

October 3, 2013

The Honorable Charles Grassley
United States Senate
135 Hart
Washington, D.C 20510

The Honorable Bruce Braley
United States Congress
2263 Rayburn
Washington, D.C. 20515

The Honorable Dave Loebsack
United States Congress
1527 Longworth
Washington D.C. 20515

The Honorable Tom Harkin
United States Senate
731 Hart
Washington, D.C. 20510

The Honorable Tom Latham
United States Congress
2217 Rayburn
Washington, D.C. 20515

The Honorable Steve King
United States Congress
2210 Rayburn
Washington, D.C. 20515

Dear Senator Grassley, Senator Harkin, Congressman Braley, Congressman Loebsack, Congressman Latham and Congressman King:

We, the undersigned Iowa associations, organizations, and businesses, strongly encourage Congressional efforts yet this year to address abuses of the legal system by patent assertion entities, commonly referred to as patent trolls.

Fighting frivolous and burdensome patent lawsuits threatened and filed by patent trolls is an expensive distraction for a large cross-section of Iowa businesses. Rather than focus their efforts on important economic development catalysts such as innovation, job creation, and business growth, entrepreneurs and business owners from all industries and sizes are more frequently finding themselves diverting valuable attention and limited resources to defending expensive and unnecessary legal threats by patent trolls. Indeed, businesses, everyday Iowans, and Iowa's economy as a whole are adversely affected by the trolls' seemingly endless barrage of legal threats and frivolous suits. The trolls' misguided and unbridled mischief unnecessarily drives up costs that are, in part, passed on to Iowa's hardworking families and consumers.

Unfortunately, patent troll activity is growing at alarming rates and costing our economy billions. In fact, patent infringement lawsuits have tripled in the last two years, rising from 29 percent of all infringement lawsuits to 62 percent. According to the White House, estimates suggest that last year alone patent trolls threatened over 100,000 companies with patent infringement suits. Further, according to widely-publicized figures, patent trolls cost the U.S. economy half a trillion dollars in the last 20 years, with more than \$320 billion occurring in only the last four (4) years.

There is a growing, bi-partisan consensus that the time to address the patent trolls' abuses is now. We are pleased to see President Obama support patent troll reform and we are encouraged by the active roles that prominent Senate and House Judiciary Committee members are playing to bring forward legislative solutions. Meaningful reforms that make it difficult for patent trolls to continue their destructive business models, improve patent quality, and streamline patent infringement disputes will drastically reduce costs for Iowa businesses.

We are encouraged by the bi-partisan work happening on this issue and we ask for the House and Senate to continue to work across the aisle and across chambers on this important industry-wide issue.

As Iowans, we look forward to working with you and your colleagues to pass needed legislation yet this year.

Sincerely,

Hy-Vee Food Stores

Technology Association of Iowa

Iowa Biotechnology Association

Iowa Association of Business & Industry

Iowa Restaurant Association

Iowa Bankers Association

Iowa Lodging Association

Iowa Credit Union League

Independent Insurance Agents of Iowa

Motion Picture Association of Iowa

Iowa Association of Realtors

Iowa Retail Federation

Iowa Grocery Industry Association

Iowa Telecommunications Association



IOWA BANKERS ASSOCIATION

December 10, 2013

The Honorable Chuck Grassley
U.S. Senate
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Washington, D.C. 20510

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Dear Senator Grassley:

The Iowa Bankers Association appreciates your willingness to meet with us in Council Bluffs and listen to bankers and other small businesses share their concern regarding abuse of the legal system by non-practicing entities (NPEs), commonly referred to as patent trolls.

As you heard during the meeting in Council Bluffs, we along with many of our customers have been impacted and feel strongly that legislation is needed to curtail the risk of abusive litigation and disingenuous license fee demands by "patent trolls". Although it is a good first step, the bill recently passed by the House does not go far enough in dealing with the tactics patent trolls use against banks and other types of businesses. In particular, stronger action must be taken to make it harder for trolls to send abusive "demand" letters that contain very little information about what is allegedly being infringed and whether the patent is in fact valid and who is the real owner. The legislation also should include stronger language to protect end-users from the threat of infringement actions. Banks are mainly end users because we buy products and services from vendors. It is abusive for trolls to threaten end users because there is no intent to infringe or any technical knowledge about the possibility of infringement simply from purchasing a product from a vendor.

