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SCOTUS Joins Team Anti-Troll

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Just a few short months after the house passed the Innovation Act, HR 3309 (now before the Senate Judiciary Committee), a bill pointedly aimed at curbing the practices of non-practicing entities, or patent trolls, the Supreme Court has now issued two decisions not as deliberately aimed but nonetheless injurious to the patent troll business model.

Yesterday, Justice Sotomayor delivered two nearly unanimous decisions of the Court that collectively lower the hurdle for prevailing defendants to obtain attorneys' fees against the plaintiff. The previous standard, oft implemented by the Federal Circuit, the federal Court of Appeals for patent cases, required "material inappropriate conduct" or *both* "subjective bad faith" and "objective[] baseless[ness]" on the part of the plaintiff in bringing the case before fees could be awarded against it. Such conduct is commonly complained of by those targeted by patent trolls, entities named for their practice of acquiring patents in the hopes of collecting damages through infringement lawsuits, but is rarely punished. Small businesses and individuals who are sued by patent trolls often pay a fee to settle the case rather than incur the expense and exposure of litigation. Yesterday's dual Supreme Court decisions may change that.

The Court started by rejecting the Federal Circuit's strict standard for awarding fees and announced a comparably lenient one, stating that fees can be awarded whenever a case "stands out from others with respect to the substantive strength of a party's litigating position or the unreasonable manner in which the case was litigated." In a related decision, the Court curbed the Federal Circuit's ability to overturn fee awards made by lower federal courts. Although applicable to all patent cases, the implication to trolls is clear: bring a baseless lawsuit to intimidate a payment out of a defendant, and jeopardize your own bottom line as well.