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THE MORAL AND ETHICAL DIMENSIONS OF PATENT TROLLING: A COMPARATIVE STUDY OF NON-PRACTICING ENTITIES

AUTHORED BY - ANUKRITI SRIVASTAVA
National Law University and Judicial Academy, Assam

Abstract

Patent trolling, which is defined as exploitative assertion of patent rights by non-practising entities is a threat towards competition and market as well as innovation. Patents are exclusive rights granted for an invention while trolls as defined by Merriam-webster as "a dwarf or giant in Scandinavian folklore inhabiting caves or hills". In modern sense of the word even "people who deliberately try to upset someone or start an argument with them, especially by posting offensive or unkind things on the internet are called internet trolls." [1] Though both these meanings are not actually part of the actual concept of patent troll they in some sense reflect the idea of how these entities behave i.e., show certain behavioural aspects including provocation, exploitation, aggression etc.

Further, it has been established on the basis of empirical research that the behaviour displayed by such entities cause a significant loss in capital as well as undermines the spirit of innovators. The project primarily focuses on the utilitarian framework in arguing whether patent trolling is ethical or moral in the global patent regime.

Introduction

The present article deals with the "moral and ethical dimensions of patent trolling". However, in order to develop the understanding of what are the ethical and moral dimensions, first an understanding of what exactly is, a patent troll is required. This article has made an attempt to define the term, although doing so is rather an impossible task, as applying a strait jacket formula to the same would do more of a harm than good. However, various attempts to cage the definition has been made, most though not unfruitful, have their own lacuna. However,

[1] merriam-webster,merriam-webster.com https://www.merriam-webster.com/dictionary/troll (last visited November 18 2025)

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merely defining patent trolls is not enough, the reasoning behind such actions is also analysed along with the legal status of such troll behaviour.

Further, the next step after developing an understanding about the term "patent troll" would be to analyse how this practice may or may not be moral or ethical, as the concept of morality is not uniform on the contrary, it is subjective and varies in accordance to the given time and space. Thus, what may be considered righteous at one point of time may not be so in a different time, viewed in a different light. Therefore, an attempt has been made to reach a conclusion after analysing various stances.

Additionally, the problem of patent trolling is neither new nor territorial. The concept of patent trolling though in vague since last twenty years has been in existence for around centuries and has been an issue not just for India but different jurisdictions all over the world. [2] The first example of a proto troll can be Eli Whitney's cotton gin patent assertions.[3] However, the first recognised patent troll is of George Seldon's patent for road engine.[4]

Lastly, to conclude the overall idea of the article, a section dealing with economic and policy implications along with recommendations have been made with reference to implementation as well as formulation of these regulations or laws.

Research Questions:

1. How did ethical and moral stance on troll behaviour gradually changed with changing notions of morality subjective to Right Theories.
2. What is the legal status of such non-practising entities?
3. What are the procedural and statutory gaps in the current legal frameworks to curb such behaviour throughout various jurisdictions?
4. What reforms are required in order to attain an efficient framework to deal with such behaviour?

[2] Robert H. Resis, Esq, History of the Patent Troll and Lessons Learned, Banner Witcoff, https://bannerwitcoff.com/_docs/library/articles/HistoryOfPatentTroll.pdf , (last visited Novemeber 18 2025)
[3] Robert H. Resis, History of the Patent Troll and Lessons Learned, **17 Intell. Prop. Litig. 1 (Winter 2006), https://bannerwitcoff.com/media/_docs/library/articles/HistoryOfPatentTroll.pdf
[4] ibid

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Research Objectives:

1. To examine the ethical and moral stance on troll behaviour with changing notions of morality subjective to Right Theories.
2. To analyse the legal status of such non-practising entities.
3. To examine the procedural and statutory gaps in the current legal frameworks to curb such behaviour throughout various jurisdictions.
4. To suggest reforms that are required in order to attain an efficient framework to deal with such behaviour.

