

June 3, 2015

The Honorable Charles Grassley
Chairman, Senate Judiciary Committee
United States Senate
Washington, D.C. 20505

The Honorable Patrick Leahy
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, D.C. 20505

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of financial institutions of all sizes and charters represented by the undersigned trade associations, we commend you for introducing S. 1137, the PATENT Act, and for your continued work to develop legislation that can be enacted into law. Tomorrow's markup will be an important step, and we look forward to working with the Senate on improving this legislation. As a coalition, we have two essential priorities in any effort to curb abuses of the patent system:

- 1) Demand Letter Reform and Enhanced Transparency: abuse of the patent system through the use of vaguely worded demand letters must be ended. Demand letters should be required to provide more details about the patent and who claims to assert it.
- 2) Extending the duration of the Covered Business Method (CBM) program.

Demand Letters

S. 1137 would help ensure that demand letters include clear and detailed information, such as the owner of the patent, what entities have a financial interest in the patent, what product or service is allegedly being infringed and how such product or service infringes the patent. Without this information, financial institutions and especially smaller banks and credit unions have no way to effectively evaluate the merits of the demand letter. Non-Practicing Entities (commonly known as patent trolls) know this and often purposefully omit such details to make it more challenging for targeted firms to evaluate the merits of an infringement claim. This leads many banks and credit unions to unnecessarily pay patent trolls a licensing fee rather than enter a costly and lengthy legal battle.

The reforms included in S. 1137 would significantly curb vague and deceptively-worded demand letters. It is critical that this provision stay intact and perhaps even be strengthened as the legislative process moves forward.

Covered Business Method Program

Unfortunately, S. 1137, as introduced, does not extend the duration of the Covered Business Method Program (CBM).

Data on CBM performance demonstrates that the CBM program is working as Congress intended. The program has been utilized by companies across a broad cross-section of the US economy, and there is no evidence of abuse or unintended consequences. The CBM program is a narrowly tailored, carefully constructed procedure that preserves and enhances incentives for

innovation by protecting the rights of legitimate patent holders while providing an efficient, cost-effective alternative to litigation for the review of questionable business method patents against the most relevant prior art. Inter Partes Review (IPR) does not allow for consideration of evidence of prior use or sale as invalidating prior art, or a determination as to whether the patent is eligible subject matter under Section 101. The CBM program is the only viable tool for eliminating covered business method patents that are invalid under the Supreme Court's decision in *Alice* or in light of use and sale prior art in a quick and cost-effective manner. In the absence of CBM the only alternative for defendants in cases involving low-quality and otherwise invalid patents will be to license or incur the prohibitive cost of litigation.

If Congress fails to extend this program in this legislation, history suggests that the program will expire denying financial services firms and other industries the ability to contest low-quality business method patents in a post-grant review program administered by the experts at the PTO.

Conclusion

We appreciate your leadership in introducing S. 1137 and commend the Committee on inclusion of language aimed at addressing the problem of deceptively-worded, vague demand letters. Further work, however, must be done in the area of patent quality to ensure that meaningful opportunities exist for all sectors to have PTO experts review low-quality patents for invalidity against the best prior art, and to answer the question of subject matter patentability. In order to assure this objective the CBM program must be extended. We look forward to working with the Committee to do so before the bill goes to the Senate floor.

Thank you for your consideration.

Sincerely,

American Bankers Association
American Council of Life Insurers
American Insurance Association
The Clearing House Payments Company LLC
Credit Union National Association
Financial Services Roundtable
Independent Community Bankers Association
NACHA – The Electronic Payments Association
National Association of Federal Credit Unions
National Association of Mutual Insurance Companies