October 18, 2013

The Honorable Patrick J. Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Chuck Grassley
Ranking Member, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable John Conyers, Jr.
Ranking Member, Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

Dear Messrs. Chairmen and Ranking Members:

Thank you for the leadership that you and your committees have shown in recognizing the need to reform the nation's patent system. America's patent system must promote innovation. It must ensure that companies large and small can devote resources to productive, pro-growth innovation in the marketplace instead of burdensome, unjustified patent litigation that stifles innovation.

Yet some entities use patents to tax innovation, not to promote it. Such companies accuse innovators of infringement – not to capture the value of the patent, but to demand settlements based on what their targets would have to spend to fight them in court.[1] The enormous cost of defending against an infringement allegation raises particular concerns when a small business is the defendant. For these businesses, the cost of defense may exceed their revenue, all but compelling settlement regardless of the merits.

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[1] *See, e.g.*, BRIAN T. YEH, CONG. RESEARCH SERV., R42668, AN OVERVIEW OF THE "PATENT TROLLS" DEBATE 1 (2012) (stating that "vast majority" of cases brought by patent assertion entities "end in settlements because litigation is risky, costly, and disruptive for defendants, and PAEs often offer to settle for amounts well below litigation costs to make the business decision to settle an obvious one").

We urge you to enact the following patent litigation reform measures, which will make patent litigation more efficient in order to reduce the incentive to bring such nuisance patent suits:

- *Genuine notice pleading in patent cases.* Under current law, entities that accuse innovators of patent infringement need not tell their targets in the complaint which claims of the patent they allege are infringed or which products or services allegedly infringe. A target that does not know the precise allegations against it can run up high, wasteful legal bills pursuing arguments that turn out to be irrelevant once the accuser finally makes its case clear. Section 2 of S. 1013 and Section 2 of H.R. 2639 both aim to correct this problem.[2]
- *Efficient management of patent cases.* In patent cases, the judge typically issues a so-called *Markman* ruling that construes the terms in the patent claims and lets the parties know the patent's scope. Under current law, expensive discovery often happens before that ruling, even though the ruling can render much of that discovery a waste of time and money. Knowing that, some accusers use early discovery burdens to force a settlement based on the cost of litigation, rather than the merits of the case. We support proposals – such as Section 4(a) of S. 1013 and Section 5 of H.R. 2639 – that stay any unnecessary discovery until the court has told the parties what the patent covers.
- *Curbing discovery abuse in patent cases.* Some patent accusers aim to leverage the cost of excessive discovery to force a settlement that has little to do with the merits of the case. We support proposals that, like Section 4(b) of S. 1013, allow for discovery of core documentary evidence in patent cases in the usual way, but that require the accuser to pay the costs of producing any additional discovery in patent cases.
- *Patent fee shifting.* In addition, we also support appropriate fee-shifting reform. The Patent Act has included a fee-shifting provision since 1952. We encourage Congress to provide more clarity regarding patent fee shifting. Done correctly, fee-shifting reform will deter nuisance patent lawsuits, particularly those based on weak patents, and ensure fairness in the patent system.

Reforms to mitigate the estoppel bar for administrative review of issued patents are also important. In addition, the reforms above are essential because they will make patent litigation less expensive and more efficient. They will help weed out the exploitative cases in which the accuser seeks to extract a settlement based on the cost of litigation, rather than on the merits of the cases. They will have little impact on cases founded on the merits of the patented technology, ensuring that inventors can receive their due reward for their work. We look forward to working with you to ensure that these proposals succeed in freeing the patent system to fulfill its function: encouraging innovation and boosting the American economy.

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[2] S. 1013 was introduced by Sen. Cornyn on May 22, 2013. H.R. 2639 was introduced by Reps. Farenthold and Jeffries on July 10, 2013.