Your role as the Ranking Member of the Senate Judiciary Committee is crucial to the well-being of Iowa businesses and we appreciate your efforts to resolve the issue. First and foremost, a business that purchases or license products or services in good faith from reputable vendors and technology companies to support their business and customers should not be held hostage by a patent troll. For little more than the cost of a postage stamp, these trolls are managing to stifle innovation and competition.

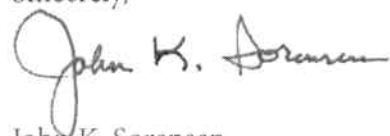
One example of recent activity in our area include a suit filed in June of this year against First National Bank of Omaha by a NPE known as Intellectual Ventures.. Their suit argues that First National's systems infringe upon the patents it allegedly owns on matters related to computer security for electronic transactions. The suit also cites firewalls, cryptography and distribution of digital property as areas which its patents have been infringed upon. Another example occurred a few months later, where a lawsuit was filed against Lincoln-based Pinnacle Bank by Activision TV saying the bank operates digital display signs that infringe on its patents. The Pinnacle suit is one of a series of patent actions brought this year against businesses that are end users of digital display signs. Both of these cases show how NPEs utilize overly broad patents to make claims of infringement against banks that are either simply engaging in normal business practices or have simply bought a technology product or service from a vendor.

Despite much-needed reforms put in place by the America Invents Act, NPEs continue to manipulate the patent law, threatening litigation accompanied by licensing fee demands designed to extract a "tax" on the very innovation created to support and benefit consumers and the economy.

Since banks of all sizes license innovation and technology to support consumer use, they are frequent NPE targets. In fact, banks are now one of the top ten industries targeted by NPEs and like many industries, when faced with threats of expensive patent litigation (estimated to cost between \$500K and \$3.5M) many banks - especially smaller institutions - find that their only option is to settle these questionable claims rather than face paying even higher litigation costs to defend themselves against frivolous claims of patent infringement.

Senator Grassley, you have always championed efforts to defend business and individuals against frivolous and abusive lawsuits and your support for moving forward with legislation to prevent abuse of the patent system is critical. We thank you for your continued interest and appreciate your support of reforms that would prevent the abuse of the patent system, including abusive demand letters and threats to end users from NPEs.

Sincerely,

A handwritten signature in black ink, reading "John K. Sorensen". The signature is fluid and cursive, with the first name "John" being the most prominent.

John K. Sorensen
President & CEO
Iowa Bankers Association

December 10, 2013

From: Robert R. Rees, Jr.
To: U.S. Senator Charles Grassley
Subject: Current State of Patents from the Perspective of an Inventor

I am an individual inventor and entrepreneur. I write to explain how the patent system has collapsed, and to ask for your help.

The invention of the patent has driven innovation like no other invention in history. For over 400 years, the patent system has fueled the longest period of continual innovation in human history. We have inherited a proud history from folks like Whitney, Bell, Howe, Wright, Tesla and Edison who inspire generations of inventors and entrepreneurs. And, it's an amazingly simple invention: society's legalized trade of a limited duration monopoly in return for sharing a valuable idea for society to freely advance.

The key to the patent system's success, however, is not what a patent is. It's what a patent *does*. A patent acts as an asset that can be leveraged for investment, which, in turn, enables further innovation. In actuality, it is a vehicle for a marriage of people, ideas and capital that propels innovation, creates jobs and provides the bedrock of our great economy.

For a patent to act as that vehicle, it must have enough value to attract investment. It must be an investment grade asset.

Today, patent values have plummeted and that is killing the US patent system.

My inventions cover many different product channels; Toys, Tailgating items, Solar Charged Laptops, Tablets, Mobile phones and other handheld devices and a new Operating System which ties in many different components. While I have more ideas, which I have researched how big the market it and what problems it will help solve, I am remiss to file any more patents/provisional patents until I know as an individual inventor that my ideas will be protected.

When I invented my first invention, trademarked as the Bubble-Worm, I bet my career, my financial stability and much more on it. However, I knew I was on to something and I wanted to build my own company based on my own inventions. I also believed that the US patent system would protect me. That is, after all, what the American dream is all about.

