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Paycheck Protection Recipients Among NPE Targets

by [Josh Landau](#) • August 26, 2020

The Paycheck Protection Program (PPP) is a federal business lending program established by the 2020 CARES Act, intended to help small businesses retain jobs during the pandemic. In order to receive funds, companies applied and explained how many jobs they would save with the money they received. All of that data is [publicly available](#).

Cross-referencing PPP loan data with lawsuits filed between March 13, 2020 (when the COVID emergency was officially declared) and July 29, 2020 shows that, in that period of time alone, NPEs sued 36 companies who received PPP loans. With only a few exceptions, all of the targeted recipients are small and medium-sized enterprises, ranging from a medical robotics manufacturer to an engineering CAD company to a company that makes test devices for electrical utilities.

But what they all have in common is that they were sued by non-practicing entities.

Translating Litigation Into Job Losses

As part of the PPP application process, companies were supposed to report how many jobs would be retained with the money they received. While this requirement was not universally fulfilled, the majority of recipients did report an estimate of the number of jobs saved. The data made public on the program also included a range within which companies' approved PPP loan amounts fell. Using this information, and assuming that companies received on average a loan falling in the middle of the loan amount range, we can calculate an estimated annual cost per job for these small and medium-sized NPE targets—approximately \$81,710 per year. (This includes salary, health insurance, retirement benefits, and other compensation, and excludes the 3 targeted recipients who did not report a job retention number.)

So, on average, each of those companies can retain an employee if they don't lose \$81,710 per year.

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But we also know that each of those companies is facing a new patent lawsuit. And according to AIPLA, the median cost of taking patent litigation to trial—even for a relatively small company likely to have a small amount at risk—is around \$1.9 million dollars per patent. With a median time to trial of 2.1 years, these companies are facing around \$900,000 per year in legal fees.

That means that for each patent litigation one of these companies takes to trial, that company has to pay 11 jobs per year worth of money in legal fees alone. That doesn't sound like much, but for a company that makes construction survey and mapping hardware and software and only has 70 employees, or an enterprise cooling solutions company with 100 employees, that's 10-15% of the company's workforce at risk. That's money that could have gone to hiring new employees, building out the business, or researching and developing new products.

And as the potential risk from a lawsuit goes up, the amount of money paid in legal fees does as well, meaning that as these companies grow, more jobs are at risk from each patent litigation. It's no wonder that many of these companies, facing a choice between potentially firing employees to pay for their defense or paying the troll bridge toll, choose to take a license to a patent they don't actually infringe.

Far from protecting these small businesses, patent litigation is threatening their existence.

Troll Protection Funding

Beyond the negative impacts on PPP recipients that have been sued by NPEs, there's one more thing that the PPP data reveals: PPP funding was used to help keep NPEs in business. Cross-referencing well-known NPE entities to the PPP loan data shows that 5 patent assertion entities received PPP loans—[Dominion Harbor Enterprises](#), [Implicit LLC](#), [Parus Holdings](#), [Infogation Corp.](#), and [Omnitek Partners](#).

It's extremely unclear why these companies needed PPP loans to retain jobs in the first place—after all, [patent litigation filings](#) have actually increased during the COVID crisis. And there's no reason to think that their businesses have been negatively impacted by COVID. A patent license or an infringement judgment doesn't exactly require face-to-face contact. Nonetheless, taxpayers may wind up funding somewhere between \$1.15 million and \$3 million dollars worth of patent assertion activity.

Perhaps the most exceptional of these requests is from [Implicit LLC](#), which appears to have been approved for a loan of \$150,000-\$350,000 to save a single job for 2.5 months. Making the most conservative assumptions possible using the PPP data, that means taxpayers may have funded Implicit to protect a single job with compensation of at least \$432,000 per year.



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Apparently patent assertion continues to pay off for its practitioners.

Update: At the time when research for this article was conducted, RPX classified Parus Holdings as an NPE. Subsequently, RPX reclassified Parus as an operating company.

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