Sincerely,

ADTRAN, Inc.
Huntsville, Alabama

American Consumer Institute
Washington, DC

Apple Inc.
Cupertino, California

Application Developers Alliance
Washington, DC

Avaya Inc.
Santa Clara, California

BlackBerry Limited
Irving, Texas

BSA | The Software Alliance
Washington, DC

Ciena Corporation
Hanover, Maryland

Cisco Systems, Inc.
San Jose, California

Coalition for Patent Fairness
Washington, DC

Consolidated Communications
Mattoon, Illinois

Consumer Action
Washington, DC

Consumer Electronics Association
Arlington, Virginia

DIRECTV
El Segundo, California

DISH Network
Englewood, Colorado

Dropbox, Inc.
San Francisco, California

eBay Inc.
San Jose, California

Electronic Frontier Foundation
San Francisco, California

Engine
San Francisco, California

Entertainment Software Association
Washington, DC

Facebook
Menlo Park, California

FairPoint Communications, Inc.
Charlotte, North Carolina

Ford Motor Company
Dearborn, Michigan

Frontier Communications Corporation
Stamford, Connecticut

Google Inc.
Mountain View, California

Groupon, Inc.
Chicago, Illinois

GVTC Communications
New Braunfels, Texas

Hawaiian Telcom
Honolulu, Hawaii

Hewlett-Packard Company
Palo Alto, California

HTC America
Bellevue, Washington

IBM Corporation
Armonk, New York

Juniper Networks, Inc.
Sunnyvale, California

Limelight Networks, Inc.
Tempe, Arizona

LinkedIn
Mountain View, California

MediaFire
Houston, Texas

Meetup, Inc.
New York, New York

Microsoft Corporation
Redmond, Washington

National Retail Federation
Washington, DC

NCTA – The National Cable & Telecommunications Association
Washington, DC

Netflix, Inc.
Los Gatos, California

New York Tech Meetup
New York, New York

North State Communications
High Point, North Carolina

NTCA – The Rural Broadband Association
Arlington, Virginia

Oracle
Redwood City, California

Personal Democracy Media
New York, New York

Public Knowledge
Washington, DC

QVC, Inc.
West Chester, Pennsylvania

Rackspace
San Antonio, Texas

Red Hat, Inc.
Raleigh, North Carolina

Safeway Inc.
Pleasanton, California

SAS Institute Inc.
Cary, North Carolina

Shenandoah Telecommunications Company
Edinburg, Virginia

Southwest Texas Telephone Company
Rocksprings, Texas

TechAmerica
Washington, DC

Twitter, Inc.
San Francisco, California

USTelecom Association
Washington, DC

Verizon Communications Inc.
New York, New York

VIZIO, Inc.
Irvine, California

Waterfall Mobile, Inc.
San Francisco, California

Windstream Communications
Little Rock, Arkansas

XO Communications
Herndon, Virginia

cc: Members of Senate and House Committees on the Judiciary

How The New Patent Abuse Reduction Act Levels The Playing Field

Filed in Cloud Industry Insights by Alan Schoenbaum | May 23, 2013 8:50 am

The patent abuse fight is picking up momentum, and we have new ammunition. Yesterday, the senior Senator from Texas, John Cornyn, introduced the Patent Abuse Reduction Act of 2013 (the "PAR Act"). My home state U.S. Senator has just taken a huge step to solve the patent troll epidemic. This bill is a breath of fresh air in the battle against patent trolls and their brazen abuse of the patent system. The PAR Act is designed to "deter patent litigation abusers without prejudicing the rights of responsible intellectual property holders," Cornyn said in a statement[1].

We encourage you to read the PAR Act – we have linked it at the bottom of the page. For everyone out there who is not a lawyer, though, we want to take a minute to explain what this bill means and why it is so important:

- Patent trolls are notorious for hiding their claims behind flimsy lawsuit pleadings. The current standards for making an accusation of patent infringement do not require plaintiffs to explain what they allege to be infringing or how the defendant infringes. This lack of clarity forces anyone accused of patent infringement into an endless (and expensive) guessing game. Section 281A of the Patent Abuse Reduction Act forces patent assertion entities (PAEs) to spell out their claims and be specific about their complaints. These specifics include how the patent is being abused; the names, model numbers and other information of the products or services alleged to infringe the claim and where the infringement occurs; and a host of other factors most patent trolls can currently omit from their suits.
- Patent trolls usually hide their actual owners behind shell companies. These patent trolls don't want publicity because they don't want to be known for who and what they are. Section 281A of the bill removes the anonymity of patent trolls and forces them out of hiding, by requiring them to identify not only themselves, but any other businesses or individuals who are co-owners, assignees, licensees or have a legal right to enforce the patents in question, along with exposing any person or business with a financial interest in the patent infringement case.
- Another common tactic of patent trolls is to find a first patent, sue people on that patent with a first shell company, and settle… only to find and sue the same people again on a second patent with a second shell company. This bill makes it possible to expose the money machine behind patent trolls, and to make them come to the table and take part in the case.
- One of the most expensive parts of a patent lawsuit is something called "discovery" – where companies are forced to organize and hand over mountains of internal documentation to the patent trolls so that they can introduce "evidence" of patent infringement. Trolls use discovery to drive up the cost of the lawsuit, making it cheaper to settle, and to fish for more ways in which they can apply their claims. Section 300 of the PAR Act adds fairness to the discovery process by limiting discovery until after the meaning of the patent (called "claim construction") has occurred, and shifting much of the cost of unreasonable discovery back to the patent troll.

- Finally, section 285 institutes a “loser pays” rule for unreasonable litigation. This is the ultimate tool for balancing litigation, freeing businesses and individuals from having to shoulder the massive financial burden of fighting a frivolous patent infringement claim.

The Patent Abuse Reduction Act beams necessary sunlight onto these all-too-frequent proceedings and is a major step toward fixing the problem of patent abuse. It has a fitting acronym – the “PAR” Act – because it helps put companies “at par” and on an even playing field with those who would abuse the system.

At Rackspace, we’ve been on the front line of the problem; patent trolls have become our most pressing legal issue. We have seen a 500 percent spike since 2010 in our legal spend combating patent trolls. And we’re not alone. We hear almost daily about companies and developers that have been impacted by patent infringement suits filed for no other reason than to extort money.

We’ve stood up and fought back. Just recently we fought a troll in court, and won[2]; we turned the tables on another, suing them in Federal Court[3]; and we filed a challenge with the patent office against a third[4].

An army is now forming to fight patent trolls[5], and, if passed, Sen. Cornyn’s Patent Abuse Reduction Act of 2013 will be a very powerful weapon with which to battle them.

Read the full Patent Abuse Reduction Act of 2013[6] here.