I needed to establish a market fast. To do that, I needed money. I quickly learned that investors do not invest for charity. They invest for profit and they manage their risks. They told me that I needed a patent to put up as security, so I filed for one in mid 2009. Among other benefits, the patent would return value to the investors in the event my business failed. Patent protection also meant that I could secure an "*exclusive right*" to my invention for 20 years in exchange for disclosing it to the public so that others could build upon it. The "*exclusive right*" would allow me to hold competition at bay long enough to establish my

Here's why:

- Since the decision in *eBay v. MercExchange*, I no longer have the “*exclusive right*” – the right to exclude others from using, making, importing or selling my inventions. This is true despite the fact that the “*exclusive right*” is guaranteed in the US Constitution, black letter law and 400 years of precedent. The “*exclusive right*” is the foundational principle of the patent system and the primary driver of a patent’s value. The threat of injunction secures the market created by a patented invention for the inventor and protects it from those who would steal it. Once a patented invention has been stolen, exercising the “*exclusive right*” with the threat of injunctive relief decreases litigation and drives settlements that map closely to the market value of the invention.

Conversely, the inability to exercise the “*exclusive right*” drives unnecessary litigation and arbitrary settlements at much lower levels than the market value of the invention. Infringers have a strong advantage over inventors because they are generally wealthier and set up for litigation. Most inventors are neither. Without an injunctive threat, infringers embrace a strategy of escalating litigation to wear the inventor down with piles of paperwork, unnecessary expenses, and extended delays. After all, they cannot lose the market; they get to keep the golden goose no matter what happens. In the end, for an infringer, it’s all about writing a check. If you can clock out the inventor, you may never have to write that check, or at least it will be only for the nuisance value of the suit.

The loss of the “*exclusive right*” has significantly and fundamentally damaged the value of my patents and all other patents in general.

- Only a few years ago patentable subject matter meant that “*anything under the sun and made by man*” was eligible to be patented as long as it was not a law of nature, an abstract idea, or mathematical concept. Subject matter eligibility acts as a gate. Once the patent application is found to be of patentable subject matter, the gate is opened, and then the invention is examined under the statutory conditions of patentability.

However, the courts radically changed the definition of patentable subject matter in *Bilski v. Kappos*. The lower courts determined that in order for an invention to be patentable, it must either be a machine or it must transform matter – the Machine or Transformation test (MOT). The Supreme Court upheld the MOT test, but expanded it by saying “*it is not the only test*”. However, that expansive language does not play out in the lower courts or the USPTO as both tend to use MOT exclusively.

Software is necessarily tied to a machine in that software does nothing without running on computing hardware – the opposite is also true. However surprising it may be, software running on computing hardware is not the machine prong of a MOT test. The software must (perhaps) control some part of the machine, like an interface or a device. This definition excludes a majority of software from patent protection. For example, most of the apps that you download on your iPhone cannot be protected by patents, or in another example, enterprise software protecting your laptop against hackers and crooks cannot be patent protected.

Bilski caused inventors to change how they worded patent claims by adding the words “in a computer system” or some other innocuous phrase that did not substantively change the meaning of the claims. However prior to *Bilski*, patent claims lacked that superfluous wording, and because *Bilski* was effectively retroactive to all patents, many patents were rendered unenforceable. This lowered the value of potentially thousands of patents to near zero, and thousands of others lost

years in prosecution as the claims were rewritten thus damaging their value. I lost three years in one of my patent families.

Because of confusion created by *Bilski*, infringers routinely challenge the subject matter eligibility of any software patent. The courts use different interpretations of *Bilski* and other cases producing a scrambled set of conflicting rulings depending on the court. Today, there is not even a sliver of clarity making it impossible to predict the outcome of a subject matter eligibility test. Due to this confusion, most software cases are settled for nuisance value in order to avoid the impossible to comprehend risk of the patent being invalidated. Those that do not settle are appealed by one or the other party, and often by both. To make matters worse, the appeals court also rules in unpredictable conflicting ways depending on which three of the ten judges are drawn. *CLS Bank v. Alice Corporation* makes this abundantly clear. Since almost every district court ruling is appealed, nothing in litigation makes much difference until the appeal, when the judges are drawn. You will win or lose solely based on which judges you get. It has nothing to do with law. It has nothing to do with legal precedent. The only relevant factor is luck – whether you have good or bad luck depends wholly on personal opinions of those judges drawn. It is complete chaos.

