

The Honorable Michael C. Burgess, M.D.
Chairman, Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member, Subcommittee on Commerce,
Manufacturing, and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

April 16, 2015

Dear Chairman Burgess and Ranking Member Schakowsky:

On behalf of financial institutions of all sizes and charters represented by the undersigned trade associations, we are writing to commend you for your leadership over the past two Congresses in developing legislation to tackle bad faith patent demand letters. Although the legislation is in need of improvement, it is a positive step forward.

Financial institutions of every size have been targeted by Patent Assertion Entities (PAEs), often referred to as patent trolls, who in most cases assert patents of dubious quality through vaguely worded demand letters or intentionally vague complaints. Indeed, the recent focus of patent trolls on credit unions and community banks threatens to pose additional, unwarranted costs on lenders and the communities they serve. In our industry alone, there are hundreds of examples of a patent troll attempting to sell a product—the patent license—to a bank or credit union using tactics resembling fraud or extortion.

Your bill would clarify the Federal Trade Commission (FTC)’s authority to fight against deceptive practices, while not affecting legitimate patent holders’ rights to send demand letters or otherwise assert their patent rights. FTC and state Attorneys General enforcement could help alter the fraudulent business model of trolls by removing some of their financial incentive to send intentionally vague demand letters in the hope of quick settlements. Added transparency could also help businesses make sense of a letter upon receipt, better equipping them to evaluate the legitimacy of the claim.

We encourage the Committee to do more to make this legislation an effective tool to combat patent trolls. In particular, the definition of “bad faith,” is very restrictive and it should be either removed altogether or expanded to help ensure more small businesses can enjoy the protections of the bill. In addition, we note that states have proven to be effective laboratories for developing and furthering robust policy relating to patent trolls. The bill should allow states that have proactively enacted laws to discourage bad faith demand letters to continue to use those laws to protect banks, credit unions, other small businesses and their customers from abusive behavior by patent trolls.

Your bill is a constructive step towards addressing the problem demand letters pose to small businesses. We look forward to continuing to work with the Committee and stakeholders to craft a bipartisan solution that directly addresses the growing abuse of our patent system and

April 16, 2015

Page 2

these specious claims that are having a negative impact on our industry, our customers, and the American economy.

Sincerely,

American Bankers Association

The Clearing House Payments Company

Credit Union National Association

Financial Services Roundtable

Independent Community Bankers of America

National Association of Federal Credit Unions

CC: Members of the Subcommittee on Commerce, Manufacturing & Trade