



April 15, 2015

The Honorable Charles E. Grassley
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Robert W. Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
B351 Rayburn House Office Building
Washington, DC 20515

Re: ***Real Estate’s Stake in “Patent Troll” Reform***

Dear Chairmen and Ranking Members:

The undersigned organizations represent all facets of the U.S. real estate industry. Our members construct, own, manage, lease, broker, and finance all types of properties across the country, including office buildings, single-family homes, apartments, hotels, industrial plants, retail, health care, and other establishments.

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 committees 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.

The patent troll problem grows every year that Congress fails to act. Patent trolls filed 18 percent more lawsuits in 2013 than the previous year, suing 11 percent more companies. Real estate businesses, tenants, brokers and service providers have been threatened and targeted with spurious patent infringement claims in contexts such as:

- 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;
- Retail establishments that offer “store locator” functions and on-line platforms to enable purchases through credit, debit, and gift cards that assist consumers in deciding whether, where and how they buy ordinary goods and services;

- Lenders that offer web-based technologies at the core of the 21st-century banking experience such as check imaging, mortgage comparison shopping, and mobile banking apps that drive real estate transactions;
- Hospitality establishments with websites providing on-line features and drop-down menus for business and vacation travelers to search for, reserve and purchase room stays;
- 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;
- Businesses that attach scanned documents to emails to execute contracts, closings, and other commonplace real estate transactions; and
- Home builders and their contractors who use obvious processes to ensure that wood construction framing is sufficiently free of moisture for habitable, sustainable, and well-built environments.

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 committees to enact a package of common sense patent reform measures that will:

- ***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 customers who use those products. 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 customers 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 respective committees, and toward votes in both the Senate and House this year.

American Gaming Association
American Hotel & Lodging Association
American Resort Development Association
Building Owners and Managers Association International
International Council of Shopping Centers
Leading Builders of America
National Apartment Association
National Association of Home Builders
National Association of Real Estate Investment Trusts
National Association of REALTORS®
National Multifamily Housing Council
The Real Estate Roundtable

cc: Members of the Judiciary Committees of the U.S. Senate and House of Representatives