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March 18, 2015

The Honorable David Vitter
Chairman
U.S. Senate Small Business and
Entrepreneurship Committee
516 Hart Senate Office Building
Washington, DC20510

The Honorable Ben Cardin
Ranking Member
U.S. Senate Small Business and
Entrepreneurship Committee
509 Hart Senate Office Building
Washington, DC, 20510

Dear Chairman Vitter and Ranking Member Cardin:

On behalf of the more than one million members of the National Association of REALTORS® (NAR), who facilitate nearly 5 million home sales, boosting the American economy, we urge your strong support for strong comprehensive patent litigation reform. Litigation and threatened litigation from abusive patent trolls divert resources away from more productive activities including property sales and investment in new technologies that enhance the consumer's real estate experience and lead to job creation.

NAR, whose members identify themselves as REALTORS®, represents a wide variety of real estate industry professionals. REALTORS® have been early adopters of technology and are industry innovators who understand that consumers today are seeking real estate information and services that are fast, convenient and comprehensive. Increasingly, technology innovations are driving the delivery of real estate services and the future of REALTORS® businesses.

Real estate firms vary widely in size, but the overwhelming majority are very small entities. NAR's most recent surveys indicate that more than half of all realty firms have less than twenty-five agents and the typical sales agent is affiliated with an independent realty firm with only one office. This unique industry structure can make compliance with regulatory burdens particularly onerous. Further compounding this concern is the independent contractor status of the overwhelming majority of real estate sales professionals. Any new data security requirements will necessarily impact the individual real estate agent who is a legal business entity separate from the real estate company with which they are affiliated.

We write to explain how the real estate sector has been impacted by specious infringement claims asserted by non-practicing entities (NPEs), or "patent trolls." We urge your committee to swiftly pass meaningful reform legislation to curtail abuses when NPEs claim intellectual property rights in "sham" patents that are overly broad and lack integrity; send poorly researched but threatening demand letters to extort licensing fees from business owners; and file vague and frivolous lawsuits.

In 2012, patent trolls sued more non-tech companies than tech companies, at an estimated cost to the U.S. economy of \$80 billion on court battles. The number of defendants in patent lawsuits increased roughly 129 percent over the four year period from 2007-2011, according to the U.S. Government Accountability Office. Real estate businesses, tenants, brokers and service providers have been threatened and targeted with spurious patent infringement claims, in contexts that include the following:

- Brokers implementing website technology to allow zooming in to located points of interest on a map and creating home search alert function
- Building owners and tenants that use standard, off-the-shelf routers to provide Wi-Fi access for hotspots in lobbies, restaurants, atriums, and other common areas of buildings;



- The Multiple Listing Service, a critical tool for real estate agents that uses location-based search capabilities to identify homes and other properties available for sale or lease; and
- Businesses that attach scanned documents to emails to execute contracts, closings, and other commonplace real estate transactions.

Rather than researching and litigating patent infringement claims, our members wish to channel their resources to serve their core functions to satisfy the real estate needs of the American people – and create jobs in the process. To that end, we ask your committee to enact a package of common sense patent reform measures that includes:

Reform abusive demand letters: Require that patent demand letters include truthful, basic information. Patent trolls send vague and deceptive letters alleging patent infringement to demand unjustified payments from innocent individuals and businesses. Vague demand letters should not be used to bully innocent businesses into paying what amounts to protection money.

Make trolls explain their claims: Require patent owners to explain in detail the basis for the alleged infringement when they file a complaint. Current law does not require that a patent holder explain how a patent is infringed, or even identify the product involved, which makes it nearly impossible someone who has been sued to evaluate the case and decide how to proceed.

Protect innocent customers: Ensure that claims between a patent owner and a manufacturer proceed before claims between the patent owner and the manufacturer's end users. Under current law, anyone can be sued for infringement for simply using a product, system or method. We don't want to change that. Instead, it simply makes sense for cases against end users to be stayed in favor of cases involving the manufacturer.

Make patent litigation more efficient: Make patent litigation more efficient so that weak cases can be dismissed before expensive discovery. Requiring patentees to explain and judges to decide what a patent means at the beginning of a case—the Markman hearing—narrows the case to the actual legal issues in question, drives early resolutions and avoids unnecessary and expensive discovery.

Stop discovery abuses: Require trolls to pay for the discovery they request beyond core documents so that they cannot run up costs just to force a settlement. Since trolls don't actually make or create anything, they have few documents to produce and no incentive to be reasonable in their discovery requests. Making trolls responsible for the costs of their discovery requests that go beyond the core documents needed to decide most patent issues will stop unreasonable demands made for negotiation leverage.

Make abusive trolls pay: Require that a losing party who brings a frivolous case pay the other side's attorney's fees—and make sure the troll can pay. Trolls currently have few barriers to litigation with no significant costs. A stronger presumptive fee-shifting statute and a mechanism to ensure court ordered fee shifting is enforceable will deter nuisance suits.

Provide less expensive alternatives: Maintain and improve administrative alternatives to litigation. Ensuring access to efficient and fair mechanisms to re-examine questionable patents will reduce litigation abuses and strengthen the patent system.

To be clear, validly issued patents warrant full protection to spur American innovation and ensure that U.S. businesses thrive in increasingly competitive marketplaces at home and abroad. Our concerns are with patent trolls who have no interest in producing any goods or services, have not put the sweat equity into the innovations they purport to protect, and simply wish to sue or otherwise coerce payments from real estate and other companies. The reforms we suggest above would not have a chilling effect on inventors who legitimately seek to protect their hard-earned intellectual property. Our recommendations would provide the U.S. real estate sector with the freedom it needs to operate within a rebounding economy.

We look forward to working with you as patent reform legislation moves through your Committee and the full Senate.

Sincerely,



Chris Polychron
2015 President, National Association of REALTORS®

cc: U.S. Senate Small Business and Entrepreneurship Committee