“SLAPP”-ing Patent Trolls?

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This project explores state anti-SLAPP statutes as a model for patent litigation reform. To the extent that patent trolls use litigation as a tool for intimidation in order to extract settlements, in a manner similar to the “Strategic Lawsuits Against Public Participation” that the anti-SLAPP statutes are intended to limit, the experience among states with anti-SLAPP statutes should prove relevant to efforts to curb damage done by frivolous patent litigation. The SHIELD Act (Saving High-Tech Innovators from Egregious Legal Disputes Act of 2013), currently under consideration in the House Subcommittee on Courts, Intellectual Property, And the Internet, would provide for recovery of litigation costs, including awards of attorney’s fees, when defendants prevail against patent trolls (as defined by the bill). Awards of attorney’s fees are just one of the tools commonly employed by state anti-SLAPP statutes. The paper will examine the diversity of state experience with anti-SLAPP statutes in order to consider whether additional measures might strengthen the SHIELD Act and to anticipate the level of success the SHIELD Act will have in protecting innovators from “egregious legal disputes.”