



## Opinion Poll

### Kentucky Small Business Owners Support Legislation Reforming Patent System

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## Table of Contents

Executive Summary .....	3
Main Findings .....	4
Small Employers Strongly Support Proposed Changes to U.S. Patent System .....	5
Conclusion .....	7
Methodology .....	7
Poll Toplines .....	8

## Executive Summary

Small business owners across Kentucky are doing everything they can to fortify their businesses in our slowly recovering economy. In communities across the state, it is the jobs small businesses provide and the consumers they serve that keep our recovery moving. However, this is threatened when small businesses are faced with costly and frivolous lawsuits brought on by patent assertion entities—commonly referred to as patent trolls. According to a scientific opinion poll conducted for Small Business Majority, small businesses support proposed changes to the U.S. patent system that would help prevent patent trolls from targeting small businesses.

Patent assertion entities are companies that don't make or sell anything of their own; they purchase relatively ambiguous patents and then demand royalty payments for use of their technology, or immediately file lawsuits against firms they believe are infringing on their intellectual property. This situation is not just faced by companies that manufacture or sell technology: it also affects end users of common technologies, such as a coffee shop offering WiFi to their customers.

Small business owners understand that in order to prevent these attacks, reform is needed to strengthen the U.S. patent system. Our polling found Kentucky entrepreneurs show strong support for many proposed changes to the country's patent system.

For example, Kentucky small businesses believe they should be protected from patent trolls by requiring them to sue the party that is actually responsible for infringement, not the end users who had no input into the product. Nearly eight in 10 (79%) support this provision, and more than half (55%) *strongly support* it. Additionally, more than two-thirds (69%) believe patent trolls should be deterred from attacking small businesses in the first place by penalizing them for filing fraudulent patent assertions or sending abusive demand letters. Seventy-nine percent believe courts should impose financial sanctions against patent trolls that file baseless lawsuits.

In the case that a small business must go to court to fight a patent troll, nearly three-fourths (74%) support a provision that would allow courts to require the loser in a frivolous patent case to pay the winning side's fees and costs. What's more, a vast 80% support a provision that would require more transparency in patent lawsuits by requiring plaintiffs to disclose who the owner of a patent is before litigation, so that it is clear who stands to benefit financially from the lawsuit. Nearly six in 10 (59%) *strongly support* this type of transparency.

Small employers also showed particularly strong support for a provision that would reduce the cost of discovery in patent lawsuits. Eight-five percent of entrepreneurs support the creation of new judicial rules to reduce the costs of discovery in patent litigation, so that high legal fees do not force small businesses and entrepreneurs to settle out of court when they don't need to.

Small employers also agree that improvements should be made to the U.S. Patent Office in order to help prevent abuse of the system. A vast majority (68%) believes the U.S. Patent Office should be fully funded so there is closer scrutiny of patent applications. What's more, nearly eight in 10 (79%) support expanding patent review opportunities to prevent patent trolls from threatening small businesses with patents that were questionable in the first place. More than three-fourths (77%) support creating a system to trigger automatic reviews of patent that are commonly exploited by patent trolls.

It's important to note the respondents were politically varied and were in fact a Republican plurality – with 48% of small business owners identifying as Republican, 21% as Democrat and 21% as independent.

