

Beware of Patent Trolls

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Imagine this. You get an official looking letter from an unfamiliar limited liability corporation (LLC). The letter states that it is aware that your design firm operates a particular type of copy machine that has a push-button feature that enables you to scan documents and then email or otherwise transmit them directly from the copier via a local network. The letter goes on to inform you that this LLC you have never heard of owns a patent on that scan-and-transmit technology.

The letter demands that in order to use this software function, you must pay a licensing fee to the patent holder – \$1,000 annually per employee! It's a scam, right? Certainly the copier manufacturer wouldn't have sold you a machine that contained patented software that required a separate license to use. Unfortunately, no, it's not a baseless scam. In this case, the unknown LLC actually does own a broad patent on scan-and-email technology. Whether the patent would withstand a serious court challenge is questionable, but, to date, it has not been challenged.



This LLC is one of a growing number of firms known as Patent Assertion Entities (PAEs) or Patent Holding Companies (PHCs). Perhaps you have heard of these PAEs and PHCs by their less-than-flattering nickname -- patent trolls.

Trolling for Dollars

There are two basic types of patent trolls, neither of which invent or manufacture anything. The first type is typically a group of attorneys that forms an LLC, buys existing patents from others and then makes its money by demanding licensing fees from companies it claims are violating the patents they have purchased. The second type of patent troll doesn't purchase patents but offers its legal services to patent holders in exchange for a percentage of the licensing fees they collect.

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Patent Trolls (continued from page 1)

Both types of patent trolls tend to focus on technology patents. Many target companies in particular industries – for example architect and engineering firms using scan and email technology, or coffee houses, bookstores and hotels who offer Wi-Fi services to their patrons. Some also target particular states or jurisdictions where they have had success in patent enforcement.

Patent trolls typically prey on small and mid-size companies, those most likely to be intimidated by a demand that says either pay the licensing fee or we'll see you in court. These trolls figure smaller firms can't afford to hire an attorney and fight the patent claim in court. Likely, legal costs and potential judgments will not be covered by either professional liability or general liability insurance. Unwilling to take the chance of a huge financial loss, these firms often buckle and pay the licensing fee demanded or negotiate a lower rate.

What to Do

Paying the patent trolls is not only distasteful, it's expensive. But what other options do companies have? Here are some alternatives that, while not perfect, are being used today.

Ignore it.

You can simply drop the demand for licensing fees in the trash can and hope the patent troll goes away. One study of companies targeted by patent trolls showed that more than 20% simply ignored the

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demand letter; and these firms experienced lower average costs than firms who fought back with legal representation or paid the license fees. Patent trolls are often uninterested in pursuing their licensing fees through a legal battle. They get plenty of firms who willingly pay up and find it more profitable to simply send out more letters to more companies and collect more checks. Other trolls, however, can be aggressive, and ignoring the first letter may lead to formal demands and claims, and added costs.



To control defense costs, some firms in targeted industries have teamed up and share the expense of hiring a patent attorney.



Fight it.

A good patent attorney can put together a substantive response that may get the patent trolls to back off. But for small firms, extended legal representation can be more expensive than the licensing fees being sought. In any case, it is probably wise for any firm who receives a demand from a patent troll to get at least a basic review of the letter by a qualified patent attorney who can provide an opinion as to what action, if any, is needed.

Insure it.

There are insurance policies that cover patent infringement. However, few carriers offer it and it can be expensive. Plus, you'd have to purchase the insurance before any patent trolls have come knocking. No insurance company is going to provide you with coverage once you've received a demand letter.

Attack it.

Businesses across various industries have begun banding together to combat patent trolls. Perhaps

the most well known national anti-troll group is called Stop Project Paperless (www.stopprojectpaperless.com). Specific to the design industry, the ACEC Legal Council Forum is investigating these trolls. You might also contact your elected representatives. There is currently a bill in Congress that seeks to award prevailing party fees to firms who fight and beat the trolls, and the Vermont attorney general is currently suing a patent troll for violating consumer protection laws.

Avoid it.