Research methodology:

My project adopts qualitative as well as comparative analysis of legal framework, which is accompanied by a philosophy based normative analysis of the ethical and moral justifications as well as condemnation of behaviours displayed by such trolls.

Chapter1. Defining a patent troll:

Patent assertion entities which are sometimes derogatorily known as patent trolls in courts and sometimes even diminished to the extent of being labelled bottom feeders are entities or individuals that hold patents but do not manufacture and supply goods or services, rather their only motive is litigation in order to extort money by misusing ambiguous claim boundaries.[5]
Patent trolls are not covered under a precise definition. Various attempts have been made to accurately define the term. However, there is no one particular definition to define it in a manner which covers all its aspects. The reason being that it is a daunting task, as it may lead to a broad generalisation, incorporating entities otherwise not included in its scope which may do more harm than good.

An attempt has been made by the **white house factors** to portray some essential characteristics which must be present in order to be called a patent troll[6], which includes:

1. patents for the sake of patenting
2. absence of technology transfer

[5] Thomas H. Kramer, Proposed Legislative Solutions to the Non-Practicing Entity Patent Assertion Problem: The Risks for Biotechnology and Pharmaceuticals, 39 Del. J. Corp. L. 467, 473: Jessica M. Karmasek, McCaskill Introduces Own Legislation Aimed at 'Bottom-Feeder' Patent Trolls, THE SOUTHEAST TEXAS' LEGAL JOURNAL, March 5, 2014,: James Bessen, Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk 2008

[6] "Patent Assertion and U.S. Innovation," Exec. Off. Of the Pres., June 2013, https://ww whitehouse.gov/sites/default/files/docs/patent_report.pdf. (last visited November 18 2025)

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3. strategizing for a perfect time to pursue litigation for patent infringement
4. acquiring patents having unclear boundaries
5. and creation of numerous shell companies among other factors.

In conclusion it can be said that the term "patent trolling" requires the overall examination of the entity's conduct and intent. Therefore, instead of relying on rigid and cabined definitions, the predatory manner in which patent trolls exploit their victims should be evaluated. However, the moral justification for patent troll activity cannot be based upon secondary benefits or theoretical market functions when documented primary harms occur simultaneously.

Impact of patent tolls on innovation:

The relationship between patent trolling and innovation has been a subject of considerable debate, with arguments both supporting and opposing the view, patent **trolls harm innovation. The arguments made in favour of the statement** "patent trolls harm innovation" are that patent litigation in aggregate destroys a large amount of firm wealth each year. Entities affected by patent trolls have comparatively stalled innovation rates as compared to entities not targeted by these patent trolls [7], thereby preventing innovation which is the primary objective of patents. **Those in favour of the arguments made against the statement** "patent trolls harm innovation" are that Patent trolls can be viewed as a signal of progress[8] and can lead to evolution of the patent market as frequent buying and selling of patents leads to patent liquidity[9], creating a secondary market and thereby adding to the economy by encouraging failed corporations to recover some of their costs. However, empirically industries which face comparatively higher patent trolling are prone to decline in innovation.[10]Thereby, defeating the purpose of such protection ie, social welfare by innovation.

Along with that increased patent auctions are made which give sellers the incentive to create. [11] However, this may in turn lead to more patent trolling as the trolls may buy these patents

[7] James Bessen, "The Evidence is in: Patent Trolls Do Hurt Innovation." Harvard Business Review, https://hbr.org/2014/07/the-evidence-is-in-patent-trolls-do-hurt-innovation.James Bessen, "The Evidence is in: Patent Trolls Do Hurt Innovation." Harvard Business Review, https://hbr.org/2014/07/the-evidence-is-in-patent-trolls-do-hurt-innovation. (last visited November 18 2025)

[8] McDonough III, J.F. (2006). The myth of the patent troll:an alternative view of the function of patent dealers in anidea economy. Emory LJ, 56: 189.

