Forget the Trolls, It's Time to Embrace the Elves

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"The term 'patent troll' has been perversely extended to any NPE; but the label is a pejorative that clouds an understanding of the true merit of many virtuous NPEs, the 'patent elves.'"

The term "patent troll" has become ubiquitous in the IP world since it was first coined at Intel in the late 1990s. There is no single definition of what it means but it is always used pejoratively and is most frequently deployed against non-practicing entities (NPEs).

NPEs do not manufacture patented products. Instead, they derive economic value from IP sales, licensing or other

monetization activities. In recent years, there has been a deliberate and partially successful effort to conflate NPEs with patent trolls. However, to do this is disingenuous at best, dishonest at worst.

While there are some bad actors in the patent world, as there are in every industry, most monetization is based on entirely desirable activity that fuels further innovation. The people doing this work should not be seen as patent trolls. Instead, they are best described as “patent elves”.

Like trolls, elves are an important part of Norse mythology. Known as álfar, they are mystical beings generally regarded as creatures of great beauty, intelligence, and power. Unlike trolls, elves were believed to bring good fortune, heal illnesses, and protect people from danger. Additionally, they were considered skilled craftsmen, capable of creating magical and precious objects. Patent elves should be seen in the same way.

Thanks to patent elves, SMEs, universities and other smaller entities can have the confidence to invest in long-term R&D. This leads to innovations that, when protected by patents, can ensure a constant flow of licensing revenues to fund further R&D. This is particularly important when it comes to standards-based interoperability technology.

Incentives to Innovate

In today’s global market, the success of so much innovation relies on interoperability, because it is essential for the widespread adoption of high-level technology products. Standardization, therefore, plays a crucial role in the innovation process, ensuring that new technologies can work seamlessly across different systems and markets.

A thriving innovation ecosystem relies on global standards and the work of standards development organizations (SDOs). These bodies are central to defining and spreading interoperable technologies like 5G, Wi-Fi, and the IoT. They gather ideas from innovators and are tasked with transforming them into tangible implementable solutions, or standards.

The SDOs themselves do not do R&D. Rather they look to their members to make significant financial investments to develop and promote new standards. For example, the total costs incurred by companies involved in both innovation and standardization efforts to develop the MPEG Audio and DVB- T standards have been estimated at approximately €190 million and €96 million, respectively.

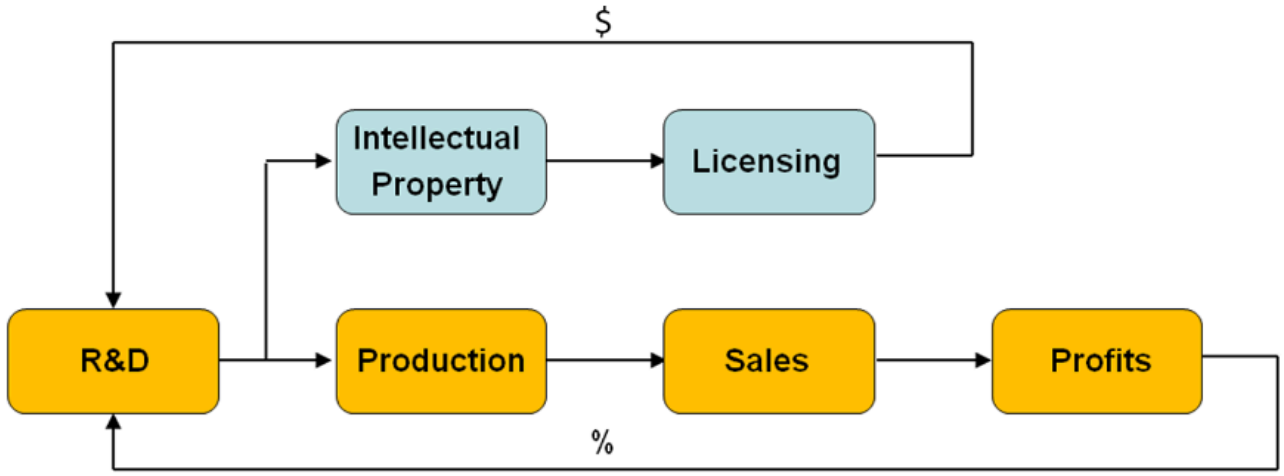
To incentivize continued innovation and participation in standardization efforts, innovators must be reasonably compensated for their contributions. Patents elves ensure this happens in multiple ways.