There are steps you can take to help avoid the potential financial losses of a patent troll. In the case of the scan-and-email patent trolls, for example, you can try to negotiate a lease modification with the company that provides your copy machine so that you are indemnified against any patent infringement claims regarding the hardware and software in the equipment. If that fails, you can consider foregoing use of the technology, having the scan and transmit functionality in your copiers disabled.



Clearly, it is almost impossible to eliminate the threat of patent trolls. If you receive a demand letter from such a firm, immediately inform your legal counsel and your insurance agent or broker. Contact your state or national industry associations and elected representatives, and take advantage of groups like Stop Project Paperless for further information and advice.

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.



live well, work well

November 2013

Food Safety Tips for Turkey Time



Preparing a turkey for Thanksgiving is a lot of work, and as the big day approaches it can be tempting to cut corners. However, one area where you should never do things in half-measures is food safety. The last thing anybody wants to deal with during Thanksgiving aftermath is food poisoning.

The "danger zone" is between 40° F and 140° F—the temperature range where foodborne bacteria multiply rapidly. When preparing a turkey, be aware of the four main safety issues: thawing, preparing, stuffing and cooking to adequate temperature.

Thawing. There are three safe ways to thaw food: in the refrigerator, in cold water and in a microwave oven. For refrigerator thawing, place the turkey in a container to prevent juices from dripping on other foods. Allow approximately 24 hours for every 4 to 5 pounds in a refrigerator set at 40° F or below.

To thaw in cold water, seal the turkey in a watertight bag and submerge in cold

water. Allow 30 minutes of submersion per pound of turkey and change the water every 30 minutes. For microwave thawing, follow the manufacturer's instructions for defrosting. Plan to cook the bird immediately after microwaving thawing to prevent bacteria from developing on the meat.

Preparation. After preparing the turkey, thoroughly wash your hands and disinfect utensils or surfaces to avoid bacteria from the turkey spreading to other foods.

Stuffing. For optimal safety and uniform doneness, cook the stuffing outside the turkey in a casserole dish. However, if you place stuffing inside the turkey, do so just before cooking, and use a food thermometer. Make sure the center of the stuffing reaches a safe minimum internal temperature of 165° F.

Cooking. Be sure the turkey is completely thawed, and set the oven to a minimum temperature of 325° F. Place the turkey breast-side up on a flat wire rack in a shallow roasting pan 2 to 2-1/2 inches deep. Use a food thermometer to ensure the stuffing, breast, thigh and wing joint reach a safe minimum internal temperature of 165° F. Cooking times will vary by size and oven. When finished, let the turkey stand 20 minutes before removing all stuffing from the cavity and carving the meat.

Lung Cancer Risk Awareness

Lung cancer is the leading cause of cancer death and the second-most diagnosed cancer in both men and women in the United States.

Lung cancer begins in the lungs and may spread to lymph nodes or other organs in the body, such as the brain. Cancer may also spread from other organs to the lungs.

Because there are very few nerve endings in the lungs, many people with lung cancer do not show symptoms until the disease is in its later stages.

There are two main types of lung cancer: small cell and non-small cell. Non-small cell lung cancer makes up about 80 percent of cases and spreads to other parts of the body more slowly than small-cell lung cancer does. Small-cell lung cancer is almost always associated with smoking.

Cigarette smoking is the number one risk factor for lung cancer. The lifetime risk of lung cancer in non-smokers is very small. Not smoking is the single best thing you can do to avoid lung cancer.

To further minimize your risk of developing lung cancer, test your home for radon and your workplace for industrial compounds. Also be sure to avoid air pollution whenever possible.

DID YOU KNOW

Lung cancer causes more deaths than the next three most common cancers (colon, breast and prostate) combined.



