



October 11, 2013

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

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

The Honorable Charles 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:

As organizations and companies representing the travel community, we thank you for your leadership on patent reform and your current efforts to address the increasing problem of U.S. patent system abuse by entities bringing wasteful technology infringement lawsuits against productive companies. Travel is one of the nation's largest industries. In 2012, it generated \$2 trillion in economic output, and directly generated \$129 billion in tax revenue for federal, state and local governments. Travel is also one of the nation's largest employers, supporting 14.6 million jobs, which represents 1 out of every 8 workers in the U.S. However, efforts by travel companies to create jobs and boost our nation's economy are being undermined by the predatory legal tactics preferred by patent assertion entities (PAEs).

PAEs are affecting all parts of our industry. Those of us who are users and purchasers of technologies are increasingly being threatened with demand letters and/or sued by PAEs for allegedly infringing on their rights, even though we are merely end-users of a technology for which they may or may not be suing the producer. In fact, typically the actual producers are purposefully not targeted by the PAEs in order for the PAEs to extract sizeable settlements from end-users who are unable to defend the lawsuits. The travel technology segment of our industry is being sued as well. These companies provide consumers traveling to and within the U.S. with technological advancements, including comparison shopping, personal safety advice, customer service, convenience, and choice. For this part of our industry, its ability to protect and improve online innovation is critical to the continued competitiveness of our nation as a travel leader around the world.

Our member companies have been severely affected by the growing incidence of patent litigation abuse through infringement lawsuits brought by PAEs. The rising tide of these damaging suits is contributing to the suppression of the U.S. economy and hampering job creation and commerce. Economic damage caused by PAEs is estimated by Boston University to be around \$29 billion annually, and a single lawsuit may easily cost the defendant over \$1 million—even when the defendant prevails.

We believe that the draft discussion legislation circulated by Chairman Robert Goodlatte is a good start in addressing the significant PAE problem. In particular, we commend its inclusion of reforms to the discovery system and pleading requirements, both areas that should be addressed. In addition, we support the inclusion of a requirement for the payment of fees and expenses to the prevailing party and the requirement that the Judicial Conference make recommendations on case management procedures, including recommending practices that focus on early summary judgment motions where resolution of issues may lead to expedited disposition of a case. We also support its efforts to address lawsuits against end-users by allowing interested parties to join the case and for suits against end-user customers to be stayed during the course of a suit against the maker of a specific technology, though as we note below we think additional steps should be taken in this area. Specifically, we suggest the following issues be taken into consideration as you undertake patent reform legislation in the coming months:

- **Venue:** Currently, a plaintiff can bring a lawsuit in a patent case anywhere an infringement allegedly occurs. Unfortunately, it is common for courts in patent cases to give insufficient consideration to factors such as the location of witnesses and physical exhibits when responding to motions to transfer venue, which means that venue can potentially be anywhere. We would encourage you to consider limiting venue to locations where a defendant has a principal place of business, where the defendant agrees to be sued, where the invention was created, where significant R&D related to the patent has happened, or where a university that owns a patent is located. In addition, we urge you to consider requiring the judiciary to stay proceedings when a change of venue motion has been filed early in a case.
- **Filing Fee:** PAEs take advantage of the judicial system by filing numerous cases against multiple parties. We would suggest increasing the filing fee in patent cases to \$5000 to deter unnecessary filings and making it clear that if plaintiffs filed one case against multiple defendants and then moved to separate the cases to avoid paying fees, they would still have to pay for each of the new cases. We recognize the concerns about access to courts with this proposal and would suggest that exceptions be made for individual inventors, universities, and similarly-situated entities.
- **Procedures for Summary Judgment and Rule 18 Basis for Suit:** We recognize that the discussion draft requires the Judicial Conference to review a number of procedural items and promulgate rules and procedures on a number of items. We would encourage you to include among these items the elimination of inconsistencies between the Federal Rules of Civil Procedure which allow for any party to file for summary judgment and some judges' creation of processes that limit the right by forcing parties to request permission from the court in order to file for summary judgment, which judges frequently

refuse. This requirement would dovetail well with the current recommendation in the draft regarding summary judgment timing. We hope you will consider these changes and would be happy to discuss further or offer specific legislative language for your consideration.

- End-User Protections: We encourage you to consider the strongest protections possible for end-users who are merely customers buying products and using them as intended yet are being targeted by PAEs. One solution that has been discussed and we encourage you to consider is an immunization of end-users from patent infringement litigation. As you review the impact PAEs have on end-users, we also encourage you to consider ways to ensure that patent damages in PAE suits are based on the value of the allegedly infringing technology, not an end-user's business revenues.

Thank you again for your work in this area. Your efforts are critical to the economic success of industries such as ours. We look forward to working with you on this important issue.

Sincerely,



Roger Dow  
President & CEO  
U.S. Travel Association



Steve Shur  
President  
Travel Tech Association



Katherine Lugar  
President & CEO  
American Hotel & Lodging Association



Zane Kirby  
President and Chief Executive Officer  
American Society of Travel Agents