



February 6, 2013

The Honorable Patrick 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
United States House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

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

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
United States House of Representatives
B-351 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Leahy and Goodlatte and Ranking Members Grassley and Conyers:

As your committees begin the 113th Congress, the companies of the Coalition for Patent Fairness (CPF) write to outline our recommendations to improve America's patent system.

The Coalition for Patent Fairness has spent the past seven years working to improve our patent system through legislation, the administrative process, and the courts. Our companies hold tens of thousands of patents and are among the most active users of the patent system. We are strongly committed to the health of the patent system and we look forward to working with you and your colleagues to address these challenges in a productive 113th Congress.

While we have seen progress with the passage of America Invents Act (AIA) and in the courts, our companies and the innovation ecosystem of startups and investors continue to face significant problems. Patent Assertion Entities (PAE's), commonly referred to as "patent trolls," are still plaguing America's innovators. One recent report showed that PAEs cost the American economy \$29 billion in 2011, and that did not include the indirect costs of lost innovation. Even more troubling, studies find that the targets of this patent game are increasingly small- and medium-sized businesses. These startups are essential to innovation and job creation, but are most vulnerable to the uncertainties and expenses of patent litigation.

Remove incentives to litigate - PAEs should not have a free roll of the dice. CPF supports the DeFazio-Chaffetz SHIELD Act (“Saving High Tech Innovators from Egregious Legal Disputes Act of 2013”) and similar legislative efforts. While it is early in its legislative evolution, we believe in the essence of this legislative idea: innovation and the patent system are best served by disincentivizing unnecessary and abusive litigation. We look forward to working with your committees on this important legislation.

Fix the estoppel threshold - do not let the AIA’s new post-grant review become useless because of a technical error. As Chairman Leahy and former Chairman Smith recently noted, the mistake in question was a “scrivener’s error.” The intent of Congress was clear, yet over a year and half after passage of the AIA, this error remains unremedied. As far back as 2005, the introduced and passed versions of the patent reform bills contained identical language on this matter, until it appears the text was inadvertently changed, despite a lack of legislative directive, at some point between the House Judiciary Committee’s vote to report the bill to the House Floor and the House taking up the matter. Were it allowed to function as Congress intended, the AIA’s new post-grant review proceeding could potentially help improve patent quality and minimize costly litigation. Yet without the necessary technical correction, many stakeholders may avoid post-grant review proceedings altogether. As such, a major accomplishment of the AIA may never be realized.

Protect and enhance prior user rights - America’s trade secrets are vulnerable under the new first to file patent system. We need to put American companies on a level playing field with their foreign competitors who enjoy broad prior user rights in their home countries. It is essential to ensure that prior user rights adequately protect trade secrets embedded in commercialized products. Congress recognized that, even as the AIA passed, there remained some uncertainty as to the scope of prior user rights necessary to protect innovation under the new first to file system and a need to revisit the matter in the near future. We believe that there is extensive cross-industry support for taking this opportunity to address the question, in order to protect substantial investments made in the development and preparation of proprietary technologies.

Use your oversight role actively to ensure an ongoing public discussion about how to maximize innovation in our patent system. The pace of change is accelerating rapidly in everything from technology that we patent to the business models that take advantage of the system. We face challenges at the PTO, in the Federal Courts, and at the International Trade Commission (ITC). We have been encouraged by recent efforts by the Federal Trade Commission and the Department of Justice to examine Patent Assertion Entity activities. Likewise, the PTO has been active in engaging stakeholders on important questions. The PTO recently sought comments on the questions of the clarity of claims and the identity of the real-party-in-interest, and are engaging with the patent community in finding ways to improve the quality of software related patents. CPF is actively working on several of these efforts, and we urge your

committees to encourage the PTO in these efforts to improve the patent system. Finally, last year the House Judiciary Committee held a valuable hearing on PAE use of the ITC patent enforcement procedures. That hearing heard testimony from CPF member Cisco Systems and other key innovators such as Ford Motor Company about the troubling use of the US trade agency as a parallel patent court. This is an important issue that we believe needs your continued oversight.

Thank you for your continued leadership and willingness to take our views into consideration. If you have questions, please contact Matt Tanielian at mtanielian@franklinsquaregroup.com.

Sincerely:

The Coalition for Patent Fairness

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SAP America, Inc.

Newtown Square, PA

Intel Corporation

Santa Clara, CA

Verizon Communications Inc.

New York, NY

Intuit

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The Coalition for Patent Fairness is a diverse group of companies and industry associations dedicated to enhancing U.S. innovation, job creation, and competitiveness in the global market by modernizing and strengthening our nation's patent system.

For more information, visit <http://www.patentfairness.org>.