Endnotes:

1. statement: http://www.cornyn.senate.gov/public/index.cfm?p=InNews&ContentRecord_id=082eaec-1983-41a7-b656-156c1b4b77cb&ContentType_id=b94acc28-404a-4fc6-b143-a9e15bf92da4&f6c645c7-9e4a-4947-8464-a94cacb4ca65&Group_id=bf378025-1557-49c1-8f08-c5df1c4313a4
2. we fought a troll in court, and won: http://www.rackspace.com/blog/mathematics-cannot-be-patented-case-dismissed/
3. we turned the tables on another, suing them in Federal Court: http://www.rackspace.com/blog/why-rackspace-sued-the-most-notorious-patent-troll-in-america/
4. we filed a challenge with the patent office against a third: http://www.rackspace.com/blog/abolish-the-patent-vanquish-the-troll/
5. An army is now forming to fight patent trolls: http://www.rackspace.com/blog/an-army-is-forming-to-battle-patent-trolls/
6. Patent Abuse Reduction Act of 2013: http://a3ba8a9e733f0f48e083-34c21d0cbf24e519af797fddd23e1832.r18.cf1.rackcdn.com/Documents/Patent%20Abuse%20Reduction%20Act.pdf

Source URL: http://www.rackspace.com/blog/how-the-new-patent-abuse-reduction-act-levels-the-playing-field

Application Developers Alliance

Contact:
Courtney Lamie
276-492-4248 (mobile)
202-250-3006 (desk)

Application Developers Alliance Applauds Cornyn Patent Reform Legislation

Bill Would Help Disarm Patent Trolls, Promote Innovation

Washington, D.C. (May 22, 2013) – Today the Application Developers Alliance applauded Senator Cornyn (R-TX) for introducing legislation that will help protect developers from patent trolls.

"We welcome Senator Cornyn's thoughtful, multi-faceted effort to substantially reduce job-killing abusive patent litigation," said Jon Potter, President of the Application Developers Alliance. "Along with Chairman Leahy, Senator Schumer, Chairman Goodlatte and others, Senator Cornyn's support of software patent reform demonstrates a commitment to the entrepreneurs who are driving the country's economic recovery. The bill would help disarm patent trolls of some of their most potent weapons."

The Application Developers Alliance is currently hosting Developer Patent Summits nationwide, including a summit tonight in New York, convening app developers, entrepreneurs, patent experts, and policymakers to discuss software patent challenges, trolls, and ideas for reform. Learn more at: http://devsbuild.it/devpatentsummit.

About the Application Developers Alliance

The Application Developers Alliance is an industry association dedicated to meeting the unique needs of application developers as creators, innovators, and entrepreneurs. Alliance members include more than 20,000 individual application developers and more than 120 companies, investors, and stakeholders in the apps ecosystem.

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From the Austin Business Journal :http://www.bizjournals.com/austin/print-edition/2013/06/21/patent-trolls-threaten-tech-companies.html

SUBSCRIBER CONTENT: Jun 21, 2013, 5:00am CDT

Op-Ed: Patent trolls threaten tech companies and Austin's vibrancy

Emil Sayegh, Guest Columnist

The Internet is the fuel that powers our current economy — ever growing, and allowing new industries and ideas to emerge every day. And a lot of that is happening here in Texas.

According to the TechAmerica Foundation's Cyberstates 2013 report, the Internet and high tech jobs provided a whopping 486,600 careers for Texans in 2012.

This month, the biggest names in the Internet industry will gather in Austin for HostingCon. Many of these companies, including Codero Hosting, are also members of the Internet Infrastructure Coalition, an organization founded to support the growth of the $46 billion Internet infrastructure industry. As the CEO of Codero, I look forward to joining with other Texas-based tech companies to welcome the industry to Austin.

Our capital is a great place for a national event like HostingCon. I have been part of this wonderful city since 1986. I have seen it grow and evolve into a true center of gravity for information technology. Internet infrastructure leaders and proud members of the i2Coalition such as SoftLayer, cPanel, Data Foundry Inc., Rackspace and Codero have established their headquarters and main offices in Texas, helping the Lone Star State obtain Cyberstates' second ranking nationally for industry jobs in Internet, telecommunication and engineering services as well as semiconductor manufacturing.

At the same time, Texas universities are producing tech-savvy graduates and advancements in the technological sector.

As Texas grows and matures in the high tech industry, it's imperative that it protects the ideas, innovation and new technology that are being developed by businesses.

At HostingCon, the i2Coalition is sponsoring a number of panels that examine some of the greatest threats to our industry, including a panel called "Money Stealing Trolls." Of particular concern when it comes to threats to innovation are attacks by patent assertion entities, or "patent trolls," who seek to undermine technological progress for quick financial gain. These trolls have taken advantage of a broken patent system, allowing them to bring up patent infringement cases on small and large businesses. These lawsuits can cost a company millions of dollars in litigation alone. For this reason, many of the larger companies settle out of court. However, smaller companies like Codero attempting to grow in our economy also face these

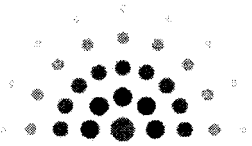
frivolous lawsuits. Patent trolls can cause small- to medium-sized companies to lose revenue, forcing them to cut salaries and jobs — and in extreme cases file for bankruptcy. The tactics of the trolls are stifling innovation. Because of their actions many companies hesitate to produce new products for fear of violating an unknown frivolous patent.

One of the i2Coalition's top priorities is to bring about patent reform, and both the i2Coalition and Codero applaud Texas Sen. John Cornyn for introducing a bill known as the Patent Abuse Reduction Act of 2013.

This will bring fairness to the discovery process, Cornyn says. The bill will also shift responsibility for the cost of litigation to the losing party. This will relieve small business from hefty litigation cost and punish patent trolls. The act also calls for transparency in enforcement, meaning all parties that have direct financial interest in the outcome of the lawsuit must be revealed.

