

October 28, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

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

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Messrs. Chairmen and Ranking Members:

The patent system plays an important role in promoting innovation in the United States. Increasingly, however, patent assertion entities (PAEs), commonly called patent trolls, are exploiting the patent system for financial gain to the detriment of innovation. PAEs do not make or sell products, nor do they develop new technologies—their business model is based purely on patent litigation and patent licensing. They impose huge costs on American businesses (at least [\\$29 billion in 2011 alone](#)) that drain funds from job creation. The undersigned organizations represent tens of thousands of businesses employing tens of millions of Americans, as well as public utilities and public interest groups. We call on Congress to provide relief from patent abuse by creating an efficient, inexpensive alternative to litigation for fighting the invalid business method patents commonly asserted by PAEs.

The PAE problem is growing rapidly. Nearly [7,000 businesses](#) were sued by PAEs in 2011-2012, a fourfold increase since 2006. In fact, the number of companies being sued with business method patents [has increased 28% a year on average since 2004](#). Many more were threatened. These suits frequently involve low-quality patents that cover standard features of e-commerce, like online shopping carts, store locators on websites, and shipment notification emails sent to customers. Non-tech companies are frequent targets of these patents, usually for products that they purchased. 51% of the PAE suits faced by retailers, for example, are over business method patents.

Most companies have little recourse but to settle with PAEs, even when threatened with invalid business method patents. The average cost of patent litigation is \$6 million. For a small or medium business, defending a patent lawsuit typically [costs \\$1.75 million](#). Because proving a PAE's patent invalid through litigation can take years and cost millions, a targeted company faces a no-win situation: it can pay lawyers, the PAE, or both.

To avoid settling with PAEs who use invalid patents, companies need an effective alternative for challenging validity outside of the courtroom. One such alternative, created in 2011, is the Covered Business Method (CBM) review program at the U.S. Patent & Trademark Office. CBM review gives threatened companies a substantially less expensive way to challenge low quality patents. Once invalidated at the PTO, a patent is removed from the system; it cannot be used to target other businesses. Importantly, small businesses are also able to pool their resources in order to pay to have a PAE's patent reviewed.

Currently, however, CBM review is limited to "financial services" patents. This limitation means that most of the patents used by PAEs are not eligible for CBM review. Other programs for challenging patent validity at the PTO do not allow the PTO to consider whether the patent is abstract, vague, or too broad, common problems with the business method patents asserted by PAEs.

This is why we were pleased to see growing momentum in Congress for expanding CBM review. The White House also argued for an expanded CBM program in its package of legislative recommendations announced this June. Last week, the U.S. Patent & Trademark expressed its support as well. We strongly urge you to support a package of reforms that would expand CBM review in order to address the low-quality patents that are fueling the PAE litigation explosion and harming American companies.

We appreciate your support of this important initiative.

Sincerely,

Airlines for America

American Association of Advertising Agencies
New York, NY

American Gaming Association

American Hotel and Lodging Association

American Public Power Association

Application Developers Alliance

CoCo
Minneapolis, MN

Computer & Communications Industry Association

Direct Marketing Association

Electronic Frontier Foundation
San Francisco, CA

Engine Advocacy

Food Marketing Institute

Galvanize
Denver, CO

International Franchise Association

The Internet Association

Internet Infrastructure Coalition

Mobile Marketing Association
New York, NY

National Association of Realtors

National Council of Chain Restaurants

National Grocers Association

National Retail Federation

Printing Industries of America

Public Knowledge

Public Patent Foundation
New York, NY

Startup Weekend
Seattle, WA

The eMob
New York, NY