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A Good Night's Sleep

Long an afterthought in the public health community, the importance of sleep is rapidly gaining recognition as a key driver of wellbeing. Lack of sleep is now associated with a host of hazards and maladies including reckless driving and chronic illness. Here are some tips to ensure you get the proper amount of rest you need to maintain good health:

1. Go to bed and wake up at the same time each day.
2. Avoid caffeine and nicotine after noon.
3. Avoid large meals and alcohol right before bedtime.
4. Relax before bed with a book or with music. No electronic screens!
5. Exercise is great, but no later than two to three hours before bed.
6. Make sure your bedroom is a quiet, dark and relaxing environment, and is neither too hot nor too cold.

Giving Thanks for Savings

Thanksgiving is all about gratitude and togetherness, but it's also about abundance—and that can get pricey. While it may seem out-of-place to budget your feast, hosting a get-together you can afford while avoiding the stress associated with cost and waste will guarantee you a more enjoyable holiday.

Estimate—Have a plan before going to the store. Assume one pound of turkey per person. Use the serving size information on side dish recipes. You can use an online meal calculator to help you determine how much food you need. Estimate a little more if you want to have leftovers. Make a list based on your calculations so as not to overbuy.

Buy generic brands in bulk—If you're going to feed a large crowd, it's worth it to make a trip to a warehouse retailer for non-perishable items like canned goods, paper products and alcohol. Using store or generic brands for staple items like seasoning and stock will save you a lot of money without affecting taste.

Store promotions—Keep an eye out for special coupons and promotions around Thanksgiving. Some stores offer a free turkey if you spend a certain amount of money. Also, be on the lookout for coupons in the weeks before Thanksgiving.

BYOD (Bring Your Own Dish)—If you're hosting, it isn't stingy to ask your guests to bring food. Your guests will not fault you for asking them to bring a dish or beverage, especially since you are already doing so much. Just be sure to request types of dishes, not specific ones. For instance, ask people to bring an appetizer, side dish or dessert.

7. Don't lie in bed awake longer than 20 minutes. The anxiety of being awake can make it harder to fall asleep. Instead, get up and do a relaxing activity until you get tired.



Cranberry Stuffing

This homemade stuffing is a healthier and better-tasting alternative to most store-bought brands, and baking it separately from the turkey reduces the amount of calories and fat per serving. Use it to lighten up this year's Thanksgiving.

- 1 cup low-sodium chicken broth
- 1 cup chopped celery
- ½ cup chopped onion
- 10 slices of toasted whole wheat bread, cut into cubes
- ¼ cup chopped parsley
- 1 tsp. dried tarragon
- ½ tsp. paprika
- ⅛ tsp. ground nutmeg
- ½ cup chopped fresh cranberries
- 1 cup whole water chestnuts
- 1 cup chopped apple

Preheat the oven to 350° F. Lightly coat a 2-quart baking dish with cooking spray. In a large skillet, heat the chicken broth over medium heat. Add the celery and onion and sauté until the vegetables are tender, about 5 minutes. Remove from heat. In a large bowl, combine the bread cubes, parsley, tarragon, paprika, nutmeg, cranberries, water chestnuts and chopped apples. Add the onion and celery mixture. Stir to mix evenly. Spoon stuffing into the prepared baking dish. Cover with aluminum foil and bake for 20 minutes. Uncover and bake 10 more minutes. Serve immediately.

Yield: 6 servings. Each serving provides 147 calories, 2g of fat, 0.5g of saturated fat, 1mg of cholesterol, 263mg of sodium and 5g of fiber.

SPOTLIGHT ON



Cavnac & Associates is proud to support local and non-profit civic organizations, including the San Diego Center for Children.



The San Diego Center for Children is a 126-year old accredited nonprofit organization offering one of the most comprehensive behavioral health programs in the region for children from 3 to 18 years of age. Through our Center “safety net” of professionals and community partnerships, we strive to achieve solutions for children and families and to identify and assess behavioral issues long before they escalate. Our mission is achieved by implementing the Continuum

of Behavioral Health for Children. The Continuum provides “one stop” identification, assessment, and treatment support for the family seeking help or the professional providing treatment. The Continuum emphasizes excellence in care through therapeutic treatment, academic development and community partnerships in order for children to have the greatest potential to transition successfully into adulthood.

For more information about the San Diego Center for Children, visit: www.centerforchildren.org