The risk inherent in a subject matter eligibility case is much higher for me, the inventor, than it is for the infringer. If the infringer loses, they lose the cost of litigation but still keep the golden goose. If I lose, I lose the patent altogether – my goose dies. Because the playing field is so radically unfair and risky, my patents are significantly devalued as are all other software patents. The chaos surrounding what is and isn't subject matter eligible is a primary factor of devaluing even market creating inventions to nuisance value.

A second foundational principle of our patent system is that an allowed patent is "*presumed valid*", and that overcoming that presumption requires "*clear and convincing evidence*", the highest standard of evidence, presented to a court. The burden to show proof of invalidity is on the challenger, which is normally the infringer. This is black letter law and has been a pillar of the patent system since the Patent Act of 1836. Establishing a strong presumption of validity came about because, prior to 1836, no infringer would settle an infringement lawsuit without litigating the validity of a patent, which escalated litigation, brought inconsistent court decisions and delayed settlement – much like today. This problem is well illustrated in the story of Eli Whitney and his cotton gin.

While validity is presumed in current law, in actual practice there is no presumption of validity at all due to post grant review procedures (PGR). Eli Whitney is rolling in his grave.

I group all possible PGR's into a single class for the sake of brevity. There are four distinct PGR's that enable anyone (named or anonymous) to ask the USPTO to reexamine a patent to double check that it was prosecuted correctly in the first place. A PGR does not necessarily invalidate a patent. It instead corrects an alleged error in issuing the patent, which in effect invalidates the patent. The standard of evidence for granting a PRG is simply "*more likely than not*", the lowest evidentiary standard in federal litigation, presented to the administrative branch of government. Once the patent is admitted into a PGR, the patentee has the burden to once again prove the invention is indeed patentable.

PGR removes all presumption of validity by providing a clear path around the judicial branch of government and the statutory requirement of "*clear and convincing evidence*" by opening a path through the administrative branch of government using a "*more likely than not*" standard of

evidence. These paths conflict with each other, have different standards of evidence and different burdens of proof, and they obfuscate the line between two coequal branches of government.

SAP v. Versata is a classic example of the PGR problem. Versata sued SAP for infringement. The court determined that Versata's patent was valid and infringed, and damages were awarded; Versata won. During the case, SAP filed for PGR with the USPTO. After the case was won by Versata, the USPTO invalidated Versata's patent. Two coequal branches of government using different standards came to opposite rulings on the validity of the same patent. This creates enormous uncertainty in the patent system. Which branch of the government is responsible for invalidating a patent? What is the level of evidence required to invalidate a patent? Is a patent at all presumed valid? If two decisions are made that contradict each other, which one is right and how are they reconciled.

Nobody can value a patent with this level of confusion.

Nevertheless, that's not all that's wrong with the PGR system. On average, a PGR consumes three years of a patent's life. It is customary to stay litigation during a PGR and infringers normally refuse to settle until it is decided. A patent is a time sensitive, wasting asset; it is only enforceable for 17 years or less. The time lost during a PGR is not added to the end of the patent's term. It is just lost altogether. When calculated, a PGR cuts 3 years off the 17 year term or about an 18% reduction in the patent's value.

The America Invents Act (AIA) created a new class of PGR, which is even more hostile to patents. This class is directed toward what are known as "*business method*" patents, whatever that means. This procedure has a lower pleading threshold and extends the period for challenging a patent. New laws proposed in the House wish to extend this new AIA PGR to all patents. This change will provide an even easier path to invalidate patents, which of course, further devalues patents.

- In the last few years, courts regularly reassign patent cases to the court in a jurisdiction located closest to the headquarters of the infringer. Also, under the AIA, patent suits can no longer be filed in a single suit against a group of similar infringers. They must instead each be filed individually. This means that there is high likelihood that when multiple infringement suits are filed in a single court, they will be moved to multiple different courts potentially all across the country each in a different state. As previously discussed, each court makes its own decisions and it is likely those decisions will contradict each other. Contradicting decisions can domino across cases causing even more uncertainty. Costs for the inventor can be driven to stratospheric levels as the inventor manages separate cases in multiple jurisdictions, likely in different states, and has to hire local counsel to manage each case. These changes have increased patent litigation complexity, risk, and cost, which devalues my patents and everyone else's patents as well.
- As discussed previously, infringers often engage in excessive and hostile litigation as a strategy to clock out the inventor. Conversely, many inventors sue unjustly based on questionable patents or on unsound legal theories causing damage to companies who do not infringe in an effort to extort a settlement. A simple and effective solution is to default patent infringement suits to a rebuttable loser pay system. Some cases are a close call, especially when the case involves highly complicated technology. In those close cases, the loser should be allowed to rebut the default loser pay law, and then a judge or jury can determine who pays what based on the specifics of the case. A court is certainly in the best place to make this call. It is my experience that infringers drive the cost of

litigation far more than inventors do. This change will improve the value of patents and improve the quality of patents being asserted.