[9] https://patentprogress.org/2013/08/patent-liquidity-is-a-solid-mess/

[10]David Hricik,Legal Ethics and Non-Practicing Entities: Being on the Receiving End Matters Too,27 Santa Clara J. of High Tech. 793 (2011) https://digitalcommons.law.mercer.edu/fac_pubs/34/(last visited November 18 2025)

[11] Don Clark, "Inventors See Promise in Large-Scale Public Patent Auctions,", The Wall

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for exploitative use rather than commercialisation and victimise businesses.[12]

Further, another argument made is that, patent trolls encourage proper formulation of laws to combat it. The United States is a prime example of this, even though patent trolls are highest in USA its defensive mechanism is considered to be the most efficient[13] However, in the meantime i.e., between the formation of legislative frameworks, the trolling activity persists. The harm which has been done by such activity cannot be justified by the reforms which it inspired.

Thus, it would not be wrong to make an inference that although patent trolls may have some minuscule benefits, the overall disadvantages overshadow them. The fundamental moral conclusion is that patent trolling is a type of intentional exploitation in which organisations plan their actions to profit from lawsuits by lying and exploiting the unequal bargaining power and thereby stifling innovation and social welfare.

Chapter 2: Transformation of Patent Assertion Entities Through Changing Ethical Frameworks

Patent trolling's historical trajectory, although not very dynamic, has gone through considerable changes time and again. The reason behind such shifts is not just technological change but also changes in the ethical understandings of patents. The practices considered derogatory and discouraged now, have been in existence since centuries. The progression of ethical considerations initially from the Desert Theory and the Lockean Theory towards the Utilitarian Theory has, if not caused, impacted these shifts or changes.

Initially, the patent law was viewed from the lens of **Lockean natural rights theory**.[14] In his theory, John Locke justified the conferment of some exclusive rights on the owner of the property due to the fact that he has acquired the same by applying his labour or intellect[15]. Thus, he has a right to enjoy the fruits of his labour. Initially, though this idea was made in reference to property, its natural implication would include Intellectual property. According to

Street Journal Mar. 9, 2006. http://www.wsj.com/articles/SB114187357457393357. (last visited November 20 2025)

[12] Ibid (https://patentprogress.org/2013/08/patent-liquidity-is-a-solid-mess/)

[13] Patent Trolling and Intellectual Property: Challenges for Innovations, International Journal of Safety and Security Engineering, Maryna Utkina1*, Olha Bondarenko1, Petr Malanchuk2

[14] John Locke, Second Treatise of Government §§ 27-31 (1689).

[15] Id. § 27 (labor theory applied to intellectual creation)

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his ideas, innovators have the right to enjoy the fruits of his labour irrespective of the fact whether they commercially exploit the innovations or not[16]. Thus, Lockean theory justified application of intellect rather than commercialisation or social benefit for grant of such rights. If non-practising entities were to be seen in light of this theory, one may claim that these entities are justified in their actions, as they have the patent rights and are not wrong in not commercially exploiting their inventions and stopping others from doing so. With reference to the above framework the case of George Selden is one of the best examples, in a case against Ford the defendant (Ford) argued that the plaintiff waited long enough so that others may develop upon the same technology and then he may proceed to file assertive patent claims against such entities. However, the court held that Selden had not acted beyond his rights and that he "merely took advantage of delays which the law permitted him." Thus, the court did not consider the ethical considerations with reference to such delay but restricted itself to statutory timelines following the Lockean framework.[17]

However, with passage of time application of these principles revealed fundamental failures. The increased targeted litigation by patent holders towards small businesses and farmers or such other entities started coming into picture. One such instance would be the Goodyear Dental Vulcanite Company suing approximately 2,000 individual dentists.[18]The continued following of these principles would entail the justification of these entities, consequentially, leading to decreased innovation, as expenses for the same would be diverted towards litigation. **Utilitarian** notions, although not new, emerged as a strong moral critique in response to such practices.[19]This shift was due to various factors including the increased instances of predatory behaviour by such entities, decrease in innovation, the notions of social welfare and the issues of the ones being victimised. Under the Lockean perspective, patent trolling was justified. In contrast, utilitarian theory asserts such practice as indefensible as under this theory the consequences matter morally. Under this philosophy, the overall social impact is the sphere of concern. Thus, while Natural rights theory concerns itself to the rights of the patent holder and