Sen. Cornyn is attempting to put an end to the chaos and economic stagnation these money stealing trolls create. We must stand up and support his efforts and the efforts of Texans as a whole to grow and develop in the technological world.

Emil Sayegh is the CEO of Codero Hosting.



Austin Technology Council

The Honorable John Cornyn
517 Hart Senate Office Bldg.
Washington, DC 20510

July 1, 2013

Dear Senator Cornyn:

Thank you for joining the Austin Technology Council (ATC) and members of the Central Texas innovation community for the Patent Abuse Reduction Act (PARA) panel on May 30. We appreciate your leadership in combatting patent trolls and look forward to supporting your efforts to develop meaningful patent reform in the 113th Congress.

Over the last two decades, the Innovation Economy provided 100% of net job growth in the United States. PARA's focus on patent litigation reform is an important cornerstone of congressional support for continuing that success. Comprehensive intellectual property and patent reform – alongside talent, capital, data, and infrastructure innovation policy priorities – would enhance U.S. competitiveness, job creation, and economic stability.

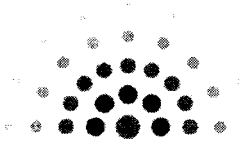
As a leading innovation hub, Austin technology, innovators and related businesses deliver $21 billion and global visibility to our region each year. ATC and its members serve as a resource for all stakeholders interested in efforts to strengthen tech, foster innovation and sustain the benefits that both bring to our community.

ATC respectfully offers the following observations on PARA. Given the scope of technology and innovation interests in Central Texas, these observations reflect a community perspective on the impact of policy on innovation fundamentals. Individual community members may have additional policy priorities.

I. Overall, PARA provides an important step forward in addressing existing patent code's greatest threat to established and early-stage innovators.

II. PARA provisions we consider to be innovation priorities and will support implementation of:
   a. SEC. 2. PLEADING REQUIREMENTS. Requires more detailed infringement complaints so that trolls can't get away with targeting an entire industry with unsupported boilerplate complaint letters.
   b. SEC. 4. DISCOVERY LIMITS. Corrects the huge imbalance in discovery costs that trolls use to pressure businesses into settling.

III. We encourage and will support your efforts to strengthen these PARA provisions:
   a. SEC. 5. COSTS AND EXPENSES. Fee-shifting strengthened with a bonding requirement. Many trolls are "judgment-proof" shell companies with no assets. A plaintiff bonding requirement will give businesses a real chance to recoup the millions spent defending against an egregious, meritless lawsuit.



Austin Technology Council

Because of the complexity of this problem, it will take a number of reforms complementary to PARA to balance the one-sided advantage that patent trolls currently enjoy. Several bipartisan bills and discussion drafts are circulating in Washington, some of which are simple, viable, and would enhance legitimate patent holders' ability to enforce their rights and protect consumers and small businesses from becoming targets. We support your efforts to lead the development of a comprehensive package of litigation reforms that will help technology companies and America's innovators defend themselves against frivolous litigation.

Thank you again for allowing us the opportunity to outline our support for your efforts on behalf of Texas and U.S. innovation.

Joel Trammel
Chairman
Austin Technology Council

Julie Huls
President and CEO
Austin Technology Council

David Altounian
Founder and former CEO
Motion Computing

John Arrow
CEO and President
Mutual Mobile

Gene Austin
President
Bazaarvoice

Joshua Baer
Founder and Managing Director
Capital Factory
Chief Innovation Officer
Return Path

Tony Befi
Vice President
IBM Systems & Technology Group
Texas Senior State Executive

Chris Boyd
Founder and CTO
Midas Green Tech

Kevin Callahan
Co-Founder and VP-Innovation
MapMyFitness

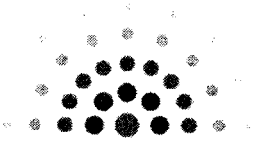
Bijoy Goswami
Founder
Bootstrap Austin

Derek Hall
Founder and CEO
Dartz Media

Gerardo A. Interiano
Public Affairs Manager
Google, Inc.

Andy Macfarlane
Manager, Business Development
Director, Governmental Affairs
Data Foundry

Jay Manickam
Co-Founder
Vice President, Strategy and Operations
uShip



Austin Technology Council

Michael McGeary
Co-Founder
Engine

Shraven Parsi
Founder and CEO
Pharmaceutical Specialties, Inc.

Anthony Peterman
Executive Director, Patents and Chief Patent Counsel
Dell

Josh Rabinowitz
Co-Founder
Articulate Labs

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President and CEO
Spinal Restoration

Alan Schoenbaum
Senior Vice President and General Counsel
Rackspace

Larry Warnock
President and CEO
Gazzang

Lawrence Waugh
Founder and COO
Calavista Software

Derek Willis
General Counsel and Secretary
Volusion

Rick Wittenbraker
VP, Market Development
uShip

Computer & Communications Industry Association
1972-2012: 40 YEARS OF TECH ADVOCACY

May 22, 2013

The Honorable John Cornyn
U.S. Senate
517 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cornyn:

CCIA applauds your introduction today of the Patent Abuse Reduction Act of 2013. American industry needs leadership such as yours to help curtail the flood of abusive patent litigation. Patent assertion entities (or PAEs) are harming the American economy. PAEs have recently branched out from suing large businesses to suing everyone from retailers to grocers to individual software developers. PAEs rely on the enormous cost of defending against patent infringement to obtain settlements, taking advantage of legal rules intended to protect research investments as their means of extortion.

