

December 12, 2013

The Honorable John D. Rockefeller IV
Chairman
Committee on Commerce, Science and
Transportation
United States Senate
512 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Thune
Ranking Member
Committee on Commerce, Science and
Transportation
United States Senate
560 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire C. McCaskill
Chairman
Subcommittee on Consumer Protection
Product Safety, and Insurance
512 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dean Heller
Ranking Member
Subcommittee on Consumer Protection,
Product Safety, and Insurance
560 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Rockefeller, Ranking Member Thune, Chairman McCaskill, and Ranking Member Heller:

We, the undersigned trade associations and public interest organizations, applaud bipartisan efforts moving through Congress to curb abusive patent litigation. As Congress continues to consider this much-needed legislation, we urge you to help develop provisions that would provide the Federal Trade Commission with further direction, under its existing Section 5 authority, to go after the unfair and deceptive demand letters that patent trolls routinely send to unsuspecting businesses and nonprofits across the country. Included in this direction, we support legislative language that would promote demand letter transparency by requiring certain minimum disclosures be made by trolls to better identify themselves, the patent in question, and the specific nature of the infringement being alleged.

As you heard in testimony given at the Subcommittee on Consumer Protection, Product Safety and Insurance on November 7, patent trolls are harassing businesses and nonprofits of every size, across an increasingly wide swath of industries, with demand letters. These letters come out of nowhere, and often allege that the mere use of everyday technology violates the patent holders' rights. Further, these questionable letters typically state vague or hypothetical theories of infringement, often overstate or grossly reinterpret the patent in question, and, in some cases, make allegations of infringement of expired or previously licensed patents.

At their core, demand letters use the mere threat of litigation as leverage to extract a "licensing fee" from the recipient business. Recipients often simply settle these nuisance claims rather than run the risk of engaging in a complicated and protracted legal battle. Put simply, it is often much more expensive to hire a patent attorney to review or defend against a suspect claim than it is to pay the requested "fee." This is the troll's calculated business model.

Vague and misleading pre-litigation demand letters are at the very center of the patent troll problem. Many, if not most claims begin and end with a demand letter as companies quickly pay undeserved "licensing fees" to simply make the patent troll go away. We urge the committee to

pursue meaningful solutions to protect businesses of all sizes from these smash and grab tactics. The fight for patent litigation reform and demand letter relief is truly a main street issue impacting businesses and nonprofits in communities across the country. We look forward to continuing to work with you on this important issue.

Sincerely,

National Retail Federation

American Hotel and Lodging Association

American Association of Advertising Agencies

Direct Marketing Association

Association of National Advertisers

National Grocers Association

National Restaurant Association

Mobile Marketing Association

American Bankers Association

Application Developers Alliance

National Association of Convenience Stores

Independent Community Bankers of America

Credit Union National Association

American Public Power Association

Retail Industry Leaders Association

Electronic Frontier Foundation

Competitive Carriers Association

National Association of Realtors

National Council of Chain Restaurants

Public Knowledge

Food Marketing Institute

Engine Advocacy