AMERICANS for TAX REFORM

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The Honorable Patrick J. Leahy
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The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
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The Honorable Chuck Grassley
Ranking Member,
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
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The Honorable John Conyers, Jr.
Ranking Member,
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U.S. House of Representatives
2138 Rayburn House Office Building
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Dear Messrs. Chairmen and Ranking Members:

Your efforts on patent reform are to be commended. In an economy increasingly supported by knowledge-based products, the health of our patent system is vitally important to American competitiveness on both the national and international arenas.

Our Constitution empowers the individual ability to create and innovate by simply stating that Congress should "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." In today's knowledge-based economy, patents are more important than ever to encourage and stimulate innovation, while ensuring that inventors are compensated for their work.

The current patent reform debate is driven – rightly -- by concerns over abusive conduct in litigation. Efforts to deter this conduct, through measures such as balanced fee shifting, heightened pleading standards, and discovery reform, are warranted to deter the increasingly aggressive and abusive practices of "patent trolls." We are pleased to support such reforms. These reforms preserve incentives for innovation and the integrity of patent ownership, and appropriately target predatory litigation practices.

Balanced fee shifting: The threat of bearing the costs if an unsubstantiated claim is brought forward in patent litigation, will serve as an effective deterrent to abusive patent lawsuits. Unless the plaintiff filed an objectively justifiable claim, the court should award reasonable costs and fees (including attorney fees) of the prevailing party. Plaintiffs pursuing cases on questionable grounds should think twice about hauling innovators into costly litigation.

Heightened pleading: Requiring a clear statement as to the claimed act of infringement and the patent infringed upon will reduce unnecessary financial burdens on defendants and increase transparency in the legal process. Often, complaints are so vague that targets do not know which claims of the patent they are alleged to have infringed or which products or services are allegedly infringing. Defendants are often forced into incur high legal costs associated with pursuing arguments that are irrelevant once the plaintiff's case becomes clear. These costs can be prohibitive for defendants, especially independent inventors and small businesses.

Discovery Reform: Often, abusive tactics aim to seek extensive discovery to drive up costs and burdens for defendants and create pressure for settlement. To eliminate this source of abuse, if a party requests additional discovery beyond core documentary evidence, that party should be responsible for the costs of additional discovery of the non-requesting party.

We appreciate the thoughtful effort put into the Innovation Act, the opportunity to share our views, and look forward to seeing real patent litigation reform succeed in Congress. Please contact Katie McAuliffe by email, kmcauliffe@atr.org, or phone, 202-785-0266, with any questions or comments.

Onward,

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