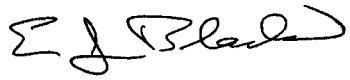
A particular problem in patent infringement suits filed by PAEs is that the complaints give the accused infringer no idea what it is actually accused of doing. We believe that Section 2 of the Patent Abuse Reduction Act would be a strong step forward in providing accused infringers the information they need in order to defend themselves. We also believe that revising Civil Form 18, as the Act does, is critical to forcing PAEs to plead their claims with specificity. As you know, the Federal Circuit recently decided that the current Civil Form 18 allows vague pleading of patent infringement.

Discovery costs are also a major problem in PAE suits, because a PAE typically has very few documents to produce; an accused infringer may have to spend millions of dollars on discovery. This asymmetry forces accused infringers into larger settlements. Section 4 of the Patent Abuse Reduction Act brings needed balance to this process, and should help to end costly fishing expeditions. At the same time, the definition of "core documentary evidence" helps ensure that the purpose of discovery is still satisfied.

This is a strong bill that takes important steps towards addressing the problem of patent assertion entities, also known as patent trolls. We look forward to working with you on the Act as it moves through the Senate.

Thank you for your efforts on curbing patent abuse.

Sincerely,



Ed Black
President & CEO
Computer & Communications Industry Association

coalition for patent fairness

CPF Statement Supporting the "Patent Abuse Reduction Act of 2013"

FOR IMMEDIATE RELEASE: May 22, 2013

WASHINGTON, D.C. – The Coalition for Patent Fairness (CPF) thanks Senator Cornyn for his leadership in confronting the problem of abusive patent litigation through the introduction of the "Patent Abuse Reduction Act of 2013." This legislation represents an important step forward in improving the patent system in such a way that allows America's innovative industries to flourish.

Patent assertion entities (or patent trolls), which prey on companies to profit off of their innovation, cost the American economy more than $29 billion in 2011 alone – and this estimate does not even begin to measure the indirect costs of lost innovation. It is likely that this figure will only increase as patent trolls set their sights on a growing range of industries, as has happened in recent months.

That's why it is imperative that members of Congress join Senator Cornyn in updating the patent system with common-sense reform before patent trolls can do more damage to America's economy. By addressing important patent litigation problems through heightened pleading standards, early claim interpretation, and discovery cost-sharing, Senator Cornyn has injected some important issues into the current debate. These items would help to avert the threat of abusive patent litigation, by providing a more fair and balanced litigation process in patent cases.

The Coalition for Patent Fairness has long advocated for reforms that will thwart abuses of the patent system, and Senator Cornyn's legislation will help advance that effort. We look forward to working with Senator Cornyn and his fellow Senate Judiciary Committee members to improve the patent system through patent litigation reform legislation this year.

*****

The Coalition for Patent Fairness is a diverse group of companies and industry associations dedicated to enhancing U.S. innovation, job creation, and competitiveness in the global market by modernizing and strengthening our nation's patent system.

Contact: Kate Connors, Kate.Connors@StoryPartnersDC.com

For more information, visit http://www.patentfairness.org.

Follow us on Twitter at @FairPatents

CEA Thanks Sen. Cornyn for Taking On Patent Trolls

Arlington, VA – 05/22/2013 – The following statement is attributable to Gary Shapiro, president and CEO of the Consumer Electronics Association (CEA)®, in response to today's introduction of the Patent Abuse Reduction Act, introduced by Sen. John Cornyn (R-Texas):

"We commend Sen. Cornyn for introducing the Patent Abuse Reduction Act, which will help curb abusive patent litigation practices.

"Patent litigation abuse has reached epidemic proportions and not only impacts the tech industry, but also ensnares legitimate retailers and end users. Patent Assertion Entities'(also known as PAEs or patent trolls) lawsuits now account for a majority of all patent litigation in the U.S., up from just 19 percent in 2006. Studies indicate that abuses in the patent litigation industry are costing innovators more than $80 billion annually in direct and indirect costs. More, a majority of these suits are brought against small businesses that lack the resources and expertise to devote to the costly and complex patent litigation process.

"The Patent Abuse Reduction Act contains a number of provisions that will help put the growing patent troll industry out of business. First, it would require trolls to provide more specific information about the substance of their infringement assertions and clearly identify the plaintiff. Second, it puts reasonable limitations on discovery and requires the patent trolls to pay for additional discovery requests. Third, the 'loser pays' provisions will lessen patent trolls' incentives to go to court with weak or flimsy claims.

"We thank Sen. Cornyn for addressing this very critical issue, and we look forward to working with Congress on smart, effective patent reform."

About CEA

The Consumer Electronics Association (CEA) is the preeminent trade association promoting growth in the $209 billion U.S. consumer electronics industry. More than 2,000 companies enjoy the benefits of CEA membership, including legislative advocacy, market research, technical training and education, industry promotion, standards development and the fostering of business and strategic relationships. CEA also owns and produces the International CES – The Global Stage for Innovation. All profits from CES are reinvested into CEA's industry services. Find CEA online at www.CE.org, www.DeclareInnovation.com and through social media:

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The Internet Association

FOR IMMEDIATE RELEASE

CONTACT: Betsy Barrett 202.997.3266 / betsy@internetassociation.org

DATE: Thursday, May 23, 2013

The Internet Association Applauds Senator Cornyn's Patent Abuse Reduction Bill

Washington D.C. – The Internet Association President & CEO Michael Beckerman issued the following statement in response to Senator Cornyn's introduction of the Patent Abuse Reduction Act of 2013 (S.1013):

"The Internet Association applauds Senator Cornyn's introduction of the Patent Abuse Reduction Act of 2013. Internet companies are targeted daily by patent assertion entities far more interested in exploiting litigation costs than in promoting innovation. Senator Cornyn's bill appreciates the need to reform a system made unacceptably inefficient by vague accusations of patent infringement, imbalanced and excessive litigation costs, and a lack of even basic transparency. With thoughtful proposals on pleading requirements, joinder, and other issues, the bill makes a valuable contribution to the ongoing discussion about how best to put an end to abusive patent litigation practices and to promote, rather than burden, real innovation in today's Internet economy."

