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TOM CONDON; COURANT.COM
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PLACE 'PATENT TROLLS' DAMAGE BUSINESSES, ECONOMY

Rheo Brouillard knew he was in the crosshairs of a "patent troll."

Brouillard is the president of Savings Institute Bank & Trust in Willimantic. Other small banks here and around the Northeast had been getting letters claiming patent infringement. Brouillard got his letter on Jan. 3, 2013.

The one-page missive from a New York law firm representing Automated Transactions LLC says, in so many words, we own the patents on the system your ATMs use. Pay us in two weeks or we will sue you, as we have done to others.

It costs a fortune to defend patent infringement suits; it's often easier, especially for small businesses, to pay the license fee to the troll. But Brouillard doesn't like to be bullied. He went to his friends at the Connecticut Bankers Association and learned that 30 banks had gotten the same letter (including one that doesn't have ATMs).

"We decided not to knuckle under," he said.

Roberta Hurley runs Southeastern Employment Services in Old Lyme, an agency that finds jobs for persons with disabilities. She got a letter last year from an entity called FolNer LLC claiming it owned a patent on the scan-to-email technology in the leased copier her employees were using. FolNer demanded a licensing fee of \$1,000 for each of Ms. Hurley's 70 employees.

She too decided not to knuckle under.

That both fought back is commendable, that they had the problem in the first place is unconscionable. If Dante were to return to the 21st century, he would assign patent trolls to one of the lower rings of the Inferno, perhaps just above the tobacco industry. They are doing vast damage to American business and the U.S. economy.

Patent trolls, known more formally as Patent Assertion Entities or Non-Practicing Entities, don't make anything. They acquire patents, often a bunch or "thicket" of them, sometimes buying them from tech firms going out of business. They then look for businesses that may be using something like the technology covered in the patents, and threaten to sue the users unless they pay a licensing fee. It's a business model very much like the Mafia's.

The targets are often small businesses — grocery stores, restaurants, even non-profits — that cannot afford the cost of litigation. And the licensing fee is often small; the idea is to make it up in volume, said Charles O'Brien, a partner with Cantor Colburn, an intellectual property law firm that has defended companies against trolls.

If a troll sends a mass mailing to, say, thousands of coffee shops demanding a \$1,500 licensing fee for its wi-fi patent, and many of the shop owners decided to settle, it's a big score.

Trolls also go after big companies as well. ESPN, Kayak, Sikorsky and Foxwoods are among Connecticut companies targeted by

trolls, according to the Main Street Patent Coalition, a nonpartisan group pushing for patent reform. The group cites a study that found that troll victims paid out \$29 billion in direct payouts in 2011, a 400 percent increase from 2005, and that the overall cost to the economy is \$80 billion a year. While it's hard to pin an exact number on innovation stymied, opportunities lost, money needlessly diverted, it's a big number.

Some states have passed laws to impede trolls — Connecticut had one under consideration as the General Assembly headed for close of session last night. But patent law is federal, that's where major change must come. A reform bill passed the House last year and is now before the Senate, that would among other things require trolls to tell defendants what they are actually accused of doing, not now required, and make it easier to stick trolls who bring meritless lawsuits with court costs.

After passing the bill, Congress should push to improve the quality of patents — some vague or theoretical patents open the door for trolls — and fully fund the Patent Office. The patent system is a bedrock of American innovation. It has to work.

By the way, Brouillard and Ms. Hurley have thus far fended off their trolls. The ATM patent wasn't for the system Brouillard's bank uses. Ms. Hurley's troll was a shell corporation, one of a half-dozen claiming to own the same patents.

tcondon@courant.com.