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Michael Beckerman and Paul DeRoche: Congress should act now to stop patent trolls

October 28, 2013 01:00 AM

BY MICHAEL BECKERMAN

If you've heard about patent trolls, you already know that they hurt businesses, drive up prices for consumers and are a drain on our economy to the tune of \$80 billion annually. What you may not know is that they are no longer limiting their targets to software developers and high-tech companies. Now the trolls are shaking down every type of business, from retailers and restaurants to major corporations and even charities. But by broadening their targets, they've sparked momentum for reform to put a stop to their abusive practices.

They've even taken aim at local banks, grocers and retailers. These companies, which employ thousands of Rhode Islanders, were sued for the use of common e-commerce tools and customer loyalty programs. The money that these businesses have to spend to defend themselves in court is money they can't spend hiring more workers and funding innovation. But that's just a glimpse of how large the troll problem has become.

Businesses targeted by patent trolls are left with two very expensive choices. For small and medium-sized businesses, the average cost of paying the troll a licensing fee is about \$1.3 million dollars. For those same small and medium-sized businesses, the average cost of going to court is \$1.75 million. So it's no wonder that many choose to pay the trolls rather than fighting them in court.

Trolls make their living by taking advantage of overly-broad, low-quality patents. These often cover everyday business practices like having an online store locator on a website or providing wifi to customers in coffee shops, and many should be invalid. The proof is that when cases based on alleged infringement of these business-method patents are tried in court, the trolls lose 85 percent of the time.

According to the White House, trolls sent out more than 100,000 demand letters last year. And it's adding up to real money for them, and a significant drain on our economy.

As the extent of this problem has become clear, policymakers are taking notice. Some states have taken action to stop the trolls, but because our patent system is under federal jurisdiction, an effective, comprehensive solution must come from Congress.

Already, a number of bills have been introduced to address this issue in both the House and Senate, and from Democrats and Republicans alike. Additionally, President Obama has urged Congress to make a number of changes to our patent system to stop the trolls.

To be effective, reform must accomplish two goals. First, it must make sure that both parties have something at stake, which will change the trolls' calculus and reduce the number of suits that ultimately go to court. Second, reform must make it easier to invalidate low-quality patents that enable abuse. Allowing targets of business-method patents to challenge the validity of the patents at the Patent and Trademark Office instead of in court would give victims of patent abuse a less costly and more efficient way to fight back.

Rhode Island businesses can't afford to wait any longer for reform to stop these patent trolls. We urge members of Congress, and particularly those on the relevant committees of jurisdiction such as Sen. Sheldon Whitehouse (D-R.I.), to act with all deliberate speed to pass reforms that stops patent abuse once and for all.

Michael Beckerman is the president and CEO of the Internet Association. Paul DeRoche is director of the Rhode Island Retail Federation.



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FOCUS

Business leaders seek relief from 'patent trolls'



PATENTLY OFFENSIVE: Providence-based attorney John Capone said that "patent trolls acquire patents simply for the purpose of suing." PBN PHOTO/MICHAEL PERRSON

By Rhonda J. Miller
PBN Staff Writer

11/25/13

David Anderson, president of Skillbuilders, first became acquainted with so-called "patent trolls" in 2011. The 19-year-old software company based in South Kingstown has an international client roster.

"There's an ongoing case being handled by Oracle Corp. because we're an official Oracle partner and it has to do with an Oracle software product," said Anderson.

His firm is hardly alone in Rhode Island in dealing with such companies that acquire a patent, often on a widely used technology, then threaten or sue many businesses for patent infringement.

"We are aware of 15 companies in Rhode Island that have been affected – who have had lawsuits filed against them – by patent trolls," said Kathie Shields, executive director of the Tech Collective, Rhode Island's technology-industry association.

"Some have settled and some are in litigation.

“Patent trolls go out and patent open-source tools and once they have the patents, they go file lawsuits against big and small companies,” said Shields.

“One example is if you go to a retail online site and put in a zip code to find the closest store, the zip code search tool is an open-source plug in,” said Shields. “The open-source information is the coding.”

Patent trolls have been around for about 10 years, but the frequency of their lawsuits has been escalating, said Shields.