[16] Matthew G. Sipe, Patent Law's Philosophical Fault Line, 2019 Wis. L. Rev. 1033, 1039-43 (explaining Lockean theory in patent context)
[17] Columbia Motor Car Co. v. C.A. Duerr & Co., 184 F. 893 (2d Cir. 1911).
[18] Christopher Beauchamp,The First Patent Litigation Explosion, https://www.thesedonaconference.org/sites/default/files/conference_papers/19%2520First%2520PL%2520Explosion%2520-%2520Beauchamp%2520%2520020416.pdf (last visited November 20 2025) https://www.thesedonaconference.org/sites/default/files/conference_papers/19%2520First%2520PL%2520Explosion%2520-%2520Beauchamp%2520%2520020416.pdf(last visited November 20 2025)
[19] Jeremy Bentham, Introduction to the Principles of Morals and Legislation (1789); Sipe, supra note 3, at 1048-52.

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his ownership, Utilitarian theory concerns itself to social welfare.

This shift was not just philosophical but also led to some concrete steps being taken by the legislation framers including patent term extensions, stricter non- obvious requirements and other such policy changes. Thus, innovations were now seen in a newer light, they were not just parallel to property rights but were also supposed to contribute towards social welfare and genuine innovation. This moral framework is so institutionalised that even after consistent technological and legal developments, this view still holds and is further strengthened by empirical data demonstrating the negative effects of patent trolling on innovation. Thus, when patent trolling re- emerged in the 1990s- present, this practice was and is still perceived in a negative light. Recent cases illustrate that the underlying framework in the present legal scenario is utilitarian:

Chapter 3: Illegality Across Jurisdictions on the basis of Principle

Patent trolling does not constitute an offence in itself; however certain behaviours of such entities may violate legal provisions. These behaviours can be confined by using different defensive mechanisms followed by the respective countries. Further, there may be an ethical-legal gap. An action not justified ethically is not necessarily illegal. The analysis has been made as per legal principles rather than jurisdictional comparison as different countries may enforce the same problem, using different mechanisms.

i. Deceptive and Bad-Faith Assertions

Though different mechanisms might be adopted, it is unlawful among all the five jurisdictions to distort, misrepresent or conceal facts in a patent claim. The **United States** does this by banning demand letters under the Patent Troll Prevention Acts[20]. This is one of the most widespread tools to extort from the victims by asserting false deceptive statements. This is done by intentionally mislabelling patents and are backed by evidence which are often fabricated. Further, litigation timelines create a sense of urgency. Additionally, the Federal Trade Commission under **Section 5** has the power to stop such demand letters which misstate the facts thereby inducing the authorities to base their decisions on frivolous claims[21].

[20] Paul R. Gugliuzza, Patent Trolls and Preemption, 101 Va. L. Rev. 1579, 1584-86 (2015)
[21] 15 U.S.C. § 45(a) (2012); FTC Invokes "Deception" Authority Under Section 5 to Try to Curb "Patent Troll" Behavior, Crowell & Moring LLP (June 22, 2025), https://www.crowell.com/en/insights/client-alerts/ftc-invokes-deception-authority-under-section-5-to-try-to-curb-patent-troll-behavior(last visited November 20 2025)

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Under the **European Union** framework, the members can impose fines or injunctions in order to deal with the problem of false or frivolous claims. The problem of such assertions is evaluated on the principles of consumer protection doctrines and unfair competition regulations[22].