## Main Findings

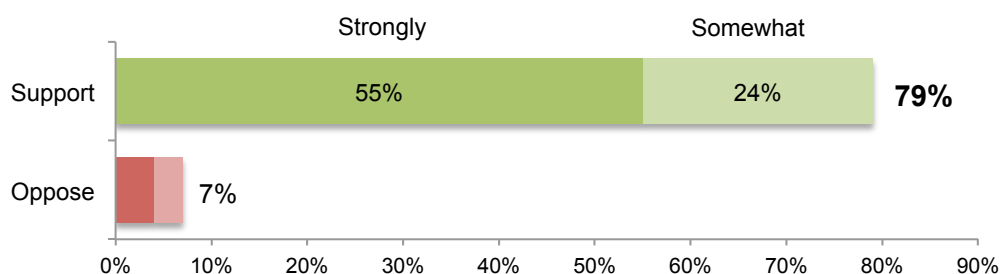
- **The vast majority of Kentucky entrepreneurs believe end users should be protected from frivolous patent lawsuits:** Nearly eight in 10 (79%) small businesses believe they should be protected from patent trolls by requiring them to sue the party that is actually responsible for the infringement, not the end users who had no input into the product. More than half (55%) of respondents *strongly support* this provision.
- **Small businesses agree the loser in a frivolous patent case should pay the winner's fees:** Nearly three-fourths (74%) support a provision that would allow courts to require the loser in a frivolous patent case to pay the winning side's fees and costs.
- **Small businesses agree patent trolls should be penalized for fraudulent patent assertions or abusive demand letters:** More than two-thirds (69%) of small business owners believe patent trolls should be deterred by penalizing them for filing fraudulent patent assertions or sending abusive demand letters. Seventy-nine percent believe courts should impose financial sanctions against patent trolls that file baseless lawsuits.
- **Small business owners support more transparency in patent lawsuits:** 80% of small employers support a provision that would require more transparency in patent lawsuits by requiring plaintiffs to disclose who the owner of a patent is before litigation, so that it is clear who stands to benefit financially from the lawsuit. Nearly six in 10 (59%) *strongly support* this transparency.
- **Entrepreneurs overwhelmingly support a provision that would reduce the cost of discovery in patent lawsuits:** 85% of entrepreneurs support the creation of new judicial rules that would reduce the costs of discovery in patent litigation, so that high legal fees do not force small businesses and entrepreneurs to settle out of court when they don't need to.
- **Small employers support making improvements to the U.S. Patent Office:** A vast majority (68%) believes the U.S. Patent Office should be fully funded so there is closer scrutiny of patent applications.
- **Entrepreneurs support expanding review opportunities for patents:** Nearly eight in 10 (79%) support expanding patent review opportunities to prevent patent trolls from threatening small businesses with patents that were questionable in the first place. More than three-fourths (77%) support creating a system to trigger automatic reviews of patent that are commonly exploited by patent trolls.
- **Respondents were a Republican plurality:** 48% identified as Republican, 21% as Democrat and 21% as independent or other.

## Small Employers Strongly Support Proposed Changes to U.S. Patent System

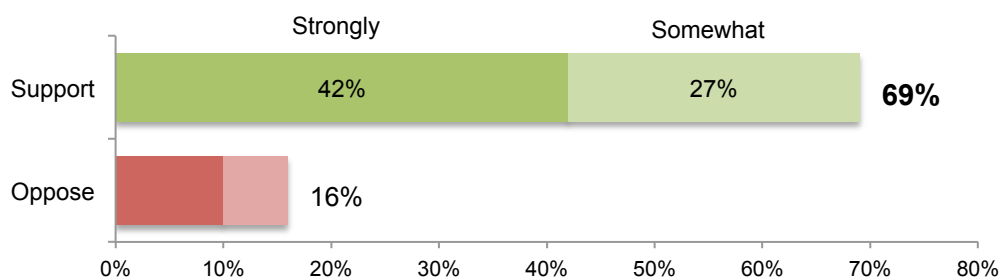
Small businesses showed strong support for many patent reform proposals that are intended to deter malicious attacks by patent trolls.

Small businesses believe they should be protected from patent trolls by requiring them to sue the party that is actually responsible for infringement, not the end users who had no input into the product. Nearly eight in 10 (79%) of entrepreneurs support this provision, with more than half (55%) who *strongly support* this. Additionally, more than two-thirds (69%) of small business owners believe patent trolls should be deterred from attacking small businesses in the first place by penalizing them for filing fraudulent patent assertions or sending abusive demand letters. Seventy-nine percent believe courts should impose financial sanctions against patent trolls that file baseless lawsuits.

■ **Figure 1: Entrepreneurs agree end users of common technologies should be protected from patent infringement lawsuits**

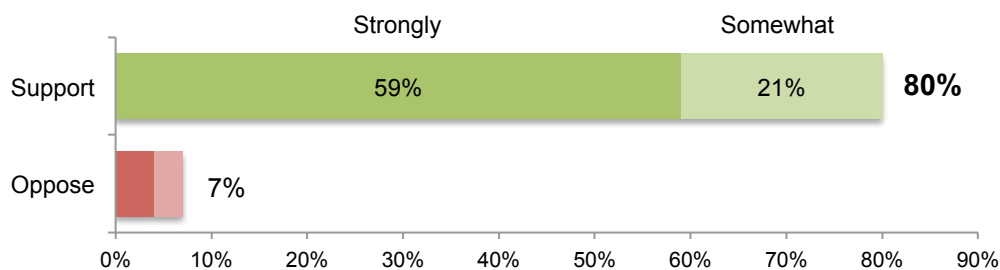


■ **Figure 2: Small business owners believe patent trolls should be deterred from filing fraudulent patent assertions or sending abusive demand letters**



