



April 3, 2014

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Mike Lee
Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Leahy, Ranking Member Grassley, and Senator Lee:

On behalf of the roughly 14,000 financial institutions of all sizes and charters represented by the American Bankers Association (ABA), the Credit Union National Association (CUNA), Independent Community Bankers of America (ICBA), and National Association of Federal Credit Unions (NAFCU), we are writing to commend your leadership and thank you for moving forward with a mark-up of S. 1720, the Patent Transparency and Improvements Act. The bill takes important steps to address the continued onslaught of patent demand letters and frivolous litigation brought by Patent Assertion Entities (PAE), often referred to as “patent trolls”, and we very much look forward to seeing the final package. S. 1720 has the potential to constrain the abuse of the patent system by implementing needed reforms and bringing much needed transparency to the patent process.

Banks and credit unions of all sizes have been targeted by these so-called patent trolls, who in most cases assert low-quality patents through vaguely worded demand letters or intentionally vague complaints. These attacks on credit unions and banks threaten to pose additional, unwarranted costs on the communities our members serve. Components of the Patent Transparency and Improvements Act will help alter the intimidating business model of trolls by removing some of their financial incentive to assert low-quality patents in the hope of quick settlements.

From a financial institution’s perspective, the genesis of the problem of unfair and deceptive demand letters is the inability to determine the alleged infringement without spending thousands of dollars in legal fees just to comprehend the supposed violation. Section 5 of the bill would clarify the Federal Trade Commission’s (FTC) authority to help fight back against deceptive practices, but does not affect the rights of legitimate patent holders to send demand

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letters or otherwise assert their patent rights. Strengthened FTC enforcement could help prevent the abuses that are currently occurring and could have the beneficial effect of dissuading patent trolls from even sending misleading demand letters. In our industry alone, there are many examples of a patent troll selling a product—the patent license—to a bank or credit union using tactics resembling fraud or extortion. As you complete work on a substitute or Manager's Amendment to S.1720, we encourage the Committee to strengthen the provision by defining in greater detail minimum elements of transparency, or allowing a Federal agency, whether the FTC or Patent and Trademark Office (PTO), to promulgate standards for a demand letter through rulemaking that the FTC could enforce.

Further, any final legislation enacted into law should also deal effectively with a pervasive dilemma facing "end users." This is a paramount concern for financial institutions. Credit unions and banks, are in almost all circumstances buyers (end users) of technology and rarely develop it themselves. Simply, they should not be sued for buying something in good faith, off the shelf. That is why it is very important that an effective customer stay provision be included in any legislation enacted into law. This would include clarification that the definition of covered customer ensures that depository institutions as defined in Section 19(b) of the Federal Reserve Act are covered as end users for purposes of the stay provision in S.1720.

Litigation reforms addressing discovery and litigation costs will also help solve the growing abuse of the patent system and ensure the efficient and judicious use of the court system. Enhanced pleading standards will provide much-needed transparency related to the merits or weaknesses of a lawsuit. If plaintiffs are required to specifically identify the product claimed to be infringing a patent as well as asserted claims and factual basis for infringement, would-be defendants will be better able to make determinations regarding licensing, settlement or litigation.

Reforms are desperately needed. This growing problem will not be solved until Congress passes bipartisan legislation that makes clear patent trolls can no longer get away with abusing the system. S. 1720 is a positive step towards addressing the problem, and we look forward to continuing to work with the Committee and Senate to craft a bipartisan solution that directly addresses the growing abuse of our patent system and the specious claims that have a negative impact on our industry, our customers, and the American economy.

Sincerely,

American Bankers Association

Credit Union National Association

Independent Community Bankers of America

National Association of Federal Credit Unions

CC: Members of the Senate Judiciary Committee