

Jonathan I. Tietz, "The Unified Patent Court and Patent Trolls in Europe", Michigan Technology Law Review, Vol. 25, No. 2, Spring 2019, pp. 303-330

Healthy organisms inevitably produce cancer cells, and vibrant patent systems inevitably let bad patents slip through. These patents are harnessed by entities that leverage the uncertainty and expense of litigation to extract licenses from technological practitioners. Post issuance patent review (PIPR) has emerged as an invaluable error correcting mechanism to prevent the socially harmful assertion of improperly issued patents. The United States, with the America Invents Act, established a new system for PIPR, expanding administrative routes to curtail bad patents. Europe is going a step further with the Unified Patent Court Agreement (UPCA). The UPCA enables a low cost patent revocation action on a broad range of grounds and with a relaxed standing requirement. But this is an opt-in system with a loser pays fee-shifting arrangement. Thus, although the structure of the Unified Patent Court (UPC) appears to be set up to facilitate efficient PIPR, the disincentives for opting in suggest that the UPC will be a less effective troll-fighting vehicle than expected. Indeed, patent trolls may simply opt for national patent systems.