These shell companies have found states where laws make it easier for them to exist, such as Delaware or Texas, so they establish entities there, then sue companies across the U.S., said Shields.

“The biggest imposition is on small companies. They don’t have the money to fight or to settle,” said Shields. “With small companies, it’s a threat to the sustainability of their business.”

The challenge for large companies is whether to spend large amounts of money and possibly years involved in litigation fighting the lawsuit by the patent troll, or to settle, said Shields.

“Those who settle end up funding the litigation by patent trolls,” said senior counsel and patent attorney John L. Capone with Duffy & Sweeney in Providence. “Patent trolls acquire patents simply for the purpose of suing. They are not the inventors ... they are simply the owners of the technology.”

An example of a patent troll is a company that has sued a number of businesses for using the technology for activating a debit card by phone, said Capone.

“They try to collect licensing fees for products they don’t manufacture or services they don’t supply,” said Capone, who will speak Dec. 10 at a Tech Collective forum on patent trolls. “They’re called Non-Practicing Entities, or NPEs.”

“NPEs sued four times more defendants in 2011 compared to 2007,” according to an article on opensource.com by Mark Bohannon, vice president of corporate affairs and global public policy at Red Hat, a Raleigh, N.C.-based international technology company whose mission is “to be the catalyst in communities of customers, contributors and partners creating better technology the open-source way.”

The Rhode Island Retailers Association, along with many national retailers and technology organizations, is urging Congress to pass reforms to stop patent abuse.

In a Sept. 16 letter to Sen. Sheldon Whitehouse, D-R.I., Greater Providence Chamber of Commerce President Laurie White said, "I am writing to express concern about "patent trolls" and the threat they pose to the general business community. No longer just a problem for tech companies, patent trolls are now targeting banks, credit unions, retailers, hotels, restaurants and Main Street businesses with frivolous infringement claims."

White said the "highly dubious claims" include suits claiming infringement for using WiFi routers, scanning documents and for using online shopping cart features on a website."

In addition to small businesses being targets of patent trolls, White said, "several companies in Rhode Island, including [CVS Caremark Corp.], Citizens Bank, Stop & Shop, Home Depot and Rite Aid have been targets of patent trolls."

Citizens Bank is named as a defendant in a lawsuit with multiple defendants, DataTreasury Corporation v. Fiserv Inc., for patent infringements on automated sales and service systems and automated multimedia data-processing network, according to the website of Chicago-based patent trial attorney R. David Donoghue, who is with the intellectual-property group of the firm of Holland & Knight.

In an Oct. 11 letter to Whitehouse, urging him to support Senate Bill 866, "The Patent Quality Improvement Act" and H.B. 276, "Stopping the Offensive Use of Patents Act," Rite Aid Senior Counsel Ron S. Chima wrote "at Rite Aid, we have been the target of a number of these frivolous patent-troll threat letters and lawsuits. Faced with years of expensive litigation versus paying a license fee, we often settle. ... This is extremely frustrating and is diverting capital we could otherwise use.

Some patent issues are valid, of course, especially with the rapid developments in technology and increasingly complex issues related to intellectual property. But patent trolls are considered to be working outside that range of legitimate patent disputes.

Patent trolls are able to acquire patents for a variety of reasons.

“Sometimes an inventor gets a patent on technology but doesn’t put it into practice. The company may have gone bankrupt,” said Capone. “Sometimes patents are sold in bankruptcy. Sometimes when a company sells off its portfolio, it might include a group of patents.”

In the letter to Whitehouse, White urged examination of potential resolutions of the patent-troll issue, include expanding the U.S. Patent Office’s Covered Business Method Program, which would create an expedited method to invalidate bad patents, as well as passage of Senate Bill 866, the Patent Quality Improvement Act.

“Let’s force patent trolls to take financial responsibility for their lawsuits by allowing defendants to recoup money spent to successfully defend themselves against junk lawsuits,” White said. •

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OP-ED / LETTERS TO THE EDITOR

Patent trolls – ugly, taxing brake on U.S., innovation

Guest Column:
Charlie Kroll and Kathie Shields
12/2/13

Trolls – once devious, fearsome members of a mythical race – are now an unwelcomed reality in our modern innovation economy.