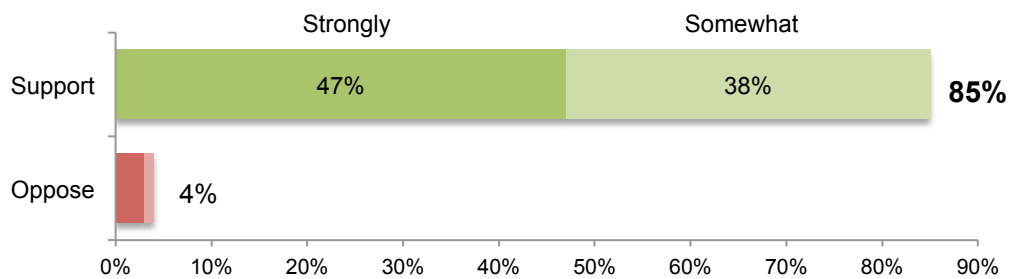
In the case that a small business must go to court to fight a patent troll, a vast 80% support a provision that would require more transparency in patent lawsuits by requiring plaintiffs to disclose who the owner of a patent is before litigation, so that it is clear who stands to benefit financially from the lawsuit. Nearly six in 10 (59%) *strongly support* this type of transparency.

■ **Figure 3: Small employers support more transparency in patent lawsuits by requiring plaintiffs to disclose information about the patent's owner**



Small employers also showed particularly strong support for a provision that would reduce the cost of discovery in patent lawsuits. Eighty-five percent of entrepreneurs support the creation of new judicial rules to reduce the costs of discovery in patent litigation, so that high legal fees do not force small businesses and entrepreneurs to settle out of court when they don't need to.

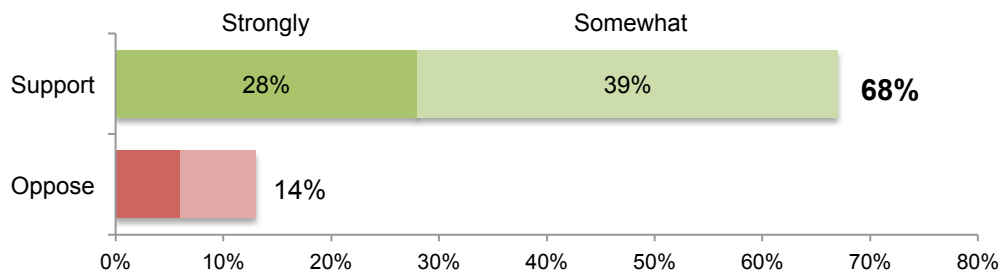
**Figure 4: Entrepreneurs support rules to reduce the costs of discovery in patent litigation, so high legal fees do not force them to unnecessarily settle out of court**



Small businesses also agree the loser in a frivolous patent case should pay the winner's fees. Nearly three-fourths (74%) support a provision that would allow courts to require the loser in a patent case to pay the winning side's fees and costs.

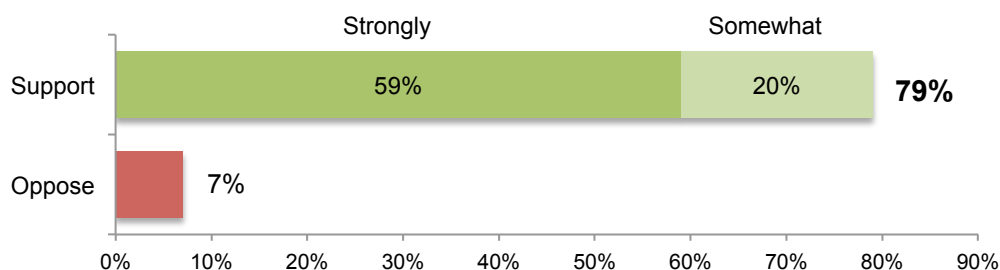
Small employers believe improvements should be made to the U.S. Patent Office in order to help prevent abuse of the system. A vast majority (68%) agrees the U.S. Patent Office should be fully funded so there is closer scrutiny of patent applications.