Returns on R&D Investment

Standard essential patents (SEPs) are a unique category of patents required to implement technical standards adopted by SDOs. By contributing their technology to a standard, SEP owners agree to make their patents available on fair, reasonable, and non-discriminatory (FRAND) terms. The FRAND commitment ensures that interoperable solutions are implemented. It guarantees the use of standardized products and services and fosters innovation, enabling the widespread adoption of new technologies for the benefit of both innovators and implementers.

Large vertically integrated companies (practicing entities) generate revenues from their product sales. This allows them to re-invest a portion of their profits in R&D to create new innovations. But how do SMEs, universities, public and private R&D centers or startups manage to do the same?

Licensing is the key. Revenues from royalties for the use of patented technology can be re-invested in new R&D efforts. This business model ensures a continuous flow of capital to support innovation. It is particularly important for those innovators that make their patents essential to the technologies incorporated within standards available on FRAND terms. In this self-sustaining cycle, intangible assets – patent rights – acquire a real economic value.



Without such recognition and rewards, innovators will be discouraged from investing in new research and may choose to opt out of the standardization process. This would lead to a preference for proprietary, closed solutions, harming the goal of achieving common

interoperability and ultimately impeding technical progress and societal well-being.

Different Scenarios in Exploiting the Result of R&D

Large corporations typically have the expertise and resources to recoup the costs of innovation and standardization through licensing activities. These companies often have dedicated legal and licensing departments that manage patent portfolios, negotiate licensing agreements, and handle royalty collection, ensuring a continuous cycle of innovation and financial return.

In contrast, SMEs, universities, research institutions and other smaller players often lack the in-house skills and infrastructure required to effectively monetize their innovations through licensing. They typically focus on research and development rather than the complex legal and business aspects of licensing, making it difficult for them to navigate the commercialization of their intellectual property.

To bridge this gap, universities and R&D centers often need the support of external licensing intermediaries who specialize in negotiating, managing, and enforcing licensing agreements. These are the elves. They can help academic institutions identify potential licensees, structure fair and reasonable agreements, and ensure compliance with licensing terms, enabling them to derive value from their innovations.

With the right external support, SMEs universities and R&D centers can unlock the financial potential of their intellectual property, ensuring that their research meets broader societal needs while also sustaining future innovation efforts.

Critical Role

The term “patent troll” has been perversely extended to any NPE; but the label is a pejorative that clouds an understanding of the true merit of many virtuous NPEs, the “patent elves”.

The table below summarizes the activities and motivations of the elves that operate in the standard development / implementation ecosystem through the licensing of SEPs:

	Elf
Patents	Essential, based on independent determination
Basis for royalty	FRAND obligation of licensor(s);
Initial patentee organisation	SDO participant (practicing entity, SME, university, R&D institution) whose core activity is innovation
Risk of litigation?	Litigation as a last resort against unwilling licensees
Ease of licensing	Support of skilled licensing intermediaries to facilitate negotiations
Benefits to licensors	Third party manages licensing and royalty collection / distribution, performing services not within scope of SMEs, universities
Benefits to consumer	Broad, speedier adoption of standardized technologies; Inventive Loop offers promise of further innovations

It is clear many NPEs play a critical role in supporting R&D and standardization efforts. Their positive contribution allows innovators, implementers and end-users to exploit the fruits of R&D and thus ensure a sustainable future for innovation and technological progress. Market participants, policy makers and the courts should recognize this virtuous behavior and enable elves to help drive technological progress in the innovation economy.

Image Source: Deposit Photos
Author: kchungtw
Image ID: 130677098

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Roberto Dini is the founder of Sisvel. With more than 40 year of experience, Mr. Dini is one of the best known and appreciated Intellectual Property experts. He began his [...see more]

Anon
June 3, 2025 09:19 am

I would suggest that **UN**-conflating the perjorative "Troll" from the 'evil' that they do (for example, by emphasizing any elvish 'good') **misses** a better approach in simply refuting what 'evil' **is**.

Patents have always been intended to be **both** a carrot and a stick.

A carrot to entice the inventors.
A stick to beat those that would otherwise employ Efficient Infringement against the inventors.

We do **not** advance the true understanding of the *intended* nature of patents by attempting to notfocus on the stick **as** the stick.

Rather, we should embrace the stick aspect and teach that "neccesity is the mother of invention," and that **with** the stick, neccesity is properly empowered.

We should **not** be apologizing for the nature of the stick.

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