

April 7, 2014

The Honorable Patrick Leahy
The Honorable Charles Grassley
United States Senate Judiciary Committee
Washington, D.C. 20510

Dear Committee Members,

On behalf of the undersigned free-market organizations, we write to express our support for your committee's patent reform efforts. As advocates for a robust innovation economy with a strong and effective patent system, we urge you to support the important litigation reforms proposed by Sens. Leahy and Lee (S. 1720), and related proposals from Sen. Cornyn (S. 1013), Sen. Hatch (S. 1612), and others.

The Constitution established an intellectual property regime that balances promotion of innovation and economic growth with the need for open and competitive markets. A well-functioning patent system is increasingly important in a global economy where technological innovation, rather than tangible assets or market share, are what make or break a company. In aggregate, these innovative companies build the wealth of nations.

Unfortunately, it has become clear that the current litigation environment surrounding our patent system stifles innovation. Each year, abusive litigation from certain patent assertion entities drains tens of billions of dollars from the economy, creating tremendous deadweight losses. While some patent assertion entities can have a valued role to play, the current civil litigation system must be updated to curtail its abuse. The targets of these "patent trolls" are not just big technology companies. Rather, most troll lawsuits are brought against non-tech companies. These victims are often main street businesses such as restaurants, coffee shops, hotels, banks and others that don't invent or manufacture anything, but are seen as easy targets by patent trolls.

These bad actors have found a profitable way to exploit the system by taking advantage of the enormous costs of litigation. Unfortunately, defending a patent infringement suit all the way through trial costs an average of \$5 million per case, and even for small and medium-sized businesses averages nearly \$2 million. Many small operations have little choice but to settle with the trolls, even when the infringement claim is completely without merit.

While American businesses are being crippled or going broke from frivolous litigation, fewer resources are left for research and development, causing uncertainty for start-ups and entrepreneurs, lost jobs, and shattered dreams.

For these reasons, we believe the patent litigation process must be reformed to strengthen the system against abuse and better protect patent holders. We strongly

support your committee's efforts to include provisions for shifting litigation fees to losers of frivolous patent suits; to adopt pleading standards that better identify alleged infringements; to reduce abuse of the discovery process; to provide reasonable protection for end users; and to impose transparency requirements for patent litigation and ownership.

Together, these reforms would shield honest businesses from spurious patent claims and make companies less likely to resolve such disputes by paying nuisance settlements. They could also aid small inventors and patent-holding start-ups by streamlining patent litigation, which will reduce costs across the board.

Abusive patent litigation extracts resources from the innovation economy, effectively taxing it, rather than promoting it as the Founders intended. We strongly urge you to support these much-needed reforms, which will serve to improve the strength of America's patent system and better align it with its constitutional mandate.

Sincerely,

Zach Graves, R Street Institute
Brent Gardner, Americans for Prosperity
Ryan Radia, Competitive Enterprise Institute
Luke Kenworthy, Generation Opportunity