**Figure 5: Kentucky small businesses support improving the U.S. Patent System to help prevent abuse of the system**



What's more, nearly eight in 10 (79%) support expanding patent review opportunities to prevent patent trolls from threatening small businesses with patents that were questionable in the first place. More than three-fourths (77%) support creating a system to trigger automatic reviews of patent that are commonly exploited by patent trolls.

**Figure 6: Small business owners believe the patent review system should be expanded to prevent patent trolls from threatening small firms**



## Conclusion

Small businesses are the backbone of our state's economy and create the vast majority of new jobs. As these poll findings make clear, they believe patent trolls take advantage of the patent system and support many patent reform proposals that would help prevent this type of abuse.

Small businesses support specific provisions within patent reform legislation because they believe it would improve the system by making patent lawsuits more transparent, protect end users of common technologies from frivolous lawsuits and deter patent trolls by penalizing them for sending abusive demand letters. Kentucky entrepreneurs support changes to the patent system because it would help protect the small business community and allow them to continue to grow and create jobs, therefore helping to strengthen our economy even more.

## Methodology

This poll reflects a telephone survey of 101 Kentucky small business owners, conducted by Lake Research Partners and Chesapeake Beach Consulting for Small Business Majority with a margin of error of +/-9.8. The survey was conducted from April 7-23, 2014.

## Poll Toplines

Small Business Majority  
Technology and Patent Poll  
101 Kentucky Small Business Owners

1. Just to confirm, are you the owner of a for-profit small business, who handles operations of the business or manages the employees?

Owner-operator .....	28
Owner-manager .....	36
Both .....	37
Neither .....	<b>TERMINATE</b>
Don't know .....	<b>TERMINATE</b>

2. Approximately how many people work 30 or more hours per week at your company, including yourself? Please don't include contractors.

1-9 Employees .....	56
10-19 Employees .....	23
20-49 Employees.....	15
50-99 Employees.....	6

3. Which of the following categories best describes your business?

Non-retail services .....	21
Retail.....	26
Construction.....	8
Manufacturing.....	2
Restaurant .....	15
Real Estate.....	3
Information Technology .....	2
(Other: SPECIFY) .....	24
(Don't know/Refused) .....	0

4. What is the zip code of your business?

Region

Illinois.....	0
Kentucky.....	100
Minnesota.....	0
Nevada.....	0



5. Now, I'm going to read you several specific patent reform proposals.<sup>1</sup> For each, please tell me if you strongly support, somewhat support, somewhat oppose, or strongly oppose that particular proposal. Here's the first one.

**RANDOMIZE LIST**

**Sorted by “Strongly support”**

5a.Require plaintiffs to disclose who the owner of a patent is before litigation, so that it is clear who stands to benefit financially.....59

5d.Create new judicial rules to reduce the costs of discovery in patent litigation, so that high legal fees do not force small businesses and entrepreneurs to settle out of court when they don't need to .....47

5i.Require courts to impose financial sanctions against PAEs that file baseless lawsuits.....56

5c.Expand patent review opportunities to prevent PAEs from threatening small businesses with patents that were questionable in the first place.....59

5f.Penalize fraudulent patent assertions or abusive demand letters ..... 42

5h.Protect end users from lawsuits by requiring PAEs to sue the party that is actually responsible for infringement, not the end users who had no input into the product .....55

5g.Create a system for triggering automatic reviews of patents that are commonly exploited by PAEs ..... 43

5b.Improve patent quality by fully funding the U.S. patent office so there is closer scrutiny of patent applications ..... 28

5e.Allow courts to require the loser in a patent case to pay the winning side's fees and costs..... 26

a. Require plaintiffs to disclose who the owner of a patent is before litigation, so that it is clear who stands to benefit financially

Strongly support.....	59
Somewhat support .....	21
Somewhat oppose.....	3
Strongly oppose.....	4
(Don't know) .....	13
Support.....	80
Oppose.....	8

b. **SSA:** Improve patent quality by fully funding the U.S. Patent Office so there is closer scrutiny of patent applications