About The Internet Association: *The Internet Association is the unified voice of the online economy representing the interests of the leading Internet companies including Airbnb, Amazon.com, AOL, eBay, Expedia, Facebook, Google, IAC, LinkedIn, Monster Worldwide, Rackspace, salesforce.com, SurveyMonkey, TripAdvisor, Yahoo!, and Zynga. The Internet Association is dedicated to advancing public policy solutions to strengthen and protect Internet freedom, foster innovation and economic development, and empower users. The Internet Association is headquartered in Washington, D.C. www.InternetAssociation.org.*

May 23, 2013

The Honorable John Cornyn
U.S. Senate
517 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Cornyn:

On behalf of jcpenney, I want to thank you for introducing the *Patent Abuse Reduction Act of 2013,* which targets the abusive lawsuits filed by an ever growing group of sophisticated and well financed patent trolls. This legislation will help stem these damaging lawsuits and allow companies like jcpenney to focus resources on growth, serving customers and creating jobs.

jcpenney is a 111-year old company. We have over 1,100 stores in 49 states and employ over 100,000 associates. Our business model is straightforward. We sell quality apparel, footwear, jewelry and home products to the American consumer. However, in recent years we have become a target of patent trolls. These frivolous lawsuits divert valuable resources away from our business and the communities we serve.

According to recent studies these troll lawsuits can cost retailers up to $5 million per case. The average settlement cost is around $1.3 million. And the exponential growth of these lawsuits is having a real and damaging impact on retailers, small businesses, and entrepreneurs. In 2007, patent trolls filed 22% of patent cases but in 2012 that number skyrocketed to 60%. These cases are filed for only one reason – so the trolls can enrich themselves and their investors. Unlike retailers, patent trolls do not manufacture or sell products. They don't build stores, contribute to local charities or create jobs. The patent trolls' business is to buy junk patents, file lawsuit after lawsuit and leverage the high cost of defending those suits to negotiate expensive settlements.

That is why we are supportive of your legislation. It is time for Congress to act and stop this lawsuit abuse. We can't thank you enough for your interest and leadership on this very important issue.

Sincerely,

Janet Dhillon
Executive Vice President
General Counsel
jcpenney

National Retail Federation®
The Voice of Retail Worldwide

June 5, 2013

The Honorable John Cornyn
United States Senate
517 Hart Senate Office Building
Washington, DC 20510

Dear Senator Cornyn:

On behalf of the members of the National Retail Federation, thank you for introducing the Patent Abuse Reduction Act. Abusive patent litigation is a significant and growing problem for retailers, and we strongly support reform.

In recent years, over 200 retailers have contacted NRF about patent litigation because they have been, or are currently, the target of patent trolls' abusive practices. Patent trolls take away resources that retailers would rather use towards investment in their businesses, including furthering innovation, refurbishing their stores, and providing more jobs.

Retail, and e-commerce specifically, plays an important role in the recovery of the economy. Managing frivolous suits is an expensive distraction many retailers cannot afford, nor do they have the resources to adequately fight these suits. The Patent Abuse Reduction Act addresses reforms which would curb trolls' ability to extort settlement demands from retailers, technology companies and others who are the targets of their outrageous claims.

As the world's largest retail trade association and the voice of retail worldwide, NRF represents retailers of all types and sizes, including chain restaurants and industry partners, from the United States and more than 45 countries abroad. Retailers operate more than 3.6 million U.S. establishments that support one in four U.S. jobs – 42 million working Americans. Contributing $2.5 trillion to annual GDP, retail is a daily barometer for the nation's economy. Retailers create opportunities for life-long careers, strengthen communities at home and abroad, and play a leading role in driving innovation. Learn more at www.nrf.com.

We appreciate your commitment to addressing the harmful impact patent trolls have on our global economy, and we look forward to continuing our work together on this issue.

Sincerely,

David French
Senior Vice President
Government Relations

cc: Members of the Senate Judiciary Committee

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Professors' Letter in Support of Patent Reform Legislation

November 25, 2013

To Members of the United States Congress:

We, the undersigned, are 60 professors from 26 states and the District of Columbia who teach and write about intellectual property law and policy. We write to you today to express our support for ongoing efforts to pass patent reform legislation that, we believe, will improve our nation's patent system and accelerate the pace of innovation in our country.

As a group we hold a diversity of views on the ideal structure and scope of our nation's intellectual property laws. Despite our differences, we all share concern that an increasing number of patent owners are taking advantage of weaknesses in the system to exploit their rights in ways that on net deter, rather than encourage, the development of new technology.

Several trends, each unmistakable and well supported by empirical evidence, fuel our concern. First, the cost of defending against patent infringement allegations is high and rising. The American Intellectual Property Law Association estimates that the median cost of litigating a moderately-sized patent suit is now $2.6 million, an amount that has increased over 70% since 2001. These and other surveys suggest that the expense of defending even a low-stakes patent suit will generally exceed $600,000. Moreover, the bulk of these expenses are incurred during the discovery phase of litigation, before the party accused of infringement has an opportunity to test the merits of the claims made against it in front of a judge or jury.

