June 9, 2015

The Honorable Robert Goodlatte
Chairman, House Judiciary Committee
United States House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte,

The financial services coalition, which represents all sectors of the industry—from commercial banks and credit unions of all sizes and business models to asset managers and insurance providers and their independent or captive insurance agents, writes in anticipation of a mark-up of H.R. 9, the Innovation Act.

Your bill is an important effort to carefully balance the rights of legitimate patent holders with a clear need for litigation reform to combat abuse by non-practicing entities (NPE). Financial services firms, as much as any other sector, are the target of NPE activity and as such we have much at stake in the debate. We commend you and your cosponsors for moving the bill forward in an open and deliberative process which we believe will yield further refinements that strengthen the bill during mark-up and before going to the Floor.

Before the introduction of H.R. 9, we identified two priorities for the committee: the need for greater detail and transparency in demand letters and a reasonable extension of the Covered Business Method Patent program (CBM).

Demand Letter Reform

We have suggested that the Committee include a provision in the legislation that would help ensure that demand letters include clear and detailed information, such as the owner of the patent, what entities have a financial interest in the patent, what product or service is allegedly infringing and how. Failure to send a clear and detailed demand letter should have meaningful consequences.

We understand that jurisdictional considerations have complicated reaching agreement on a provision to curtail abusive demand letters, but we strongly encourage the Committee to continue to work to arrive at an agreement which, like the Senate bill, will curb what has essentially become a cottage industry of bullying small companies with threats of patent litigation. In the end, any bill which purports to curb abusive behavior by NPEs, must bring some transparency and rigor to demand letters.

Covered Business Method Program

Congressman Issa and Congresswoman Chu have announced their intention to offer a bi-partisan amendment during this Thursday's mark-up that would extend the duration of the CBM program but not expand its scope. We appreciate your support of this amendment and strongly encourage its adoption.

The CBM program is working well. The limited scope of eligible patents is permitting the Patent Office to review true business method patents while keeping technological inventions out of the program. Moreover, the rigorous gatekeeping around the petition and proceeding process, such as the requirement that the patent subject to CBM be asserted in litigation or a threat of litigation and the need to demonstrate that a patent is more likely than not invalid in order for a CBM review to be commenced, prevents petitioners from abusing patent holders or consuming Patent Office resources for collateral business benefits.

CBM is the only viable tool for quickly, efficiently and cost-effectively evaluating covered business method patents for subject matter eligibility or in light of the use and sale prior art. Without CBM, the federal judiciary is the only vehicle for subject matter eligibility and use and sale prior art to be applied to currently issued business method patents. Invalidity based on subject matter eligibility and use and sale prior art are the most common grounds for challenging low quality business method patents. Without CBM, industries that are alleged to have infringed a covered business method patent are effectively cut out of post grant review while other industries, that do not predominantly rely on subject matter eligibility or use and sale prior art, will continue to enjoy a faster, cheaper and more efficient alternative to district court litigation through *Inter Partes* Review proceedings. To ensure Patent Office review remains available equally to all industries, CBM should be extended.

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Again, we commend your strong leadership in forwarding patent reform legislation. Our coalition fully supports and is committed to the thoughtful and deliberative process that you have laid out for patent reform legislation. We strongly support the adoption of the CBM extension amendment during the Committee mark-up of HR 9, but believe more needs to be done by the Committee to address abusive demand letters, particularly against community banks and credit unions. We look forward to continuing to work with you and the Committee to ensure inclusion of a CBM extension and meaningful demand letter reform as the bill works its way to the House Floor.

Sincerely,

American Bankers Association
American Council of Life Insurers
American Insurance Association
The Clearing House Payments Company LLC
Credit Union National Association
Financial Services Roundtable
Independent Community Bankers of America
NACHA – The Electronic Payments Association
National Association of Federal Credit Unions
National Association of Mutual Insurance Companies
Property Casualty Insurers Association of America