

Mark A. Lemley, Robin Feldman, Is patent enforcement efficient?, Boston Law University Review, 2018, vol. 98

Non-practicing entities (“NPEs”) as well as product-producing companies can sometimes provide innovation, either directly, through working the patent or transferring technology to others who do, or indirectly, when others copy the patented innovation. The available evidence suggests, however, that patent licensing demands and lawsuits from NPEs are normally not cases that involve any of these activities. Some scholars have argued that patents can be valuable even without technology transfer because the ability to exclude others from the market may drive commercialization that would not otherwise occur. The paper demonstrate that even if various commercialization theories can sometimes justify patent protection, they cannot justify most NPE lawsuits or licensing demands