

I came across this TechDirt article: [Exposing The Patent Troll Playbook... And How To \(Almost\) Beat It](#). This is an insider's account of what it is like to be the victim of a so-called "patent troll". Perhaps better than the article itself are the comments which make it clear how passionate people are about the topic of patent trolls. This is recommended reading, if just for the entertainment value of the comments.

Reading the TechDirt article made me recall my time as a junior litigator at a well-known Atlanta law firm. As a very green (and tired) young attorney, I sent many "licensing offer letters" for the AudioFax Company. In this role, I was an enabler of a very successful patent troll. And, as set out in this post, I have continued to enable patent trolls throughout my more than 13 years as a patent attorney and intellectual property business strategist.

The story of AudioFax is summarized [here](#), albeit in softball form. In short, AudioFax's owner, Mark Bloomberg, was an entrepreneur selling fax equipment in the 1980's. Another company, F-Mail, received a patent on the technology that Bloomberg was selling and came after him. Seeing an opportunity in fax patent licensing, Bloomberg acquired F-Mail's patent, as well as obtaining two more patents of his own. Bloomberg hired a patent licensing company to scout out potential licensees and my law firm to send out letters. Thus, his successful journey as a "patent entrepreneur" began.

I left AudioFax's law firm in 1998 to embark on a more focused career as a geeky patent attorney, and I am now an IP and patent business strategist (more info here: [The Hutter Group](#)). Over the years, I forgot all about my work with AudioFax. Recently, however, I met a patent broker whose company handled the [sale of the AudioFax patent portfolio to Catch Curve in 2005](#), and I became interested in seeing what had happened in the AudioFax patent saga. I then began to Google the history of AudioFax and saw that the company's "licensing program" continued in earnest for many years after and [apparently still does to this day](#).

There is no doubt that AudioFax meets the [definition of "patent troll"](#). For example, AudioFax never made or sold a product covered by its patents. Its revenue stream resulted only from the licensing fees obtained from its patents. The [AudioFax patents have been licensed to over 30 companies](#) including Cisco, AT & T and 3Com. Reportedly, AudioFax made millions from its licensing program, which is likely more than its founder would have made from actually selling fax products.

As a patent litigator for AudioFax, I clearly enabled their patent troll activity. However, it may not be readily apparent that, as a patent lawyer, I also enabled patent troll-like activity for many clients that would not fit readily be perceived as patent trolls. That is, over the years, I have obtained many patents for entities that had no interest in ever making or selling a product associated with that patent. This was of no concern to me: if the client had a patentable idea and had the money to obtain a patent, I would do what I needed to get him the patent. So, if a patent troll is an entity that obtains a patent for the express purpose of licensing or enforcement against another, then I have enabled this activity. I not ashamed of

this work, rather, I am proud of what I have done for these so-called "patent trolls" over the years.

As used in the press, the term "patent troll" is clearly pejorative: they are lurking to attack the unsuspecting good guys who are trying to get across the bridge to do their business. In this context, the activities of patent trolls must necessarily be bad for business. The argument here is that a company that is actually making a technology or product should win out against a patent holder that does not seek to sell that same product or technology to the public. In this scenario, companies like AudioFAX should be punished for having the foresight to protect their good ideas and enforcing their patent rights against companies that came up with those ideas at a later date and seek to commercialize those ideas.

But taking this contention to its logical extension, any person or entity that does not immediately plan to introduce a product or technology into the market should not be able to fully enforce its patent rights against someone who does seek to bring that idea to market. This group (which accurately reflects my client base over the years) would include universities, entrepreneurs with good ideas but limited means and any company that seeks to protect its R & D investment from its competitors through patents. Obviously, this is an absurd result.

Those arguing against patent trolls may have been on the receiving end of a "licensing offer letter". As a senior corporate patent lawyer, I received several of these and receipt of such letters did complicate my practice. Handling of these letters took me away from developing patent rights for my employer that I would have been very happy to license to or enforce against others regardless of whether or not my company was making the product covered by that patent. In other words, I would have enthusiastically sent a licensing enforcement letter if there was a legitimate business purpose for doing so, but it was not pleasant to be on the receiving end of these letters.

An objective view of the activities of that define the business pain caused by patent trolls should reveal a less sinister picture. That is, a patent troll is nothing other than an entity that had the business acumen and foresight to understand the power of the U.S. Patent system to create value for those who execute on this opportunity. As a society, we have decided that those who choose to tell the world what cool ideas they have come up with, as opposed to keeping those ideas secret, will be rewarded with exclusive rights for a limited time. If you don't like it, call your Congressman. In the meantime, however, you can sit and complain about the problems that patent trolls supposedly cause to your business, or [you can get on the bus and develop and execute on a value creation directed patent strategy.](#)

When your company executes on a patent strategy that is aligned with your business plans, there should be little need to worry about patent trolls because your management will know under which patent and technology bridges patent trolls are lurking. Also, your company will be able to develop and enforce patent rights that have affect your competitors; that is, your company could be seen as a patent troll to others. However, I am sure your C-level

management will not refer to your company as a patent troll but, rather, as a smart and modern business.