

December 16, 2013

The Honorable Patrick Leahy
Chairman
Committee on Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Patent Transparency and Improvements Act, S. 1720, seeks to address the rapidly-growing problem of patent assertion entities or patent trolls threatening and filing abusive litigation. Businesses of all sorts have been repeatedly victimized by patent trolls. Main Street businesses have expended large dollars on legal fees and licensing fees often based on illegitimate patent claims.

Trolls sue customers because the trolls know that the Main Street businesses are virtually defenseless in fighting claims for products and services they did not design and supply. Patent trolls know there are thousands of customers for every one manufacturer, and they can increase their return exponentially when the Main Street businesses pay a licensing fee or settle a case rather than fight back. This troll business model also depends on rolling up settlements from dozens or hundreds of end-users in order to fund further litigation against manufacturers or other end-users.

The introduction of S. 1720 is a positive step, but the bill still needs to be strengthened to further protect Main Street businesses from abusive litigation. As drafted, the customer stay provision introduces new and incalculable risks into litigation for Main Street businesses in exchange for the *opportunity* to obtain an automatic stay while a separate suit between the manufacturer and the troll takes place. Typically, the company with the best information and ability to litigate a patent infringement suit is the manufacturer. Their end-user customers should be able to have stays entered, putting their cases on hold while manufacturers litigate the key issues in a case about one of their own products, processes, or systems. That stay should not later disadvantage Main Street businesses if they do eventually have to litigate against the troll at the conclusion of the manufacturer suit. S. 1720's customer stay provision needs to change for the bill to achieve its intended goal of protecting Main Street businesses. We understand that other industries are similarly interested in finding a workable customer stay provision, and we encourage the Committee to continue working to foster a solution on this point.

We are encouraged that S. 1720 deals with abusive demand letters directly. In addition to lawsuits, many Main Street businesses also receive patent demand letters several times each year that threaten litigation should the recipient refuse to pay a licensing settlement fee. These costs present a serious problem for consumer businesses like ours. Any additional costs, such as the legal fees needed to fight patent trolls or the licensing fees used to pay them off, are extremely damaging to Main Street businesses with scarce funds. Businesses need protection from these

deceptive letters, and the bill includes an important provision requiring more transparency and disclosure in these letters.

We appreciate the work that has gone into S. 1720. We look forward to working with you as the bill continues through the legislative process to better protect main street businesses from abusive litigation and deceptive demand letters.

Sincerely,

National Trade Associations

American Gaming Association
American Hotel & Lodging Association
American Society of Home Inspectors
Application Developers Alliance
Direct Marketing Association
Food Marketing Institute
International Franchise Association
NACS – The Association for Convenience & Fuel Retailing
National Association of Realtors
National Council of Chain Restaurants
National Grocers Association
National Retail Federation
Retail Industry Leaders Association
U.S. Travel Association

State Trade Associations

Alliance of Wisconsin Retailers
Arizona Retailers Association
California Grocers Association
California Independent Grocers Association
California Retailers Association
Connecticut Retail Merchants Association
Idaho Retailers Association
Illinois Retail Merchants Association
Iowa Retail Federation
Minnesota Retailers Association
Missouri Retailers Association
Nebraska Grocery Industry Association
New Jersey Retail Merchants Association
North Carolina Retail Merchants Association
Oklahoma State Chamber of Commerce
Retail Association of Maine
Retail Association of Mississippi
Retail Association of Nevada

Retail Council of New York State
Retail Merchants of Hawaii
Retailers Association of Massachusetts
South Carolina Retail Association
South Dakota Retailers Association
Texas Retailers Association
The Ohio Council of Retail Merchants
Utah Food Industry Association
Utah Retail Merchants Association
Vermont Retail Association
Washington Retail Association
Wisconsin Retail Merchants Association

cc: Members of the Senate Judiciary Committee