More politely referred to as patent-assertion entities, patent trolls do not develop or sell new technologies. Rather, they exist to deploy large patent portfolios against productive businesses, dragging down our economy, costing us jobs and putting a tax on our most innovative products and services.

Here in Rhode Island, we are building a vibrant cluster of entrepreneurial tech startups that are developing innovative new products and services, and most importantly, creating jobs for Rhode Islanders. The abusive tactics of patent trolls pose a very real threat to the growth of our own local innovation sector.

Our patent system was designed “to promote the progress of science and the useful arts” that would not otherwise occur. However, in the fast-moving Internet and software-driven economy, we are witnessing the opposite: patents are actually slowing innovation and serving the interests of exploitative trolls.

Many patent-infringement claims made by trolls are highly dubious, including suits claiming infringement for scanning documents, using WiFi routers, and for using store-locator and online shopping-cart features on websites. No longer just a problem for tech companies, patent trolls are now targeting banks, credit unions, retailers, hotels, restaurants and Main Street businesses that use these commonplace technologies.

Consider the case of one of the most audacious patent trolls, Innovatio IP Ventures. Innovatio owns a portfolio of patents that it claims covers any sort of WiFi implementation, and they have used this to sue coffee shops, grocery stores, hotels and many other business that offer WiFi to customers. What’s more, Innovatio frequently targets individual franchisees (rather than the corporate parent) that have no idea how to deal with a patent-infringement lawsuit. Instead of getting involved in a costly legal battle, these small businesses almost always settle for a

few thousand dollars, which Innovatio gladly pockets and then moves on to the next target.

While the majority of such infringement claims are likely frivolous and would not stand a chance in court, they still managed to cost U.S. businesses \$29 billion in direct payouts and \$80 billion in indirect costs in 2011 alone. Why? Because tech startups and many other small to midsize businesses are forced to settle these challenges out of court, as they lack the time and significant financial resource needed to fight back against patent trolls' dubious infringement claims. That's billions of dollars every year that could go toward developing innovative, new products and services that is instead going to patent trolls.

This is clearly not how our patent system was intended to work.

Fortunately, both houses of Congress are now working to address the patent-troll problem. Reps. Darrell Issa, R-Calif., and Judy Chu, R-Calif., have introduced the bipartisan STOP Act in the House while Sen. Charles Schumer, D-N.Y., introduced the Patent Quality Improvement Act in the Senate. These proposals would give small businesses and startups a better, cheaper alternative to patent litigation by expanding the Covered Business Method Program, currently limited to only "financial services" business-method patents.

The CBM program gets to the root of the patent-troll problem, weeding out the bad patents that are the trolls' lifeblood. If broadened, the CBM program could be effective in helping businesses sued by patent trolls invalidate vague, obvious or overbroad patents in the PTO, rather than having to do so through expensive, multiyear litigation.

Prompt action on a number of fronts is needed if policymakers want to send an unequivocal message to patent trolls and help save productive businesses from their abuses. Congress must act quickly to keep these bad actors from further burdening our economy and negatively impacting innovation here in Rhode Island and across the country. •

Charlie Kroll is the founder and CEO of Andera Inc. and Kathie Shields is the executive director of the Tech Collective, Rhode Island's technology-industry association.

September 26, 2013

U.S. Senator Sheldon Whitehouse
Hart Senate Office Bldg. Room 530
Washington, DC 20510

Dear Senator Whitehouse:

As the Founder and CEO of Alert Solutions -- a growing Cranston-based provider of cloud-based multi-channel messaging technology and communication solutions -- I write to urge you to address the important issue of patent trolls.

The patent troll problem in our country has reached outrageous proportions. In 2011 alone, suits brought by patent speculators cost American companies and innovators \$29 billion in direct payouts and \$80 billion in indirect costs. Many of these entities produce nothing and exist solely to sue or threaten to sue hardworking American businesses like mine with baseless claims of patent infringement. Indeed, Alert Systems has received a number of threat letters from patent trolls claiming infringements related to things as basic as sending emails and faxes.

Fortunately, there is a bipartisan solution in Congress right now. S.B. 866, *The Patent Quality Improvement Act*, introduced by Senator Charles Schumer and the *Stopping the Offensive Use of Patents Act (STOP Act)* H.B. 276 introduced by Representatives Daniel Issa and Judy Chu, will help businesses fight back against these unfounded lawsuits.

