

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
At a hearing entitled:  
“The Impact of Abusive Patent Litigation Practices on the American Economy”  
March 18, 2015**

We’re here today to discuss the topic of patent litigation abuse, and in particular, the destructive tactics of so-called “patent trolls.” This practice of patent trolling has hit businesses both big and small across all industries, and it’s having a harmful effect on the economy. Patent litigation abuse imposes high costs on American businesses. It wastes resources that could instead be utilized for research, development, job creation and economic growth. It undermines the innovation and creativity that patents are supposed to protect.

Patent assertion entities focus on buying and asserting patents, rather than on developing or commercializing patented inventions. Now I want to make clear that licensing one’s patent is not in itself a bad thing. Inventors and patent owners, including universities, often aren’t in a position to commercialize their patented inventions – but they certainly have the right to protect their intellectual property against infringers.

Patent trolls, however, are entities that engage in abusive and deceptive tactics to assert poor quality patents against businesses already utilizing technologies as common as wireless email, digital video streaming and the internet. They use overly broad patents to allege infringement against companies that are simply engaging in normal business activities or have bought a technology, product or service from a vendor, many times right off the shelf. They send out intentionally evasive and misleading blanket demand letters, and employ overly aggressive litigation practices to extort settlements. They frequently hide behind patent holding subsidiaries, affiliates and shells of operating companies in order to escape scrutiny.

Frivolous patent lawsuit filings have increased over the years, and they rarely have merit. But the extent of the problem is actually much worse because most cases don’t reach merits judgment stage. Patent trolls strategically set their royalty demands below litigation costs to entice companies to settle rather than run the risk of expensive and risky patent litigation. Many companies don’t have the expertise or resources to litigate these cases, so most of the time they have no choice but to submit to this patent extortion. This, in turn, drives up costs which many times are passed on to consumers.

We’ll be hearing from three witnesses today about their experiences with, and the impact of, abusive patent litigation tactics. These witnesses represent businesses from different industries. Two of these companies have patent portfolios, while one company doesn’t own patents. Yet their conclusion is the same – patent troll abuse is counterproductive to our nation’s economic growth.

The United States should remain at the forefront of technology, innovation and creativity. Patents and the U.S. patent system are a significant component of the American tradition of opportunity, invention and innovation. But we shouldn’t allow bad actors to bring the entire system down.

I've heard many Iowans express concern about this problem, and the need for Congress to take action.

For example, one letter I just received comes from industry groups representing a diverse mix of Iowa businesses. This letter is from the Iowa Gaming Association, the Iowa Bankers Association, the Home Builders Association of Iowa, the Iowa Restaurant Association, the Iowa Retail Federation, the Iowa Communications Alliance, the Iowa Grocery Industry Association, the Iowa Lodging Association, the Iowa Credit Union League, and the Iowa Realtors Association.

They urge Congress to address these abuses, stressing that “Meaningful reforms that make it difficult for patent trolls to continue their destructive business models, by improving patent quality, streamlining litigation, enhancing discovery protections and pleading requirements, as well as increasing transparency, will drastically reduce costs for Iowa businesses and entrepreneurs.”

I'd like to put this and several other letters, a number of them from Iowans, in the record. In the last Congress, the House passed by an overwhelming vote the Innovation Act, which the White House supported. And although we started working on a product here in the Senate Judiciary Committee, we weren't able to proceed.

Almost everyone agrees this is a problem and a drag on our economy. But, there are those concerned that certain proposals could undermine the ability of legitimate patent holders to enforce their patent rights. They maintain that recent Supreme Court decisions on pleading standards, fee shifting and patent quality, as well as actions by the Federal Trade Commission and U.S. Patent and Trademark Office, have largely taken care of issues and comprehensive legislative action is unnecessary. We'll be hearing from representatives of two different stakeholder communities that believe certain proposals under consideration by Congress will harm legitimate patent holders.

I don't dispute that we should preserve patent rights and valid patent enforcement tools. We do need to strike the right balance. But Congress should act decisively if we want to alleviate the problems that are harming businesses both big and small. This will strengthen our patent system and benefit inventors, businesses and consumers alike.

So we're back at it again in this Congress – Chairman Goodlatte has reintroduced the Innovation Act, which has 9 Republican and 11 Democrat cosponsors. I look forward to working with Ranking Member Leahy, Senators Cornyn and Schumer, as well as with my other Judiciary Committee colleagues, on passing meaningful legislation that will provide a strong deterrent to those who prey on innocent businesses.

We're fortunate to have with us today a distinguished panel – including a couple of witnesses from Iowa, so I know there will be some excellent testimony.

Our first witness is Mr. Brad Powers, General Counsel at KINZE Manufacturing in Williamsburg, Iowa. A leading manufacturer of agricultural planters in the United States, KINZE is quite the success story. Jon Kinzenbaw started the company in 1956 with a few bucks in his pocket, a small bank loan, and a knack for fixing farm equipment. Since then, Mr. Kinzenbaw has been named inventor for 19 patents for KINZE, and the company itself owns many others. Today, KINZE employs nearly 1,000 people in Iowa. Prior to joining KINZE, Mr. Powers worked on IP litigation, licensing and portfolio management at McKee, Voorhees and Sease. I understand his family has made the trip out from Iowa with him, so it's my pleasure to welcome Mr. Powers and his family.

Our next witness is Mr. Hans Sauer, Deputy General Counsel for Intellectual Property at the Biotechnology Industry Organization, a trade association representing over 1,100 biotechnology companies and research institutions. At BIO, Mr. Sauer advises the Board of Directors and various departments on patent and other IP matters. He has 20 years of professional in-house experience in the biotechnology industry.

Next we have Mr. Steven Anderson, Vice President and General Counsel for Culver Franchising System, Inc., located in Prairie du Sac, Wisconsin. Famous for its Butter Burgers and frozen custard, Culver's has 528 restaurants in 22 states—including over 30 locations in my home state of Iowa—and employs more than 20,000 people. At Culver's, Mr. Anderson is responsible for overseeing all legal matters involving the corporation, including its intellectual property. Prior to joining Culver's, Mr. Anderson worked as a lawyer for the law firm of Murphy Desmond.

Then we have Dr. Michael Crum, Vice President for Economic Development and Business Engagement at Iowa State University, located in Ames, Iowa. Dr. Crum has been a faculty member in the College of Business at ISU since 1980. He led the initiative to create the Office of Economic Development and Industry Relations, which helps organizations connect with ISU's research, technical and business expertise. I'd like to make special note on the record that the Cyclones are in the "Big Dance," along with the Iowa Hawkeyes and University of Northern Iowa Panthers. It's a very good day for Iowa.

Finally, we have Mr. Krish Gupta, Senior Vice President and Deputy General Counsel at EMC Corporation, located in Hopkington, Massachusetts. EMC is the world's leading developer and provider of information infrastructure technology. Mr. Gupta has 20 years of experience working in patent law. At EMC, he has worldwide responsibility for intellectual property law and technology licensing matters. He oversees EMC's IP portfolio of over 5,100 U.S. patents—a portfolio that earned EMC recognition by the Wall Street Journal as the 8th most innovative IT company.