

Chapter 22

Patent Trolls — Problems and Solutions



(how Alex handled Non-Practicing Entities without feeding the machine)

Alex decided to treat “patent trolls” not as monsters under the bed, but as a **process problem** with repeatable answers. The headlines call them trolls; lawyers usually call them **Non-Practicing Entities (NPEs)** or **Patent Assertion Entities (PAEs)**—businesses that make money asserting patents rather than selling products. Some are mere demand-letter mills; others hold real, hard-to-invalidate claims. The trick wasn’t outrage. It was triage.

This chapter shows how Alex classified an assertion, managed the first 72 hours, picked the path (license, redesign, fight, or ignore—rarely), coordinated suppliers and insurers, used PTAB and venue strategy to advantage, and deployed brokers/defense networks when that saved time or cash. You can copy the playbook.

What showed up in Alex’s inbox (and what it meant)

The typical message looked like this: a two-page letter from a law firm you’ve never heard of, citing one or more patents with priority dates from a decade ago, accusing “lighting controllers”

or “IoT gateways” in sweeping terms, offering a “business resolution” for a number that’s suspiciously close to **cost-of-defense**. Sometimes there’s a calendar invite for a call **this week**.

Alex learned to classify quickly:

- **Drive-by demand:** vague, no element-by-element claim chart, “our portfolio reads on your products.”
- **Targeted assertion:** at least one credible chart mapping **each** claim limitation to public docs or teardown images.
- **Aggregator/Privateer:** a portfolio spun out of a practicing company to a separate entity for assertion.
- **Repeat filer:** same patent family asserted against multiple players; public dockets show a pattern of **quick settlements**.

Classification mattered. Drive-bys got a different response than credible charts.

(AI)deas — Advisory: Don’t reply on day one. Route to counsel, open a matter number, and run the checklist below before you type a word.

The first 72 hours (Alex’s no-drama protocol)

1. **Hold internal chatter.** No Slack jokes, no “we obviously infringe.” Assume discovery.

2. **Preserve and collect.** Save the letter, headers, attachments. Pull product SKUs, versions, and dates.
3. **Conflict check & counsel call.** Get outside counsel looped in—preferably one who's seen these patents or thisasserter.
4. **Check insurance.** If you have **IP defense** or **tech E&O** riders, notify carriers **early** (they love late denials).
5. **Supplier contracts.** Does your module/firmware supplier owe **indemnity**? Pull those MSAs and purchase terms.
6. **Docket deadlines.** If the letter threatens suit on a date or a meet-and-confer, capture it.
7. **Venue risk.** Is the assserter likely to file in a plaintiff-friendly district? Consider whether a **declaratory-judgment** (DJ) filing in your preferred venue is warranted—or whether a **mutual standstill** is better.

Alex treated these as muscle memory. Panic adds cost; process removes it.

Ask for what matters (and nothing you don't)

Alex's **first outbound** was short, respectful, and often from counsel:

- Request a **claim chart** showing where each asserted **limitation** is found in an accused product.
- Ask theasserter to **identify SKUs** and versions they accuse.
- Confirm **ownership/standing** (assignments recorded, any exclusive license).
- Ask whether any **cases are pending** on the same patents and whether **stays** or **PTAB** reviews exist.
- Propose a brief **mutual standstill** and **NDA** to discuss without venue games.

No bluster, no admissions. The goal: facts.

(AI)deas — Action: If they won't provide a limitation-by-limitation chart, treat the matter as **drive-by** and calibrate your spend accordingly.

Cost-of-defense economics (and when to say “no” nicely)

Many NPE demands are priced just below what it costs to defend a case through claim construction. Alex didn't take the bait blindly. The team priced four paths **before** negotiating:

- **Structured license** at a low five-figure to mid six-figure number **with peace** (covenant not to sue across current

SKUs and fields).

- **Redesign** that drops a claim element (cheapest long-term if performance survives).
- **PTAB + limited district-court spend** (aiming for stay): more upfront cost, potential portfolio-wide leverage.
- **Fight to Markman** with an eye to key constructions (sometimes the fastest way to reveal weakness).

The right path depended on **claim strength**, **design-around feasibility**, and the **assertor's history** (do they fold at PTAB? do they drag to trial?).

PTAB (IPR/PGR) in Alex's toolkit—used surgically

Why file? If prior art is **strong** and district-court timelines make a stay likely, an **IPR** (inter partes review) can cut the legs out from under the assertion—or force a substantial discount.

When not to file: If the art is merely “interesting,” or you'll face **discretionary denial** because trial is imminent, or your best defenses are **non-infringement** and **claim construction** rather than invalidity, keep your powder dry.

Portfolio view: If the NPE waves a **family**, Alex sometimes filed one killer IPR on the **keystone patent** and used that posture to negotiate **global peace** on the rest.

(AI)deas — Avoidance: Don't file an IPR just to look tough. File when you can teach the Board something **new** with clean, on-point art and a tight declaration.

Venue and DJ strategy (keeping the map in your favor)

Some districts move fast and are comfortable with patent cases; others are slower or less plaintiff-friendly. If a letter looked like pretext for a quick plaintiff filing in a disfavored venue, Alex considered a **quiet DJ** in a preferred forum—but only after weighing the optics and likelihood of settlement. Often, a **mutual standstill** was enough to neutralize the venue race while the parties compared charts.

Supplier indemnity and pass-through defense

If a claim targeted a **module** or **stack** Alex bought, counsel tendered the claim to the supplier under the **indemnity clause**. Two practical tips Alex learned:

- **Tender early, cleanly.** Follow the notice mechanics in the contract (addresses, deadlines).
- **Stay involved.** Even with indemnity, it's **your** product and channel; coordinate defense positions so a settlement doesn't bind you to poor terms.

