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How Do You Solve a Problem Like PAEs?

IP Buzz

Policy makers in Washington, DC have been hearing about the problems created by patent assertion entities – PAEs or, to some, “patent trolls” – from a number of quarters over the past few years. PAEs are generally entities that acquire patents and patent families in order to enforce them in the marketplace. A critical difference between PAEs and other patent holders is that PAEs don’t generally make or sell products or services of their own, but simply license their patents to others. As a result, they are less susceptible to patent claims asserted by their targets and less concerned about discovery burdens than other parties in patent litigation.

The activities of PAEs have been on the rise over the last few years, with estimated revenues of \$29 billion from licensing in 2011, an increase of 400% since 2005, according to FTC Chairman Jon Leibowitz, who gave introductory remarks for a [workshop](#) held by the FTC and the Antitrust Division of the Department of Justice in early December 2012.

As is common with workshops held by the competition agencies, industry participants and academics representing both sides of the issue presented at the workshop. The workshop was open to the public and was webcast live (the sessions are still available for viewing, as are a number of presentations on the [FTC website](#)). The panels at the workshop included: Realities of Licensing and Litigation Practices, Potential Efficiencies from PAE Activity, Potential Harms from PAE Activity, and How Does Antitrust Apply To The Potential Efficiencies And Harms Generated By PAE Activity. In addition to the Chairman and Acting Assistant Attorney General Renata Hesse, speakers included Stuart Graham, the Chief Economist at the U.S. Patent & Trademark Office and Carl Shapiro, the former Deputy Assistant Attorney General for Economics at the Antitrust Division, and member of the President’s Council of Economic Advisers.

An important question debated at the workshop is whether PAEs promote innovation by better compensating innovators, or hold back innovation by unfairly and arbitrarily penalizing firms that bring products and services to market. The workshop focused on that question in order to get to the more enforcement-oriented question of whether the competition agencies should be doing anything about PAEs.

The agencies are soliciting public comments regarding PAEs, which will be accepted through March 10, 2013. As of this writing, [a number of comments have already been filed](#).