

**Encourage Alternative Dispute Resolution (ADR):** Trolls take advantage of the costly and drawn-out nature of court cases. The Commercial Courts Act can be used to counter this by increasing the appeal of arbitration and mediation. If companies could settle disputes more quickly and affordably through specialized IP mediation centers, qualified mediators, and streamlined procedures, one of the trolls' main points of pressure would be lessened.

**Establish a public database to monitor patent assignments and PAEs:** Transparency is a low-cost but powerful preventative measure. A publicly available database of crucial patent transfers, ownership changes, and organizations categorized as aggressive asserters would be essential to help businesses to foresee and lessen the risk. By revealing patterns that might not otherwise be obvious, it also benefits investors, due diligence teams, and policy leaders.

**Improve commercialization of public-sector and university patents:** The majority of patents held by universities and public research organizations are not in use. By bolstering technology-transfer offices, offering financial incentives for licensing, and creating more open IP policies, these organizations would be motivated to use their patents. Assertion entities have fewer targets to acquire because there are fewer dormant patents.

**Increasing awareness among companies:** Most startups don't know how to respond to a demand letter, let alone assess the validity of a patent<sup>25</sup>. Government-led guidelines, online

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<sup>25</sup> A. Bansal, *Awareness and Preparedness of Startups Against Patent Trolls* (2019) 11 *International Journal of Intellectual Property* 120.

checklists, workshops, and in-person IP clinics targeted at startups can all help close this gap. When businesses are aware of their rights, trolls lose a lot of influence.

### iii. Strategic Recommendations for Businesses

**Join defensive networks or pools:** Networks like LOT Network prevent future use of members' patents by assertion entities. In India, the creation of smaller sector-specific pools, especially in fintech, software tools, and biotech, creates a shared layer of protection. This ensures that even in the case of a company selling its assets or going out of business, patents cannot be used as a weapon against other innovators.

**Seek special legal advice:** The worst thing a business can do in response to a demand letter is to act irresponsibly or in a panic. The business can ascertain whether the claim is valid, whether the patent can be revoked, and how to respond without giving the troll more power by speaking with an experienced patent lawyer. Too often, a measured, cool-headed response totally stops escalation.

### Conclusion

An intriguing turning point is reached in India's patent system. Through measures like stringent patentability requirements, Section 146's working requirement, mandatory licensing, and a strong system for pre-grant and post-grant opposition, the nation was able to avoid the widespread problems associated with patent trolling for many years. The judicial scrutiny in cases such as *Spice Digital and Samsung v. Somasundaram Ramkumar*<sup>26</sup> have reinforced the quality and integrity of India's patent landscape. Nevertheless, such actions that once shielded the nation are gradually changing as the innovation economy is expanding.

Due to a consistent increase in patents in the fields of pharmaceuticals, digital payments, fintech, software-adjacent technologies, and artificial intelligence, the pool of assets that can be traded, licensed, or enforced has surged. By new behavioural patterns these claims are associated. Foreign assertion entities have an immense focus on Asian markets with slower implementation of systems, and private Indian companies have started purchasing inactive or

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<sup>26</sup> *Spice Digital Ltd. and Samsung Electronics Co., Ltd. v. Somasundaram Ramkumar*, 2011 SCC OnLine Mad 2733.

unexploited patents from troubled startups. Dynamic industries can become hotspots for claims when there are conflicts in fields like payment platforms and Aadhar-related technologies.

Government programs often encouraging patent markets and capitalization is beneficial from commercialization point of view. However, they also tend to create opportunities for patent trolls. By analysing the global experiences of China and the United States we can interpret how quickly trolling can amplify when a combination of aggressive assertion, weak patents, and opportunistic litigation starts to take off.

Consequently, India should act swiftly to bolster this framework before opportunistic enforcement fully takes hold. Mandatory licensing and a working-requirement system must be implemented more continuously to stop the hoarding of unused patents. A structured post-patent review would be used to authenticate actual commercial activity when a patent is revived or relocated. Courts can further curb exploitative practices by meticulously utilizing interim injunctions in cases where the enforcing party is not involved in commercial activity.

Procedural tools like Alternative Dispute Resolution (ADR), a publicly accessible database that displays PAE behavior, and prospects for better technology transfer from universities can assist early detection and reduce litigation pressure. Businesses will continue to depend on defensive networks, patent pools, FRAND commitments, and timely legal advice. When we consolidate such steps, it can be interpreted that India's expanding patent framework promotes real research, technological development, and market competition. If India takes swift and definitive action, it can actually prevent adverse patent claims and preserve a system that fosters innovation rather than exploitation.