It will expand the Patent and Trademark Office's covered business method program (CBM), eliminating a generation of bad patents and helping local businesses bypass lengthy and expensive court proceedings. It will also improve the quality of patents being granted to prevent bad business method patents from being issued in the first place.

I urge you to support this legislation to help end the abusive practices of patent trolls and to ensure that our patent system performs as it was intended: to facilitate and safeguard real innovation that benefits our constituents, our local businesses, and our economy.

Sincerely,



David Baeder
Founder & CEO



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September 25, 2013

U.S. Senator Sheldon Whitehouse
Hart Senate Office Bldg. Room 530
Washington, DC 20510

Dear Senator Whitehouse,

At Betaspring, we are devoted to helping promising technology startups transform into fundable, scalable companies. We have accelerated 72 companies and our alumni have raised some \$30 million in follow-on funding. Through our accelerator program and the incredible work of our alumni, we are proud to be a part of Rhode Island's thriving tech startup cluster.

Unfortunately, the behavior of so-called "patent trolls" poses a significant threat to innovation in Rhode Island and across the country. Small businesses have been sued by patent trolls for using their printers to scan documents; retail merchants have faced lawsuits for placing a "shopping cart" feature on their website; and major city transit systems are under attack for developing public transit tracking apps.

These examples demonstrate just how egregious the patent troll problem has become. Most of these entities produce nothing and exist solely to threaten businesses with baseless claims of patent infringement. The majority of these claims are frivolous and would not stand a chance in court. Yet they still managed to cost U.S. businesses \$29 billion in 2011 alone.

Why? Because small businesses, like the tech startups we work with, are forced to settle these challenges out of court as they lack the financial resource necessary to fight back against patent trolls' frivolous infringement claims. That's billions of dollars every year that could go towards developing innovative new products and services, that is instead going to patent trolls.

Fortunately, there is a bipartisan solution to this problem now in Congress. S.B. 866, The Patent Quality Improvement Act, introduced by Senator Chuck Schumer and the Stopping the Offensive Use of Patents Act (STOP Act) H.B. 276 introduced by Representatives Daniel Issa and Judy Chu, will help small businesses fight back against these unfounded lawsuits.

It will expand the Patent and Trademark Office's covered business method program (CBM), eliminating a generation of bad patents and helping small businesses bypass lengthy and expensive court proceedings. It will also improve the quality of patents being granted to prevent bad business method patents from being issued in the first place.

We urge you to support this important legislation to help ensure that the patent system performs as it was intended: to facilitate and safeguard real innovation that benefits consumers, our local businesses and our economy.

Sincerely,

A handwritten signature in blue ink, appearing to read "Allan Tear", with a stylized flourish at the end.

Allan Tear

Founder & Managing Partner

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September 16, 2013

Honorable Sheldon Whitehouse
U.S. Senate
Hart Senate Office Bldg. Room 530
Washington, DC 20510

Dear Senator Whitehouse:

I write today on behalf of the Greater Providence Chamber of Commerce to express concern about "Patent Trolls" and the threat they pose to the general business community. No longer just a problem for tech companies, patent trolls are now targeting banks, credit unions, retailers, hotels, restaurants and Main Street businesses with frivolous infringement claims.

As the President of the Greater Providence Chamber of Commerce, which represents member businesses in several of these sectors, I am dismayed by the seemingly abusive behavior of these patent trolls. Many infringement claims made by patent trolls are highly dubious, including suits claiming infringement for using WiFi routers, scanning documents, and for using online shopping cart features on a website.

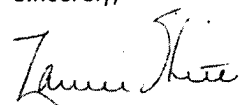
In addition to small businesses, several Rhode Island companies including CVS, Citizens Bank, Stop & Shop, Home Depot, and Rite Aid have all been the targets of patent trolls. We have been advised that most of these lawsuits are frivolous. Yet faced with paying a licensing fee versus years of expensive litigation to invalidate the claimed patent, many businesses simply settle. Such behavior is taking money away from real innovation.

