

July 13, 2017

*The Impact of Bad Patents on American Businesses*  
2141 Rayburn House Office Building

**Testimony of Thomas Lee (Mapbox) before the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet**

Chairman Issa, Ranking Member Nadler and members of the subcommittee, thank you for the opportunity to appear before you today to speak about the need for patent reform. My employer, Mapbox, was founded here in Washington, D.C. about seven years ago. We produce beautiful and powerful map technology for companies like The Weather Channel and Lonely Planet, and today have grown to over two hundred and fifty team members. Unfortunately, this success is not because of our country's patent system, but in spite of it. Predatory patent litigation has threatened us, generating distractions and roadblocks to growth.

Mapbox has had multiple experiences with patent trolls: non-practicing entities who file meritless lawsuits that are cheaper to settle than to defend. Sadly, this has become an expected cost of business in the software industry, and a substantial drag on innovation. Even the decision to testify was a difficult one for us, as patent trolls use public records to identify targets. It's only thanks to a strongly anti-troll board and executive leadership that I'm able to be here today.

We have seen trolls employ varying tactics but there are several common themes across these episodes that I'd like to highlight today.

The first is the sophistication of the troll industry. Being a troll's target for the first time is a bewildering experience, and all the more so when you hear the calmness in the voice on the other side of the phone. This is a steady, routinized business for them, and they are well-practiced at it. When a troll finally names a settlement amount, we have reliably found it to be very slightly cheaper than our counsel's estimate of the cost of proceeding with our best legal remedy. The troll business is extremely well-priced, calibrated to individual victims' means and legal situations. These are not rival software firms with whom we have conflicting claims. They are shell companies who keep minimal assets, employ few staff, and produce nothing except demands.

The second common theme is venue. Every patent troll we have encountered has filed their claims in remote locations instead of where our business is located. Patent trolls look for sympathetic venues like the Eastern District of Texas to raise the cost of defense, limit choice of counsel, and make impractical several kinds of legal responses. We were pleased to see the Supreme Court curb venue abuse. But more must be done. Trolls can still sue customers instead of service providers for a venue "hook", and it is expensive to file a motion opposing improper venue. Without additional efforts to control the cost of mounting a defense, such as limits on discovery before early motions are decided, venue will remain an inappropriately important consideration for victims of trolls.

The third theme is the exceptionally low quality of the patents in question. Digital mapping is a complex computer science problem, but the claims we've seen have purported to cover techniques as prosaic as looking for businesses on a map or dispatching vehicles from a central location. It is not an exaggeration to say that these techniques have been in use for hundreds or even thousands of years. Unfortunately, invalidating a bad patent is an expensive and risky proposition. Few companies are in a position to gamble their future in this way.

In general, the quality of software patents in our system seems to be very poor. I have worked as a programmer for almost twenty years, and in that time I have met vanishingly few peers who consider software patents to be beneficial to innovation. At Mapbox, the desire to create better products drives innovation, not the prospect of patent protection. When we file patents, it is due to other considerations, including defensive ones. Filing patents can be important for individual engineers' career advancement. But for many programmers I know, having one's name on a software patent is an embarrassment. By saying this I don't mean to question the necessity or importance of our patent system. But it is a sad truth that the system's inability to adapt effectively to the digital age means that a large and increasingly important segment of our economy has lost faith in it.

Given the prevalence of bad patents, it is particularly galling to see efforts to weaken the *inter partes* review system. IPR is one of our most important tools for dealing with the many thousands of bad patents that should be invalidated in the wake of the *Alice* decision. But it is still inaccessibly expensive for small businesses. IPR must be strengthened and made more accessible, not less so.

The weakness of the patents used against us has often been matched by the weakness of trolls' claims. In some cases, the patent's claims have had no plausible relation to our technology. But getting to the point where a judge can affirm this costs time and money, particularly if the discovery process is allowed to begin. Low pleading standards mean trolls can make vague and unsupported assertions. Amazingly, it can be impossible even to understand a troll's claims against you without incurring substantial costs.

Trolls often withdraw their claims at the first sign of any real resistance. Unfortunately, they usually face no consequences for doing so, and can proceed to targets who are more easily cowed.

Finally, let me encourage you to consider the voices that are not present today. Mapbox has been fortunate to have the resources, will and luck to defend ourselves against trolls. Others are less fortunate. In researching our trolls' past behavior, we came across other victims. Big companies who settled and were thereafter legally prevented from discussing their experiences publicly. A father and son software shop who had to watch their business get destroyed every few years when a troll came through making unaffordable demands of their clients, forcing them to move to bigger vendors who could afford protection. And there is no way to count the many

failed companies who have been forced to waste resources that should have been invested in research and development, equipment or staff instead of paying off trolls.

Your attention to this issue is welcome and sorely needed. I am hopeful that thoughtful reform can eliminate trolls' destructive practices and encourage growth and innovation. Thank you for the opportunity to speak today. I'd also like to express my gratitude to CTA and Engine for their consistent advocacy on this issue. I look forward to answering any questions you might have.