The USPTO takes an extraordinarily long time to allow patents. In my case, my first patent took over 3 years, and my second patent took approximately 4 and ½ years. The causes of these delays are simple. The examiners do not read the patent applications, they do not read the prior art, and they throw up frivolous and ridiculous rejections based on what they did not read and do not understand. After the second nonsensical rejection, inventors are forced to either file a Request for Continued Examination (RCE) or file an appeal. These delays are USPTO generated by irresponsible patent examiners and their management.

The USPTO regularly violates black letter law and their own administrative procedures when filing rejections and appeal briefs with the effect, and I believe the intent, of delaying the grant. The failure of examiners to follow their own laws devalues patents.

The USPTO for several years did not follow the law and refused to extend patent duration for their own delays. Recently the courts have fixed this problem, but it appears that the currently proposed patent laws in Congress are about to end that, as they will effectively subtract time from the patent term for filing an RCE or an appeal. This punishes the inventor for time squandered by the USPTO and adds uncertainty and devalues patents.

USPTO created delays enable potential infringers to strip inventions right off the USPTO website, incorporate those inventions into their existing products, and saturate the market long before the inventor has an allowed patent that can protect against the infringers who just stole it. If in fact there is a Patent Troll problem (the recent GAO report required by the AIA shows there isn't), the USPTO is creating it by their excessively long delays. It takes so long to get a patent allowed that infringers fearlessly steal it. Careers are made in less time. Companies startup and are acquired or go public in less time. They simply steal inventions, make millions (or billions) of dollars on them, and then loudly proclaim that the inventor is abusing them when the inventor seeks some redress for the theft. These adrenalized complaints have driven most of the recent anti-patent reforms and are driving the current round of proposed legislation. Just the fact that Congress is seriously considering changes hostile to patent protections creates uncertainty and devalues patents.

For many inventors, a so-called "Patent Troll" is the sole resource available to convert the patent into some sort of value. In my situation, that is certainly the case. Yet somehow, investors are wrongly portrayed as the evil Patent Troll taking advantage of inventors and infringers, and stifling innovation with added costs. This cannot be further from the truth, and is indeed exactly opposite the truth.

The part investor's play is essential to drive patent value and therefore, drive investment in innovation and startup companies. Their core contribution is converting assets into cash, thus adding value in many situations. For example, existing businesses often develop ancillary technologies not core to their business and they need capital to expand into markets that are their core businesses. Selling unused ancillary patent portfolios to investors to convert to cash plays a highly valuable role of providing capital used to expand products, markets and further innovation. In another example, failed companies sell patent portfolios to investors to convert to cash, which thereby recoups losses for the investors of the failed company. This particular function, recouping losses, indirectly supports the valuation of other patent holding businesses as they attempt to get funding to build new products or expand into new markets. Another example is my particular

case. An investor is converting one of my widely infringed patent portfolios into cash, which is funding the development of my software company and further innovation.

Patent Trolls (aka investors) are being actionably attacked in the courts, in the media and in Congress. My government is papering them with subpoenas for a variety of information in an obvious effort to harass, intimidate and beat them into submission. Stunningly, investors are treated differently in courts than practicing entities. If in an investor's hands, a patent is less enforceable than that same patent in the inventor's hands, the patent can't be sold by the inventor without experiencing a loss. This differentiated treatment of patent rights depending on who owns the patent knocks the bottom right out of the value of the patent.

As previously stated, investors do not invest for charity. They invest for profit. If they can't convert a patent into profit, they will not invest. Patents have been so dramatically devalued at this point, it is difficult to find an investor. What's more, my government is attempting to further devalue patents in an effort to stop these fictitiously evil "Patent Trolls" with even more new laws.

It's a simple supply and demand question. If the supply for patents is damaged further by devaluing patents, the demand for them will evaporate because no one can make a profit and therefore no one will invest. And conversely, if the demand for them is damaged further by damaging so called Patent Trolls, the value of patents will go to zero because there will be no one to buy them. Once that happens, no inventor will take on the financial and personal risk to file for a patent or much less to work to innovate at all. They'll just go fishing and the rest of us will revert to the feudal system of trade guilds and trade secrets that existed prior to the patent system some 400 years ago.