If contracts were silent, Alex still invited suppliers into the discussion; many step up to avoid **design-out** risk.

Insurance: friend when bought, foe when ignored

Defense-side coverage exists (IP defense, tech E&O, media liability with IP endorsements). Alex (eventually) bought coverage **before** the first big demand arrived and learned:

- Insurers want **prompt notice** and control over **panel counsel**.
- Coverage may exclude **willful** conduct or **contract** claims; read the carve-outs.
- Some policies cover **PTAB**; others don't.

If you don't have coverage, use this moment to scope it for next year. It's cheaper than a surprise seven-figure invoice.

Defense networks and market makers (when to bring them in)

- **Defensive groups:** Some consortia challenge NPE patents proactively or coordinate **crowd-sourced prior art**. Alex contributed when it reduced **everyone's** problem.
- **Broker/aggregator settlements:** In rare cases, paying a **global license** to a well-known aggregator was cheaper

than serial fights—if the license scope truly bought peace for Alex's products and fields.

Alex avoided “protection ransom” deals that didn't deliver real peace or had **most-favored-licensee** traps. If the license didn't list the **actual patents** and **fields**, it wasn't peace.

Communication tone (because tone saves money)

Alex's letters, emails, and calls stayed **boringly professional**. No “troll” labels, no threats, no victory laps. Judges and mediators appreciate adults. So do adjusters and brokers. Inside the company, Alex coached the team to treat NPEs like bad weather: prepare, don't panic, and don't post about the storm.

(AI)deas — Action: One calm page beats ten spicy ones. Juries never read your emails—but judges see them, and asserters price your tone.

Design-around as a feature, not a surrender

Alex evaluated, fast, whether a **single claim element** could be removed or altered without killing performance (e.g., changing sampling cadence/threshold interplay or moving a sensing point). When possible:

- Ship a **non-infringing default**; gate the old mode behind service menus or sunset it.

- Document the change and time it with negotiations; you'll often buy a **step-down** license to cover legacy units while phasing out exposure.

This turned hostage situations into timelines.

International twists Alex respected

- **Germany & quick injunctions:** If a case looked Germany-bound, Alex prepared **EOU** and **non-infringement** declarations early and weighed a **fast redesign**.
- **U.K. “unjustified threats” rules:** Language matters; Alex ran UK letters through local counsel.
- **China:** Administrative actions and **utility models** can be leveraged; translation precision is critical to both validity and defense.

Coordinated global posture beats whack-a-mole.

AI in the anti-troll kit (speed, not judgment)

Helpful:

- Mining dockets for anasserter's **settlement pattern**, average time-to-dismiss, and **claim construction**

outcomes.

- Clustering asserted patents by **CPC class** and surfacing **non-patent literature**.
- Flagging **prior licensees** (press releases, SEC filings) to calibrate ask ranges.

Guardrails:

- Never paste **confidential** teardown data into public tools.
- Human-check every citation; AI can hallucinate prior art or misread claims.
- Use enterprise/local models; keep a redlined human memo as the record of truth.

(AI)deas — **Avoidance:** Measure AI by **hours saved on triage**, not “wins.” Let it fetch; you and counsel decide.

Two brief Alex case studies

A drive-by folded:

An NPE sent a two-page letter with no chart. Alex requested element-by-element mapping and ownership. They declined, insisting on a call “to explain.” Counsel replied with a **mutual standstill** and repeated the chart request. Silence followed. The matter died without spend.

A credible chart, smart peace:

Another NPE had a chart on an older feature. Prior art was mediocre, but a **design-around** was easy. Alex negotiated a **low six-figure** license with a **sell-off** period, a covenant not to sue on current SKUs in defined fields, and a **most-favored** clause narrowly scoped. Engineering shipped the redesign in the next firmware drop. Peace, cheaply.

Quick checklists you can lift

Triage (Day 0–3):

- Outside counsel retained; conflict check done.
- Insurance carriers notified (if applicable).
- Supplier indemnity tendered (if applicable).
- Product/version inventory pulled; marking and first-sale dates noted.
- Venue risk assessed; standstill/DJ strategy decided.
- Short request sent: claim charts, SKUs, standing, parallel cases.

Decision (Week 1–2):

- Non-infringement angle identified (one clean element).

- Invalidity snapshot (best two art references or none).
- PTAB viability scored (yes/no + why).
- Redesign feasibility and timeline (weeks, not months).
- License framework drafted (fields, territory, term, rate structure).
- Budget gates set (through Markman; through IPR institution).

Negotiation posture:

- Tone: professional, brief, factual.
- Ask: license, redesign window, or standstill for technical session.
- Peace terms defined: covenant scope, affiliates, successors, fields.
- No admissions; no inflammatory language; no needless delay.

Why this chapter mattered to Alex

NPEs thrive on **chaos, fear, and fatigue**. Alex replaced those with **checklists, calendars, and choices**. By classifying the

assertion, locking down communications, leaning on insurance and indemnity where available, reserving PTAB for strong art, using venue and standstill wisely, and treating redesign as a business tool, Alex stopped paying “troll tax” and started buying **predictable outcomes** at **predictable prices**.

Next up: **Chapter 23 — Patent Protection vs. Trade Secret Protection**—how Alex decided what to disclose to the USPTO and what to keep in the vault, especially when AI-assisted workflows blurred the line between “public enough” and “secret enough.”