The magnitude and front-loaded nature of patent litigation expenses creates an opportunity for abuse. Patentholders can file suit and quickly impose large discovery costs on their opponents regardless of the validity of their patent rights and the merits of their infringement allegations. Companies accused of infringement, thus, have a strong incentive to fold and settle patent suits early, even when they believe the claims against them are meritless.

Historically, this problem has largely been a self-correcting one. In suits between product-producing technology companies, the party accused of infringement can file a counterclaim and impose a roughly equal amount of discovery costs on the plaintiff. The costs, though high, are symmetrical and, as a result, tend to encourage technology companies to compete in the marketplace with their products and prices, rather than in the courtroom with their patents.

In recent years, however, a second trend – the rise of "patent assertion entities" (PAEs) – has disrupted this delicate balance, making the high cost of patent litigation even more problematic. PAEs are businesses that do not make or sell products, but rather specialize in enforcing patent rights. Because PAEs do not make or sell any products of their own, they cannot be countersued for infringement. As a result, PAEs can use the high cost of patent litigation to their advantage. They can sue, threaten to impose large discovery costs that overwhelmingly fall on the accused infringer, and thereby extract settlements from their targets that primarily reflect a desire to avoid the cost of fighting, rather than the chance and consequences of actually losing the suit.

To be sure, PAEs can in theory play a beneficial role in the market for innovation and some undoubtedly do. However, empirical evidence strongly suggests that many PAEs have a net negative impact on innovation. Technology companies – which, themselves, are innovators – spend tens of billions of dollars every year litigating and settling lawsuits filed by PAEs, funds that these tech companies might otherwise spend on additional research and design. Surveys also reveal that a large percentage of these suits settle for less than the cost of fighting, and multiple empirical studies conclude that PAEs lose about nine out of every ten times when their claims are actually adjudicated on their merits before a judge or jury.

The impact of these suits is made more troubling by the fact that PAE activity appears to be on the rise. Empirical studies suggest that at least 40%, and perhaps as high as 59% or more, of all companies sued for patent infringement in recent years were sued by PAEs. PAE suits were relatively rare more than a decade ago, and they remain relatively rare today elsewhere in the world.

More worrisome than these bare statistics is the fact that PAEs are increasingly targeting not large tech firms, but rather small business well outside the tech sector. Studies suggest that the majority of companies targeted by PAEs in recent years earn less than $10 million in annual revenue.

When PAEs target the numerous small companies downstream in the supply chain, rather than large technology manufacturers upstream, they benefit in two ways. First, for every product manufacturer, there may be dozens or hundreds of retailers who sell the product, and hundreds or thousands of customers who purchase and use the technology. Patent law allows patent owners to sue makers, sellers, or users. Suing sellers or users means more individual targets; some PAEs have sued hundreds of individual companies. And, more targets means more lawyers, more case filings, more discovery, and thus more litigation costs overall to induce a larger total settlement amount.

Second, compared to large manufacturers, small companies like retailers are less familiar with patent law, are less familiar with the accused technology, have smaller litigation budgets, and thus are more likely to settle instead of fight. In fact, many small businesses fear patent litigation to such an extent that they are willing to pay to settle vague infringement allegations made in lawyers' letters sent from unknown companies. Like spammers, some patent owners have indiscriminately sent thousands of demand letters to small businesses, with little or no intent of actually filing suit but instead with hopes that at least a few will pay to avoid the risk.

This egregious practice in particular, but also all abusive patent enforcement to some extent, thrives due to a lack of reliable information about patent rights. Brazen patent owners have been known to assert patents they actually do not own or, conversely, to go to great lengths to hide the fact that they actually do own patents being used in abusive ways. Some patent owners have also sought double recovery by accusing companies selling or using products made by manufacturers that already paid to license the asserted patent. Still others have threatened or initiated litigation

without first disclosing any specific information about how, if at all, their targets arguably infringe the asserted patents.

In short, high litigation costs and a widespread lack of transparency in the patent system together make abusive patent enforcement a common occurrence both in and outside the technology sector. As a result, billions of dollars that might otherwise be used to hire and retain employees, to improve existing products, and to launch new products are, instead, diverted to socially wasteful litigation.

Accordingly, we believe that the U.S. patent system would benefit from at least the following six reforms, which together will help reduce the cost of patent litigation and expose abusive practices without degrading inventors' ability to protect genuine, valuable innovations:

1. To discourage weak claims of patent infringement brought at least in part for nuisance value, we recommend an increase in the frequency of attorneys' fee awards to accused patent infringers who choose to fight, rather than settle, and ultimately defeat the infringement allegations levelled against them.
2. To reduce the size and front-loaded nature of patent litigation costs, we recommend limitations on the scope of discovery in patent cases prior to the issuance of a claim construction order, particularly with respect to the discovery of electronic materials like software source code, emails, and other electronic communications.
3. To further protect innocent retailers and end-users that are particularly vulnerable to litigation cost hold-up, we recommend that courts begin to stay suits filed against parties that simply sell or use allegedly infringing technology until after the conclusion of parallel litigation between the patentee and the technology's manufacturer.
4. To facilitate the early adjudication of patent infringement suits, we recommend that patentees be required to plead their infringement allegations with greater specificity.

And finally, to increase transparency and confidence in the market for patent licensing, we recommend:

5. that patentees be required to disclose and keep up-to-date the identity of parties with an ownership stake or other direct financial interest in their patent rights, and
6. that Congress consider additional legislation designed to deter fraudulent, misleading, or otherwise abusive patent licensing demands made outside of court.

