

Taking on Patent Trolls: The Noerr-Pennington Doctrine's Extension to Pre-Lawsuit Demand Letters and its Sham Litigation Exception

42 Rutgers L. Rec. 229 (2015) | [WestLaw](#) | [LexisNexis](#) | [PDF](#)

While patentees have “the right to exclude others from making, using, offering for sale, or selling [their] invention[s],” there is no obligation to manufacture or commercialize it. One of the most famous patents for a bacterium that was capable of breaking down crude oil in order to treat oil spills was never produced, despite its immense potential usefulness and an appeal to the U.S. Supreme Court to get the patent approved. There are a number of reasons why a patentee may never end up commercializing his or her invention. For instance, “a nonmanufacturing patentee may lack the expertise or resources to produce a patented product, prefer to commit itself to further innovation, or otherwise have legitimate reasons for its behavior.” Chakrabarty, the inventor of the renowned oil-eating bacterium, likely never put his famous invention to public use because of the unknown environmental consequences of dumping the bacteria into water supplies. However, a patentee may not commercialize his product for nefarious reasons, such as using patents “as a bargaining tool to charge exorbitant fees to companies that seek to buy licenses to practice the patent.”

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