Fortunately, there are several proposed solutions. Among them, expand the Patent Office's Covered Business Method Program (CBM). This would create an expedited process in the Patent Office to invalidate bad patents. In addition, Senate Bill 866, *The Patent Quality Improvement Act*, introduced by Senator Schumer would expand the CBM program and also improve the quality of patents being granted to prevent bad business method patents from being issued in the first place.

Expanding the CBM program enjoys broad support from groups like the National Retail Federation, the National Restaurant Association, the Internet Association, and the Food Marketing Institute. Let's force patent trolls to take financial responsibility for their lawsuits by allowing defendants to recoup money spent to successfully defend themselves against junk lawsuits. Patent trolls would think twice about filing frivolous infringement claims if they knew they could be financially responsible for legal fees in a losing case.

Please consider lending your voice to the growing chorus of business groups that are urging reform to the all-important patent protection process.

Sincerely,



Laurie White
President



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www.NewportChamber.com

September 30, 2013

U.S. Senator Sheldon Whitehouse
Hart Senate Office Bldg. Room 530
Washington, DC 20510

Dear Senator Whitehouse:

I write today on behalf of the Newport County Chamber of Commerce to express concern about "patent trolls" and the threat they pose to the general business community. No longer just a problem for tech companies, patent trolls are now targeting banks, credit unions, retailers, hotels, restaurants, and Main Street businesses with frivolous infringement claims.

As the Executive Director of the Newport County Chamber of Commerce, which represents member businesses in several of these sectors, I am dismayed by the abusive behavior of these patent trolls. Many infringement claims made by patent trolls are highly dubious, including suits claiming infringement for using WiFi routers, scanning documents, and for using online shopping cart features on a website.

In addition to small businesses, several prominent Rhode Island companies including CVS, Citizens Bank, Stop & Shop, Home Depot, and Rite Aid have all been the targets of patent trolls. While the majority of these lawsuits are frivolous, when faced with paying a licensing fee versus years of expensive litigation to invalidate the claimed patent, many businesses simply settle. It is estimated that these patent troll intimidation tactics cost U.S. businesses \$29 billion in 2011 alone.

This is clearly not how our patent system was intended to work.

Fortunately, there is a bipartisan solution to the problem of patent trolls in Congress right now. I am writing to urge you to support S.B. 866, *The Patent Quality Improvement Act*, introduced by Senator Charles Schumer and H.B. 276, the *Stopping the Offensive Use of Patents Act (STOP Act)*, introduced by Representatives Daniel Issa and Judy Chu. This legislation will help businesses fight back against these unfounded lawsuits.

It will expand the Patent and Trademark Office's covered business method program (CBM),



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eliminating a generation of bad patents and helping local businesses bypass lengthy court proceedings. It will also improve the quality of patents being granted to prevent bad business method patents from being issued in the first place.

This legislation will provide important relief for business in Rhode Island and around the country, and will help ensure that our patent system performs as it was intended: to facilitate and safeguard real innovation that benefits our constituents, our local businesses, and our economy.

Sincerely,

A handwritten signature in black ink, appearing to read "Jody Sullivan".

Jody Sullivan
Executive Director



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October 11, 2013

**U.S. Senator Sheldon Whitehouse
Hart Senate Office Bldg. Room 530
Washington, DC 20510**

Dear Senator Whitehouse:

As the Senior Counsel of Rite Aid, which proudly serves our Rhode Island customers with 42 local stores, I write to urge you to address the important issue of patent trolls.

In recent years, Rite Aid and retailers across the country have been, or are currently, the target of patent trolls' abusive practices. The threat typically comes from firms whose business model is buying obscure patents which are about to expire and then either licensing the patents to retailers through the threat of litigation or filing lawsuits in an effort to force a settlement. Often retailers choose to pay the licensing fee as patent litigation is prohibitively expensive. In other words, patent trolls are stealing precious capital resources that retailers would otherwise use to invest in their businesses, including jobs, innovation, and refurbishing stores.

Patent trolls frequently file claims that are based on broad concepts and a general way of doing something rather than specific software innovations. This enables trolls to assert infringement claims covering the use of technology in virtually every area of e-commerce and mobile retailing (for example, providing store-locator functionality on a website; clicking on an item on a website to obtain further product information; sending electronic notifications to customers that their packages have been shipped). Moreover, patent trolls' claims are not limited to e-commerce applications, but also affect the operations of traditional "brick and mortar" retail stores as well (for example, claims that purport to cover the printing of receipts at cash registers, the sale of gift cards, and the use of QR-code readers to scan coupons).