As per **Indian** laws, **Form 27** provides for working disclosure of the patents[23] statements filed under this form are filed every year and the failure to do so may attract fine and allow compulsory licensing. In doing so, malpractices are undermined from their inception. **Australia** and **Japan similar** to EU patent assertions are evaluated on the touchstone of unfair competition doctrines[24].Although, both civil and criminal penalties are in existence, civil remedies are more prevalent. In **Spice Mobiles Ltd. & Samsung India v. Somasundaram Ramkumar**, an individual patentee made assertive claims of a patent that were significantly baseless as they lacked, inventive, step and novelty. This led to market instability for a long time until the patent was finally revoked by intellectual property board under section 64.[25]

Utilitarian Rationale: These deceptive assertions make negotiations difficult. Since there is no clarity in the truthfulness of the information, the basis on which the settlement between such patent assertion entities and the other party is unworkable.

ii. Misuse of patent and anti-competition tactics

This occurs when patent trolls try to employ patents beyond its lawful scope. This could be done by monopolising features which are unpatented, providing conditional licensing on goods, or by use of patents solely for the sake of excluding competition. This is controlled by application of competition law and misuse doctrine.

Under the **United States patent regime**, the misuse of a patent renders it unenforceable, unless the misuse is taken care of by the patentee[26]. Further, under the **European Union** framework, **Article 102 TFEU** provides protection against abuse of power by patent holders of standard essential patents. This is majorly centred around standard essential patents wherein the principles of Fairness, Reasonability and non-Discrimination (FRAND) are implemented. The holders cannot charge excessive licensing fees as this would monopolisation[27].

[22] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, 2005 O.J. (L 149) 22(last visited November 20 2025)
[23] Patents Act, No. 39 of 1970, India Code § 122
[24] Patents Act 1990 (Cth) s 10, Unfair Competition Prevention Act, Act No. 47 of 1993, art. 2
[25] Spice Mobiles Ltd. & M/s. Samsung India Electronics Pvt. Ltd. v. Shri Somasundaram Ramkumar, Case No. 2011(PLD)/07, IPAB (May 31, 2012)
[26] Morton Salt Co. v. G.S. Suppiger Co., 314 U.S. 488, 492-94 (1942)
[27] Huawei Techs., supra, at 51-54; Renato Nazzini, The FRAND Ceremony and the Engagement of Article 102

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Under **Indian Patents Act, 1970**, **Section 83** provides for the general principles of patents. It expressly makes provisions for compulsory licensing which can be granted if patents are being abused to restrict or to hamper transfer of technology. The interpretation of the term "abuse" is discretionary[28].

Australian Competition Law deals with misuse of market power including any conduct, which results in substantially decreasing competition in the market. Thus, even a patent holder cannot absolutely exclude the use of his patent if it substantially decreases competition beyond the scope of the patent[29]. Similarly, the **Anti-monopoly Act** of Japan restricts anti-competitive assertions in patents[30].

In **Huawei Technologies Co. Ltd. v. ZTE Corp**., holders of standard essential patterns who were committed to FRAND (fair, reasonable, and non-discriminatory) licensing were required to make a concrete licensing offer before applying for injunction, thereby preventing these dominant players from miss using their position in order to threaten or coerce unfair terms.[31]

Utilitarian Rationale: Transgression of the scope of patents is not in favour of competition and innovation and hampers the objective of social welfare. This takes place through monopolization and excessive licensing rates.

iii. Failure of Public-Interest and Non-Working of Patents

India provides provision against not working patents in the patent Act itself. **Form 27** provides for disclosure statements under which a person holding a patent has to file such statements annually and the failure of the same for three consecutive years would lead to granting of patent to someone else seeking it. As a consequence of this provision, the non-practising of patent converts what was at first legal into, what is now effectively unlawful. Since by granting of compulsory license, one of the methods of extortion ie., excessive licensing fees would be ineffective[32]. In **Novartis AG v. Union of India**, the Court enforced the application of section 3(d) in order to prevent grant of patterns on weak grounds thereby reducing the primary opportunity of such trolls to exhibit exploitative behaviour.