Today under the current patent system, my patents, while potentially worth hundreds of millions or billions of dollars, may only generate a fraction of that value. While mine are exceptional in value, lesser software patents have been rendered completely worthless. Unbelievably, my government is killing patents – said differently, killing innovation. Our courts, Congress, and the Administration are eliminating patent protection for software, an entire field of human endeavor - a field that integrates with virtually every industry on the planet and is one of the last industries that is almost completely owned by US companies.

The Administration, Congress and the Courts must take proactive measures to define subject matter eligibility, to restore my Constitutional right to an injunction, to eliminate post grant reviews, to put in place rebuttable loser pays, and to speed up the USPTO.

In a Nutshell: Nothing short of these changes will restore patents to the investment grade assets that they were just a short time ago. Nothing short of these changes will save the American Dream and American innovation in general. Our nation, the United States of America is on a threshold..the momentum of the individual states "Inventor Congress" concept is starting..let's keep it going. Without ideas, where do the new jobs come from? Where does desperately needed tax revenue come from? From new products invented by inventors.

Sincerely,

Bob Rees, Jr., Inventor



December 10, 2013

From: Robert R. Rees, Jr.
To: U.S. Senator Charles Grassley
Subject: Patent Reform

Good and Bad provisions in the "Innovation Act." (H.R. 3309)

Loser-Pay

Good Law

A rebuttable loser-pay is healthy for the patent system. This will cause both sides to consider the implications of escalating litigation, which will likely reduce assertion of bad patents and drive settlements on good patents.

Enhanced Pleadings and Limiting Discovery

Bad Law

The Innovation Act has a provision that dictates enhanced pleadings requiring that the plaintiff produce substantially more information, and a provision limiting discovery prior to claim construction.

The trial court, with its firsthand knowledge of the case at hand, is best positioned to deal with courtroom procedure especially given the breadth of variables in a patent lawsuit. Legislating courtroom procedure paints with a broad brush and will likely damage the trial court's ability to bring a fair solution in many situations.

Enhanced discover will likely increase litigation costs, risk and complexity. It could lock the plaintiff to a specific theory of infringement long before the plaintiff has the necessary information to know which theory is most appropriate when other theories are possible. This will likely complicate litigation later, potentially putting the plaintiff at a disadvantage as more information is made available later in discovery. In addition, limiting discovery could allow defendants to hide information critical to claim construction thereby placing the plaintiff at a strong disadvantage.

If loser-pay is made law these changes will not be necessary because both sides will drive for closure to reduce exposure to the risk of losing and paying the other side's legal costs.

Collecting fees from non-plaintiffs.

Bad Law

The Innovation Act has a provision that allows prevailing accused infringers to collect fees from non-plaintiffs who have an interest in the case.

This provision goes to the very foundation of American business. In any business, the personal risk of investors and executives is insulated by the use of a corporate entity – the risk is limited to the assets of the business. Patent business is a risky business. Any money invested in a patent can be lost completely in a multitude of ways. It is all or nothing with little in between. This provision enhances this high business risk by transferring additional risk to the personal assets of investors and executives. No doubt, this will have a chilling effect on patent enforcement activities across the board. Few investors are willing to bear this risk and many will no longer invest in patents.

Shrinking Post-Grant-Review Estoppel.

Bad law.

Under the current law, a post-grant review proceeding prohibits the petitioner from later arguing in other forums "any ground that the petitioner raised or reasonably could have raised during that post-grant review." The new law would narrow that estoppel only to grounds actually raised, thereby allowing a petitioner to argue the grounds that could have been raised, but were not in other post-grant review proceedings and in court.

A post-grant review is certainly the easiest way to invalidate a patent. If the accused infringer argues invalidity on one ground but chooses not to argue other available grounds, the infringer should be bound to the results for all. If not, the infringer could argue the other grounds in future post-grant reviews and in court, thus tying up the patent in litigation for years. Not only is this grossly unfair, it degrades the investment value of a patent by increasing risk and uncertainty, as well as adding unnecessary costs and delay.

Covered Business Method Patent Review.