On the rare occasions these cases go to trial, it has been reported that trolls lose 92 percent of the time, but this is small comfort to retailers who lack the resources to see these cases through to a resolution. Often the damage claims are so exorbitant and the prospect of relief through litigation so time-consuming, that retailers make a business decision to settle rather than litigate.

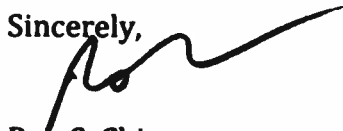
At Rite Aid, we have been the target of a number of these frivolous patent troll threat letters and lawsuits. Faced with years of expensive litigation versus paying a license fee, we often settle. Some require lengthy litigation to get the extorted demand down to nuisance value. This is extremely frustrating and is diverting capital we could otherwise use to better serve our customers. Recently, Rite Aid has been pursued by the following patent trolls: Ronald Katz, NeoMedia, Landmark, Alliacense, Card Activation Technologies, Cronos, Helferich, Innovatio, Lodsys, SFA, TQP, CreateAds, Express Card Systems, ArrivalStar and GeoTag. These patent trolls, and their frivolous claims, have cost millions of dollars in legal fees.

Fortunately, there is a bipartisan solution to the problem of patent trolls in Congress right now. Senate Bill 866, *The Patent Quality Improvement Act*, introduced by Senator Charles Schumer and the *Stopping the Offensive Use of Patents Act (STOP Act)* H.B. 276 introduced by Representatives Daniel Issa and Judy Chu, will help businesses fight back against these unfounded lawsuits.

It will expand the Patent and Trademark Office's covered business method program (CBM), eliminating a generation of bad patents and helping businesses bypass lengthy and expensive court proceedings. It will also improve the quality of patents being granted to prevent bad business method patents from being issued in the first place.

Rite Aid Pharmacy urges you to support this legislation to help end the abusive practices of patent trolls.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron S. Chima', with a stylized flourish extending to the right.

Ron S. Chima
Senior Counsel



October 10, 2013

U.S. Senator Sheldon Whitehouse
Hart Senate Office Bldg. Room 530
Washington, DC, 20510

Dear Senator Whitehouse:

As the Executive Director of Tech-Collective, the technology industry association of Rhode Island, I write to urge you to address the abusive practices of patent assertion entities, otherwise known as "patent trolls."

Patent trolls do not innovate or add any value to our economy. They buy patents solely for the purpose of pressuring companies in the technology, banking, retail, hospitality, and several other sectors to pay nuisance royalty fees.

While the majority of patent troll infringement claims are frivolous and would not stand a chance in court, they still managed to cost U.S. businesses \$29 billion in direct payouts and \$80 billion in indirect costs in 2011 alone. Why? Because small to midsize businesses, like the many Rhode Island technology companies we represent, are forced to settle these challenges out of court as they lack the time and financial resource necessary to fight back against patent trolls' dubious infringement claims. That's billions of dollars every year that could go towards developing innovative new products and services, that is instead going to patent trolls.

This is clearly not how our patent system was intended to function.

Fortunately, there is a bipartisan solution to this problem now in Congress. Senate Bill 866, *The Patent Quality Improvement Act*, introduced by Senator Charles Schumer and the *Stopping the Offensive Use of Patents Act (STOP Act)* H.B. 276 introduced by Representatives Daniel Issa and Judy Chu, will help businesses fight back against these unfounded lawsuits.

It will expand the Patent and Trademark Office's covered business method program (CBM), eliminating a generation of bad patents and helping businesses bypass lengthy and expensive court proceedings. It will also improve the quality of patents being granted to prevent bad business method patents from being issued in the first place.

On behalf of the members of Tech-Collective, I urge you to support this needed legislation to end the abusive practices of patent trolls.

Sincerely,

A handwritten signature in black ink, appearing to read "K Shields", is placed above the typed name.

Kathie Shields
Executive Director

industry partner: information technology | bioscience
industry awareness | community building | workforce development

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