Utilitarian Rationale: Patents are justified as they promote innovation. However, if there are non-working patents then, on one hand it would produce no innovation and on the other hand,

TFEU, 42 Fordham Int'l L.J. 917, 952-60 (2019)
[28] Patents Act, No. 39 of 1970, India Code § 83
[29] Competition and Consumer Act 2010 (Cth) ss 45-47 (Austl.)
[30] Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, Act No. 54 of 1947, art. 3 (Japan)
[31] Case C-170/13, Huawei Techs. Co. v. ZTE Corp., 2015 E.C.R. I-477, ¶ 54
[32] Patents Act, No. 39 of 1970, India Code § 84(1)(a)–(c)

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it would prevent other innovators. Compulsory licensing ensures that there is still innovation potential thereby boosting overall social welfare.

iv. Frivolous or Baseless Patent Assertions

The proceedings initiated by the troll are only for the purpose of extorting money. Thus, often they are anchored in baseless claims. In order to restrict such sham litigations, various jurisdictions have developed rules and policies. **The United States** has made provisions to deal with the issue. The principle of **Octane Fitness** provides for grant of attorney fees in such exceptional cases[33]. The **European Union** follows **proportionality doctrine**, under which courts look at the proportionality of the claim made and the genuine infringement occurred. If the claims are unreasonably excessive the court may refuse to grant injunction and costs[34]. **India,** by making provisions for **Compulsory Licensing** under **Section 84** expressly prohibits non-working patents. Thus, if a patent troll does not use his patent, then others can anyway get a license. Thus, it would be irrational to file a suit for enforcement of a patent against competitors because the competitors can prove non-use and get the compulsory license[35]. **Australia** mandates payment of attorney fees in case the claims made are weak or if there is misuse of the legal process[36]. Lastly, **Japan** implements cost deterrence and higher validity inspection[37].

Utilitarian Rational: Such litigation although baseless, provokes high expenses. This capital could have been streamlined toward innovation. Thus, such regulatory measures are essential to curb this diversion.

In **Octane Fitness, LLC v. ICON Health & Fitness,** The Supreme Court lower, the threshold under which attorney fees can be imposed upon the party pursuing litigation in exceptional cases, thus strongly discouraging trolling activities.[38]

The overall utilitarian rational:

As noted above, various jurisdictions apply diverse methods to solve troll behaviour. However, the intersection point of these statutes is the 'social welfare' aspect. Irrespective of the mechanism opted, the core objective is that law should prohibit such behaviour which reduces

[33] Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 554 (2014)
[34] Case C-170/13, Huawei Techs. Co. v. ZTE Corp., 2015 E.C.R. I-477, ¶ 54
[35] Patents Act, No. 39 of 1970, India Code § 84(1)
[36] Patents Act 1990 (Cth) s 138 (Austl.)
[37] Patent Act, Act No. 121 of 1959, arts. 104–105 (Japan)
[38] Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545, 554 (2014)

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overall social welfare. Though these mechanisms or regulations exist there is still, nevertheless a need for a uniform and comprehensive framework which address the problem of patent trolling at once.

Chapter 4: Problem-Solving Aspect

Since the current system does not provide welfare reducing conduct, there is a necessity of reform. There are various mechanisms by which patent trolls can be cubed. These mechanisms working in coordination in various jurisdiction could create conditions in which trolling activity would be significantly reduced.

1. Quality of Patents

One of the most effective methods of curbing troll behaviour is to restrict it from its inception. **India** under its Patent Act, **Section 3(d)** embodies this approach. Under this Section, patents cannot be granted on "mere discovery of new form of known substance" unless it is accompanied by enhanced therapeutic **efficacy**[39]. This acts as a quality control filter that could filter out problematic patents. A patent must not be a mere routine variation in an already existing patent but there must be genuine advancement.

The statutory gap: The term "efficacy" has not been defined under the Act. This leaves room for discretion thus, resulting in inconsistent interpretations. Thus, there is a need to provide a precise threshold for efficacy.

If there is no grant for such frivolous patents then there would be no question of baseless litigation. The uniform benchmark for efficacy would lead to decrease in number of frivolous patents filed.

2. Need for Post Grant Review

Even if a thorough examination mechanism is placed accompanied by stringent thresholds, instances may still arise where vague patents are granted. Once these patents are granted, they are misused by patent trolls. Thus, an expedited mechanism for review and revocation of patents is an essential[40]. However, there are various challenges in pursuing post grant review. This process can be very complex, cumbersome and time consuming, draining resources and stifling innovation.

