

April 8, 2013

The Honorable Lee Terry  
Chairman  
Subcommittee on Commerce,  
Manufacturing and Trade  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jan Schakowsky  
Ranking Member  
Subcommittee on Commerce,  
Manufacturing and Trade  
House Committee on Energy and Commerce  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Terry and Ranking Member Schakowsky:

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 you know, The House passed HR 3309, *The Innovation Act*, in an overwhelming bipartisan vote of 325-91 on December 5, 2013. However, for jurisdictional reasons, the bill did not include comprehensive provisions to address vexatious pre-litigation demand letters. As Congress continues to consider patent litigation reform, we urge you to help develop provisions that would provide the FTC with further direction under its existing Section 5 authority to go after the unfair and deceptive pre-litigation demand letters that patent trolls routinely send to unsuspecting businesses and not-for-profits across the country.

As you heard in testimony given at the Subcommittee on Oversight and Investigations on November 14, 2013, and will hear again today in the Subcommittee on Commerce, Manufacturing and Trade, patent trolls are harassing businesses and not-for-profits 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 judicially invalidated, 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 subcommittee 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 not-for-profits in communities across the country. We look forward to continuing to work with you on this important issue.

Sincerely,

**National Retail Federation**

**American Association of Advertising Agencies**

**Direct Marketing Association**

**Association of National Advertisers**