

December 17, 2013

The Honorable Orrin Hatch
U.S. Senate
104 Hart Senate Office Building
Washington, DC 20510

Dear Senator Hatch,

We are writing to express our support for S. 1612, the “Patent Litigation Integrity Act of 2013.” This legislation would enable fee shifting in unsuccessful patent infringement lawsuits. The risk of fee-shifting would help to discourage Patent Assertion Entities (PAEs) from filing frivolous lawsuits.

To deter abusive patent litigation we must reverse the economic incentives that fuel frivolous patent infringement lawsuits. Fee shifting, or the ability of the court to award the prevailing party reasonable fees and other expenses, is a critical component to discourage meritless lawsuits. We applaud legislative efforts to provide the courts this critical tool.

Importantly, S.1612 goes further. The legislation ensures that fee shifting will be effective by empowering the court, on a motion from the defendant, to order the party alleging infringement to post bond to cover the other party’s expenses. Too often PAEs find ways to escape accountability. Were PAEs subject to fee shifting, many would seek to avoid payment, including using various corporate entities and subsidiaries that can hold few assets and be wound down without being held accountable. S.1612 would effectively block the quest to avoid accountability by ensuring PAEs post bond in advance, ultimately ensuring they are subject to downside risk when they lose frivolous lawsuits.

We support your efforts to reverse the existing asymmetrical litigation risk. We believe S. 1612 will hold PAEs financially accountable and ultimately deter them from filing frivolous lawsuits that unnecessarily harm financial services providers and the consumers they serve.

We look forward to working with you on this important legislation.

Sincerely,

American Bankers Association
American Insurance Association
The Clearing House
Credit Union National Association
Financial Services Roundtable
Independent Community Bankers of America
NACHA—The Electronic Payments Association
National Association of Federal Credit Unions
National Association of Mutual Insurance Companies