[39] Patents Act, No. 39 of 1970, India Code § Section 3(d)
[40] Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. 545 (2014)

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The statutory gap: India had initially made provisions under the **IPAB** (Intellectual Property Appellate Board) which provided for accountability mechanisms. Under **Section 83A** each tribunal bench included at-least one technical advisor in addition to a judicial member who decided statutory timelines and made funding conditional upon performance. Further, in order to allow independent functioning, provisions for a separate budget are made.

However, IPAB was abolished by "**The Tribunals Reforms Act**" in 2021[41] and its functions were transferred to Intellectual Property Divisions under High Courts due to which there are various issues including lack of technical assistance and increased time in resolving the case. This absence of technical assistance reduces its capacity to evaluate complex disputes efficiently.

There is an expedient need to re-establish a body similar to IPAB which would provide speedy remedy and technical expertise in cases of patent disputes.

3. Elimination of non-practicing patents

Patent trolls or Non-Patent Entities as discussed earlier have no positive contribution in innovation and thereby, overall welfare of the society. Thus, there is necessity to restrict such trolls. There are some other methods other than those discussed above which could aid in reducing them:

1. Patents must be **commercialised** actively.
2. There should be **annual disclosure** obligations which would provide the status of working of such patents in detail.
3. A need for rapid triggers towards compulsory licensing.
4. The term "working" should be defined more clearly.

The statutory gap: At present, India deals with the issues of non-working patents under the mechanism of Form 27 and Compulsory licensing. However, there is a lack of enforcement of non-disclosure of such working statements[42]. Further, the term of 3 years for the compulsory license to set in motion in in unreasonably excessive. The time by which such license is granted, a significant amount of damage has already taken place as in the meanwhile trolls get ample amount of time to litigate[43].

There is a need to introduce stringent audit enforcement mechanisms. 'Working' should

[41] The Tribunals Reforms Act, No. 33 of 2021, § 3, Gazette of India, Aug. 13, 2021 (India)
[42] Prianka Misra, Form 27 and the Indian Patent Working Requirement: An Empirical Study, SpicyIP (Apr. 10, 2020), https://spicyip.com/2020/04/form-27-study.html (last visited: Nov 14 2025) (last visited November 20 2025)
[43] Rahul Bajaj, Patent Working Disclosure: Reforming the Rule of Form 27, Indian J. L. & Tech. (2019)

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include manufacturing or some substantial amount of commercialisation of the invention in India, either by the patent or an exclusive licensee. Merely non-exclusive licensing should not form 'working'.

Further, if false claims about the patent are found while auditing, the patent office should initiate the enforcement of such patent under the Patents act and issue a compulsory license without the statutory waiting period. Additionally, imposing administrative penalty.

Conclusion

My analysis of ethical and moral dimensions of Patent Trolls and the comparative study highlights the fact that, the problem of patent trolling can only be resolved if immediate steps are taken to curb such behaviours. The proposed reforms though not exhaustive, makes suggestions for the manner in which such activity can be controlled. These suggestions include improving quality of patents, need for post grant review and the elimination of non-practicing patents. The ethical and moral dimension is explored with reference the Lockean Theory as the basis of patent behaviour which gradually evolved into the Utilitarian Theory. The impact of trolls on innovation and whether such behaviour is justified in the context of social welfare under Utilitarian framework.

After undertaking a comparative study between **United States**, **European Union, Australia, Japan and India.** Additionally, statutory gaps in the Indian framework are recognised and reforms are suggested for the same. It can be concluded that India in comparison to its counter parts has placed more efficient provisions in order to restrict exploitative behaviour specially after the 2005 Amendment to the Patents Act. However, enforcement gaps and statutory limits as highlighted are still prevalent. Thus, if the suggested reforms are incorporated possibility of a more efficient legal framework to encourage innovation and thereby, overall social welfare will be in place.

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