In previous articles in this series, I introduced the difficulties of small companies that are being sued or threatened with lawsuits on the basis of broad patents covering what is today known as e-commerce. In this column, I discuss the implications of such threatened lawsuits and why there should be a broad movement of resistance to overly broad patents.

As I understand the purpose of patents, they are intended to provide a benefit to the patent holders and to the public. Patents should be made public to improve business and technology as well as to enrich patent holders, not simply used to extract fees from people who have never had the opportunity to learn about the patented techniques. I think that buying overly broad patents from owners who inadequately publicized and enforced their own patents and then suddenly enforcing those patent rights is an unfortunate use of patent law with bad consequences for everyone except the patent holders.

Along with many other observers, I think that $5,000 payments demanded of small companies for alleged patent infringement are likely to be just a start to a longer-range plan. In addition to generating revenue, it seems to me that the threatened or actual litigation is also establishing legal precedents that will serve in future cases when patent holders attack larger victims. The obvious next step for such e-commerce patent holders is to tackle larger businesses, say those earning millions of dollars a year in profits. Patent holders could then demand larger payments, perhaps in the $100,000 range. However, the most likely targets in the long run are the big players in e-commerce, where license payments in the million-dollar range would be achievable.

If holders of overly broad patents are not stopped now, I think they will ultimately be suing companies like Amazon, e-Bay and Charles Schwab – precisely the class of target beloved by 15-year old denial-of-service script kiddies. However, the consequences of using overly broad patents as a basis for extracting fees from e-commerce participants are far more serious than a temporary denial of service: the threats of legal action could discourage countless businesses from going online in the future and the windfall profits could be in the many millions of dollars per year. Since companies habitually pass their expenses on to their customers, everyone doing business with the victims of this kind of legal coercion will end up paying to fatten the bank accounts of the owners of broad e-commerce patents.

OK, what should we do? Well first, _don’t_ write to Tim Beere to offer encouragement in his fight against the e-commerce patent holders – the poor bloke is trying to run his small, growing chocolate company (currently they have sales of less than $5 million a year). The lawsuit and the Defense Fund have already taxed his available time and he and his wife are overwhelmed with thousands of supportive e-mail messages (there hasn’t been a single critical e-mail). What you _can_ do to help is to support the Defense Fund by clicking on <http://www.youmaybenext.com/help.html>, where there’s a link to the PayPal system so you can contribute by credit card. You can also send a check. You can see a list of the small-
business owners who are actively resisting legal pressures at <http://youmaybenext.com/fighting.html>.

Best of all, if you work for a big company – say in the Fortune 1,000 – send a copy of these newsletters about overly broad e-commerce patents to your corporate legal counsel and to your chief technology officer. I devoutly hope that large companies will join the fight against overly broad e-commerce patents and will successfully challenge and overturn such patent claims. The Patent Office has got to see common sense and stop handing out patents on broad, obvious tools and methods that are already in wide use. Victory in the current legal battles will help establish precedents in this fight. Otherwise, everybody that uses e-commerce – and that’s probably every single one of you reading this column – may end up paying a form of taxation without representation to a new class of overlords of the Internet.

By the way, I gave the Defense Fund a personal donation – and ordered a box of chocolates for my wife through <http://www.debrand.com/> for good measure. They were excellent chocolates.

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