

December 16, 2013

The Honorable Patrick J. Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles Grassley  
Ranking Member, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 201510

Dear Chairman Leahy and Ranking Member Grassley:

We, the undersigned trade associations and members of the Stop Patent Abuse Now Coalition (“SPAN Coalition”), applaud bipartisan efforts moving through Congress to curb abusive patent litigation. As Congress continues to consider this much-needed legislation, we would like to voice our strong support for provisions contained in S. 1720, the “Patent Transparency and Improvements Act,” that would provide the Federal Trade Commission with further direction, under its existing Section 5 authority, to go after the bad-faith demand letters that patent trolls routinely send to unsuspecting businesses and nonprofits across the country. The current provision would also promote demand letter transparency by requiring that certain minimum disclosures be made by trolls to better identify themselves, the patent in question, and the specific nature of the patent infringement being alleged.

Patent trolls are increasingly harassing businesses and nonprofits of every size, across the wide swath of industries represented here, 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 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 protracted litigation in federal court. Put simply, it is often much more expensive to hire a lawyer to review or defend against a suspect claim than it is to pay the requested “fee.” This is the troll’s business model.

Vague and misleading demand letters are central to the patent troll problem. Indeed, many claims begin and end with these letters as companies quickly pay these undeserved “licensing fees,” given the expense and complication of defending on the merits in court. We urge Congress to enact meaningful legislative 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 continue working with you on this important issue.

Sincerely,

*American Association of Advertising Agencies*

*National Retail Federation*

*The Direct Marketing Association, Inc*

*Association of National Advertisers*

*The Mobile Marketing Association*

CC: All members of the Senate Judiciary Committee

