

# UNITED *for* PATENT REFORM

January 15, 2015

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

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

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20510

The Honorable John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20510

Dear Chairmen and Ranking Members:

We, the undersigned members of United for Patent Reform, have formed a broad coalition of diverse American businesses to pursue comprehensive solutions to abusive patent litigation. Despite the passage of the America Invents Act and several recent positive rulings from the Supreme Court, abuse of our patent system continues unabated. Instead of creating new jobs and investing in new technologies, businesses large and small across many industries—from national realty, construction, and technology businesses to Main Street retail shops, hotels, grocers, convenience stores, and restaurants—continue to be forced to divert scarce resources to fighting frivolous lawsuits and overly broad claims made by Patent Assertion Entities (“patent trolls”). This must change.

Enshrined in the Constitution, America’s patent system has driven innovation, technological advancement, and economic growth for over two centuries, but it is being threatened by patent trolls who manipulate and exploit imbalances in the patent system. Patent trolls use the threat of high litigation costs to extract unwarranted “hold up” settlements, not only from companies that make the products that trolls allege might infringe their patents, but also from completely unknowing users of those products who buy them knowing little or nothing about how they are made or the intellectual property that goes into making them. Patent trolls know it is often cheaper and easier for their victims to settle than to become educated about the inner-workings of technology made by someone else.

The trolls engage in this activity without regard for the integrity of the patent system or the costs in lost jobs, shuttered businesses, and reduced innovation. Rather, they seek personal financial gain at the expense of the productive participants in the US economy. This is not an isolated problem. Suits by trolls have risen by an average of 22 percent per year since 2005. The problem has grown out of control, and as every member of the Coalition can attest, patent trolls target every corner of the American economy from Main Street businesses to technology companies.

Parties across the political and economic spectrum agree that the problems caused by patent trolls and abusive patent litigation must be addressed. President Obama has spoken out forcefully against patent trolls, explaining that they are “just trying to essentially leverage and hijack somebody else’s idea and see if they can extort some money out of them.” Democrats and Republicans in the House of Representatives joined together to pass the Innovation Act by an overwhelming bipartisan vote of 325–91. Although the Innovation Act could have done even more to prevent abusive patent litigation, it was an excellent start to the legislative reform effort. It took a comprehensive, yet targeted, approach to addressing the problem: it heightened pleading standards, reformed discovery requirements, introduced end user protections, and provided much needed transparency. These reforms were supported by a diverse group of businesses, consumer groups, academics, and state attorneys general.

The urgent need for comprehensive change has not lessened since the House of Representatives passed the Innovation Act thirteen months ago. Although the Supreme Court heard an unprecedented number of patent cases last term—a testament to the fact that our patent system needs reform—those decisions have not deterred the abusive strategies employed by patent trolls who continue to exploit the patent system. Moreover, although the courts can alter their understanding or interpretation of the patent laws, only Congress has the authority to change those laws.

The Coalition has united, not to achieve incremental victories or invalidate specific types of patents, but to take back a patent system increasingly held hostage by patent trolls and return it to its original purpose: fostering innovation and investment that benefits the entire American economy.

To achieve this goal, the Coalition supports the following legislative reforms:

- **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 for 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, by among other things not watering down the PTO's existing standards, will reduce litigation abuses and strengthen the patent system.

The Coalition looks forward to working with you to develop reforms that return the American patent system to one that fosters entrepreneurial activity rather than abusive litigation.

Sincerely,

*Adobe Systems, Inc.*

*National Association of Convenience Stores*

*Amazon*

*National Association of Home Builders*

*American Hotel & Lodging Association*

*National Association of Realtors*

*Brinker International, Inc.*

*National Council of Chain Restaurants*

*Carlson Rezidor Hotel Group*

*National Restaurant Association*

*Chico's FAS, Inc.*

*National Retail Federation*

*Cisco Systems, Inc.*

*Oracle Corporation*

*Coalition for Patent Fairness*

*Pacific Sunwear of California, Inc.*

*Culver Franchising System, Inc.*

*QVC, Inc.*

*Dell Inc.*

*Retail Industry Leaders Association*

*Dillard's, Inc.*

*Salesforce.com Inc.*

*Facebook*

*SAS*

*Food Marketing Institute*

*Starwood Hotels & Resorts Worldwide, Inc.*

*Google Inc.*

*Verizon Communications Inc.*

*Intuit Inc.*

*Whataburger*

*JCPenney*

*White Castle System, Inc.*

*Macy's*

*Williams-Sonoma, Inc.*

cc: The Honorable Mitch McConnell, Majority Leader, United States Senate  
The Honorable Harry Reid, Minority Leader, United States Senate  
The Honorable John Boehner, Speaker, United States House of Representatives  
The Honorable Nancy Pelosi, Minority Leader, United States House of  
Representatives  
The Honorable Members of the Senate Committee on the Judiciary  
The Honorable Members of the House Committee on the Judiciary