Strongly support.....	28
Somewhat support .....	39
Somewhat oppose.....	7
Strongly oppose.....	6
(Don't know) .....	19
Support.....	68
Oppose.....	14

c. **SSB:** Expand patent review opportunities to prevent PAEs from threatening small businesses with patents that were questionable in the first place

Strongly support.....	59
Somewhat support .....	20
Somewhat oppose.....	0
Strongly oppose.....	7
(Don't know) .....	14
Support.....	79
Oppose.....	7

d. **SSA:** Create new judicial rules to reduce the costs of discovery in patent litigation, so that high legal fees do not force small businesses and entrepreneurs to settle out of court when they don't need to

Strongly support.....	47
Somewhat support .....	38
Somewhat oppose.....	1
Strongly oppose.....	3
(Don't know) .....	10
Support.....	85
Oppose.....	5

e. **\_SSB:** Allow courts to require the loser in a patent case to pay the winning side's fees and costs

Strongly support.....	26
Somewhat support .....	48
Somewhat oppose.....	6
Strongly oppose.....	9
(Don't know) .....	11
Support.....	74
Oppose.....	15

f. **\_SSA:** Penalize fraudulent patent assertions or abusive demand letters

Strongly support.....	42
Somewhat support .....	27
Somewhat oppose.....	6
Strongly oppose.....	10
(Don't know) .....	16
Support.....	69
Oppose.....	16

g. **\_SSB:** Create a system for triggering automatic reviews of patents that are commonly exploited by PAEs

Strongly support.....	43
Somewhat support .....	34
Somewhat oppose.....	5
Strongly oppose.....	9
(Don't know) .....	9
Support.....	77
Oppose.....	14

h. **\_** Protect end users from lawsuits by requiring PAEs to sue the party that is actually responsible for infringement, not the end users who had no input into the product

Strongly support.....	55
Somewhat support .....	24
Somewhat oppose.....	3
Strongly oppose.....	4
(Don't know) .....	13
Support.....	79
Oppose.....	7

i. **\_** Require courts to impose financial sanctions against PAEs that file baseless lawsuits

Strongly support.....	56
Somewhat support .....	22
Somewhat oppose.....	5
Strongly oppose.....	4
(Don't know) .....	12
Support.....	79
Oppose.....	9

**The few remaining questions are for statistical purposes only.**

6. Generally speaking, do you think of yourself as a Republican, a Democrat, an independent, or something else?

**IF INDEPENDENT:** Would you say that you lean more toward the Republicans or more toward the Democrats?

Republican.....	41
independent - lean Republican .....	7
Republican.....	48
independent .....	21
Democrat .....	21
independent - lean Democratic.....	2
Democrat .....	19
(Don't know/Refused).....	10

7. What is your age?

18-24 .....	5
25-29.....	1
30-34 .....	8
35-39.....	4
40-44 .....	11
45-49.....	21
50-54.....	10
55-59.....	11
60-64 .....	14
65-69.....	8
70-74.....	1
75 and over .....	2
(Refused) .....	5

8. (RECORD GENDER)

Male .....	68
Female .....	32

9. For statistical purposes only, which of these categories best describes the gross revenue of your business in 2013?

Less than \$100,000 .....	23
\$100,000 to under \$250,000 .....	14
\$250,000 to under \$500,000 .....	9
\$500,000 to under \$1 million .....	9
\$1 million to under \$2 million .....	14
\$2 million or more .....	12
(Don't know/Refused).....	19

10. For how many years have you been the owner of your current business?

Less than 1 year .....	6
1-2 years.....	9
2-5 years .....	17
6-10 years .....	19
11-20 years.....	18
More than 20 years .....	27
(Don't know/Refused).....	4

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<sup>1</sup> Respondents were provided with the following description of patent assertion entities prior to this question: *Now, as you may know, patent assertion entities – sometimes called PAEs or patent trolls – are companies that don't make or sell anything of their own; they just own patents. They often purchase vague or generalized patents covering commonly used technology such as Wi-Fi, scanners, or e-commerce tools, and then demand annual fees for use of that technology – or immediately file lawsuits against companies they claim have infringed on their intellectual property. This is a situation that an end user of technology can face, such as a coffee shop offering Wi-Fi to their customers, not just faced by companies that manufacture and sell technology.*