Statement for the Record

On Behalf of the

AMERICAN BANKERS ASSOCIATION

For the Hearing


Before the

The Subcommittee on Courts, Intellectual Property and the Internet

Of the

House Committee on the Judiciary

March 14, 2013
On behalf of the members of the American Bankers Association (ABA) we appreciate the opportunity to submit this written statement for the above-entitled hearing. The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s $14 trillion banking industry and its two million employees. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities.

The testimony the Subcommittee received on March 14 made it clear that the risk of abusive patent infringement impacts nearly every industry, including banking, retail, and technology. This statement is intended to reinforce that testimony, but also to emphasize that abusive patent litigation is a serious concern for banks of all sizes across the country and that we welcome the opportunity to work with Members of the Subcommittee and your colleagues in the House on solutions that would help end abuses in this area and promote greater innovation and competition.

Abusive patent litigation has been around for many years. That is why we supported the reforms Congress put in place through enactment of the America Invents Act, in particular the process for review of overly broad business methods patents by the Patent and Trademark Office (PTO). Unfortunately, the abuses have continued despite those reforms, and banks continue to be barraged by the use by non-practicing entities (NPEs) of overly broad patents, threats of litigation, and licensing fee demands. As a result, resources and capital that could go toward lending or otherwise serving bank customers and communities have necessarily been re-allocated to defend against abusive patent claims from NPEs.

Faced with threats of expensive patent litigation, many banks, and especially smaller banks, find that their only option is to settle rather than face paying millions to defend against extortive claims of patent infringement. Well-funded and sophisticated NPEs take advantage of community banks with limited resources and little patent experience, and have amassed significant “licensing” fees from banks literally for the cost of mailing a threatening letter.

A recent example of this involves an NPE known as Automated Transactions, LLC (ATL), which targeted more than 150 community banks in New England, New York, New Jersey, and Georgia. ATL claimed that transactions facilitated by the use of the banks’ ATMs infringe one or more of its patents. What ATL failed to mention, however, is that several of ATL’s claims have been invalidated by the courts. In particular, the Supreme Court denied certiorari on ATL’s appeal of an April 23, 2012, decision by the Federal Circuit to affirm a ruling by the Board of Patent Appeals and Interferences invalidating several of ATL’s patent claims. Despite this, the company continues to assert those patents and sue banks, including banks that do not even have ATMs.

We were pleased that several of the witnesses at the hearing offered suggestions intended to alleviate some of the incentives that drive abusive litigation by patent NPEs. In particular, we believe that it would be helpful to put in place a means to restrict the ability of non-practicing entities to profit from suing end-users of technology, as opposed to those who make and or sell that technology. In addition, we support H.R. 845, which provides for the recovery of litigation costs by defendants that successfully defend against abusive patent challenges from NPEs in court.

Abusive patent litigation is a serious problem for U.S. banking institutions of all sizes. We strongly support efforts to end abusive patent litigation and look forward to working with the Subcommittee on this important issue.