In closing, we also wish to stress that as scholars and researchers we have no direct financial stake in the outcome of legislative efforts to reform our patent laws. We do not write on behalf of any specific industry or trade association. Rather, we are motivated solely by our own convictions informed by years of study and research that the above proposals will on net advance the best interests of our country as a whole. We urge you to enact them.

Sincerely,*

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SIIA Welcomes Increased Congressional Focus on Patent Trolls; Applauds Sen. Cornyn's Bill Introduced Today

WASHINGTON, D.C. (May 22, 2013) – The Software & Information Industry Association (SIIA), the principal trade association for the software and digital content industries, today commended Senator John Cornyn (R-TX) for introducing S__, The Patent Abuse Reduction Act, and for his leadership on efforts to curtail patent troll activity. The bill, which is one of a growing number of legislative efforts aimed at attacking the problem of abusive patent litigation, calls for several steps that SIIA supports, including: a heightened pleading requirement for plaintiffs; increased transparency for determining the parties that are actually behind a lawsuit, and; requirements that parties pay for any discovery that is beyond "core" materials.

SIIA President Ken Wasch commented, "The economic harm being caused by patent trolls is receiving increased attention in Congress, and we commend Senator Cornyn for his leadership on this issue. We applaud his introduction of strong thoughtful legislation that would implement several needed patent litigation reforms. It is a crucial step toward an effective legislative response to the plague of patent trolls damaging American innovation and our economy. As we seek to enact effective, comprehensive patent troll reform legislation this year, we look forward to working closely with Senator Cornyn, the leadership and members of the Senate and House Judiciary Committees and other stakeholders."

About SIIA
SIIA is the leading association representing the software and digital content industries. SIIA represents approximately 700 member companies worldwide that develop software and digital information content. Information technology (IT) and software security are critical issues to SIIA's members, many of whom strive to develop safe, secure and state-of the-art products that effectively serve their commercial and government customers alike, while protecting their intellectual property. For further information, visit www.siia.net.

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SIA SEMICONDUCTOR INDUSTRY ASSOCIATION

SIA Statement on Legislation to Curb Abusive Patent Litigation
August 1, 2013

The Semiconductor Industry Association (SIA) supports the efforts of Congress, the White House, and courts on reducing abusive patent litigation. While judicial and administrative reforms to address this issue can play an important role and need to continue, SIA believes it is time for Congress to adopt legislation to prevent abusive conduct and to address the cost asymmetry in patent litigation, while at the same time preserving the ability of patent owners to protect their intellectual property and their investments in research and innovation, and ensuring that U.S. companies are not placed at a disadvantage to foreign competitors.

In this regard, SIA thanks and applauds Senator Cornyn for his leadership in the introduction of the "Patent Abuse Reduction Act of 2013" (S.1013). Abusive practices in patent litigation have a substantial negative impact on the U.S. economy and on U.S. innovation. The semiconductor industry believes that some of the concepts outlined in this bill, such as heightened pleading standards in cases where such information is reasonably accessible to patent holders, fee-shifting for non-prevailing parties, and early claim interpretation, will be useful in addressing abusive litigation practices. We encourage members of Congress to join Senator Cornyn in advancing these concepts and similar initiatives.

As Congress moves forward on the Cornyn bill and other proposals that include these principles, SIA urges Congress to proceed carefully and listen to stakeholders to ensure that legislation does not result in unintended negative consequences to patent owners and U.S companies.

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The Semiconductor Industry Association (SIA), representing the leading U.S. semiconductor companies, supports policies that encourage innovation, including the protection of intellectual property. The semiconductor industry is research intensive—members invest, on average, 18 percent of revenues to research and development. Nearly half of the top 15 American patent recipients are semiconductor companies, and semiconductors are one of the country's top exports. The continued success of our industry and continued American leadership in semiconductor design and manufacturing depends on a strong and balanced patent system, including sensible and efficient rules to resolve patent disputes.

1101 K Street NW, Suite 450 Washington, DC 20005
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TAB Supports Senator Cornyn's Patent Lawsuit Reform Bill

Date: 5/22/2013
Category: Press Release

FOR IMMEDIATE RELEASE

Contact: Bill Hammond

May 22, 2013

Phone: (512) 637-7701

TAB Supports Senator Cornyn's Patent Lawsuit Reform Bill

AUSTIN, TX— U.S. Senator John Cornyn is introducing the Patent Abuse Reduction Act, which will modernize the patent litigation system and better protect innovators who are being targeted by so called "patent trolls."

"These 'trolls' are responsible for the majority of patent litigation and are simply trying to obtain fast settlements," said Bill Hammond, President and CEO of the Texas Association of Business (TAB). "This practice stifles innovation and discourages the creation and expansion of small businesses."

Hammond said that TAB fully supports the effort to reform the patent litigation system. "We welcome the news that Senator Cornyn has taken the initiative and introduced this legislation aimed at addressing, and ending, this abusive practice."

Two things that Senator Cornyn's bill does is to require the people filing these claims to identify themselves, and it requires the losing party to pay for the cost of the litigation. "Adding transparency and this kind of financial responsibility will deter many of these people, who are simply looking to make a quick buck from filing this sort of frivolous litigation in the first place," said Hammond.

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Founded in 1922, the Texas Association of Business is a broad-based, bipartisan organization representing more than 3,000 small and large Texas employers and 200 local chambers of commerce.