

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee
Hearing on “The Impact of Abusive Patent Litigation Practices
on the American Economy”
March 18, 2015**

America’s patent system fuels our Nation’s greatest innovations. It promotes investment in new products and designs that benefit us all. In recent years, however, some bad actors have abused the patent system in ways that detract from its purpose. Small businesses in Vermont have been threatened with patent suits simply for using office equipment they purchased off the shelf. Website owners have faced costly litigation for using basic software in e-commerce. Instead of using patents to drive new creation, bad actors have held up main street businesses and innovative companies to extort financial settlements.

Last Congress, the Senate Judiciary Committee dedicated months of work to develop bipartisan solutions for such behavior. These solutions include: promoting transparency to hold bad actors accountable; curbing misleading demand letters; and protecting customers who are targeted simply for *using* a product, when the manufacturer should defend the suit instead.

We also considered measures relating to patent litigation, to address concerns that it is unusually difficult to defend against frivolous patent suits. These concerns include the extreme cost of discovery, and the fact that today, patent holders can file a lawsuit with only minimal information, so a defendant cannot even assess whether they are liable.

When I convened a hearing on this topic last year, John Dwyer from the New England Federal Credit Union in Vermont testified at length about the problems his small community institution faced because of patent litigation over the use of ATMs in their building lobbies. Gas stations and convenience stores were targeted in the same series of litigation threats. Because of inadequate rules about transparency, John and other defendants could not tell if they were being targeted by the same corporation. Because of broadly-written complaints, they could not tell whether the item accused of infringement was the credit union’s own computer system, or the ATMs they had purchased from someone else. Because of lax rules about demand letters, the sender did not have to tell the defendants that many of the patents at issue had been declared invalid by the Federal Circuit and the Patent Office months before. Instead of focusing on serving customers, John’s credit union and the other targets spent months and hundreds of thousands of dollars in litigation.

A second witness I invited to testify at the hearing, Michael Makin from the Printing Industries of America, described the exact same problems in the printing industry, where small businesses have been targeted for using basic software and other products they purchased off the shelf. I continue to hear concerns about these issues from companies in Vermont like MyWebGrocer, Vermont Teddy Bear, the Vermont Country Store, King Arthur Flour, and the Montpelier restaurant Pinky’s on State.

Many have raised concerns that, if taken too far, litigation reforms like those in the House-passed Innovation Act would harm *legitimate* patent holders when they enforce their rights in court. I agree we must find a balance, which is why we worked for months last Congress on legislative text. Although the Committee was not able to complete its work, we made significant progress

on comprehensive draft legislation. I hope we can build on that work now to pass meaningful legislation into law.

Three years ago, Congress came together to enact the Leahy-Smith America Invents Act, the greatest update to our patent law in 60 years. That achievement was reached because Senators and stakeholders joined together to find solutions that work for all participants in the patent system. Abusive practices by bad actors are a discredit to our strong patent system, and it is in no one's interest that they continue.

The real-world accounts we have heard from the New England Federal Credit Union, the Printing Industries of America, and some of the businesses who will testify today, illustrate the impact of abusive practices on our economy. They also illustrate the need for thoughtful but swift work by this Committee and the Congress. These businesses need us to build on last year's extensive work to enact meaningful legislation. I hope we can again come together to pass meaningful, effective reform.

I thank the witnesses for coming today, and look forward to their testimony.

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