Bad law. (I understand this provision has been removed in the current version)

The AIA creates an option for third parties to attack patents covering non-technological "covered business method" innovations through the use of a new post-grant review proceeding. The new law would somewhat restrict the scope of CBM review to only cover first-to-invent patents (rather than pre-AIA patents) as defined in Section 3(n)(1) of the AIA. The new law would also, inter alia, codify the USPTO's somewhat broad definition of "financial product or service" described in the *Versata* case.

SAP vs Versata is a classic case illustrating the problem of the "Covered Business Method" review. Patents classified as a CMB patent are degraded substantially. This PGR must be eliminated, not codified further.

Patent Term Adjustment.

Bad law.

The new law would eliminate any patent term adjustment for "B delay" occurring after an applicant files a request for continued examination (RCE) or an appeal. This change would have a significant impact on the patent term of a large number of issued patents.

For years, the PTO did not follow the law and refused to extend patent duration for their own delays. Recently the courts fixed this problem, but this provision would resurrect it.

Premise underlying “good law/bad law” categories.

A patent is an agreement between society and an inventor. An inventor teaches a new and useful invention to society so others can freely build upon it, thereby advancing innovation and our economy. In return, our government grants the inventor a short-term *exclusive right* to the invention and legally protects it.

In today’s patent system, our government is failing to provide that protection. This failure is degrading a patent’s ability to attract capital investment. With no investment, most inventors cannot protect or practice their inventions. Thus, infringement is encouraged, litigation is escalated, and the inventor’s ability to generate value from the patent is debased. To make matters worse, infringers turn the tables, unjustly distorting this created chaos to drive reforms that further damage the investment qualities of patents. This weakens our economy by reducing economic output historically created by our patent system, which is contributing to low job growth and the economic malaise we are currently experiencing.

A patent is an *exclusive right* to an invention, which is a high cost for society. For the patent system to work, society must be repaid with significant value. Returning value to society generally requires that someone practice the invention because once practiced, others see it, use it and advance it. When working properly, as it did until recently, society is repaid with high levels of innovation creating high levels of job growth and economic output.

However, the Founders intentionally opened the U.S. patent system to all people regardless of their means or social class. Mass accessibility differentiated the U.S. patent system from other systems. Notably, mass accessibility was a primary characteristic that made our system much more successful than other systems, which were accessible only to the moneyed and the powerful.

Whether an inventor practices the invention or licenses it for others to practice, an invention requires capital. People with limited means seldom have the necessary capital. It did not take long for the government to learn that the patent itself must be capable of attracting investment. The Patent Act of 1836, created an *investment grade asset* by establishing a strong presumption of validity and one clear path to prove invalidity.

Since 1836, the results speak for themselves. The U.S. patent system has returned greater innovation and economic value to society than any patent system in history. This has been the foundation of our great economy for almost 200 years... until recently.

My premise is one single thing – a patent must be an *investment grade asset* for the U.S. patent system to return value to society. Today a patent is not that asset and that weakness alone is destroying our system of mass accessibility by transforming it back to a system only accessible to the moneyed and the powerful, which was, ironically, what existed before the U.S. patent system.

Capabilities Required for an Investment Grade Asset:

1. **Exclusive Right:** A patent is an *exclusive right* defined in the U.S. Constitution, law and 400 years of precedent, which when exercised must exclude others from making, selling, using or importing the patented invention. This capability creates a known benefit mapping directly to the *market value* of the invention, which strongly supports the investment qualities of patents.

The absence of the *exclusive right* encourages infringement, because a patent cannot exclude infringers from the market the patent created. Once widely infringed, the patent may be incapable of attracting investment necessary to practice the invention due to that infringing competition. Thus, a patent may only remain capable of being licensed. With no injunctive relief, infringers do not license a non-practiced patent without litigation and courts award damages at a *percentage of revenue* - far below a *market value*.

2. **Presumption of Validity:** A patent must be presumed valid. There must be only one well-known and well-understood path to invalidate a patent. The bar to invalidate a patent must be high, using the highest form of evidence with the burden of proof on the party seeking to invalidate the patent. This capability creates a known and durable asset with defined and understandable risks, which strongly supports the investment qualities of patents.

The absence of the *presumption of validity* increases risk that the patent's value could go to zero, as is the case now with Post Grant Review and undefined Subject Matter Eligibility. The absence also increases costs with extended litigation as infringers work to invalidate the patent using multiple avenues in the courts and in the administrative branch. Therefore, the asset becomes impossible to reasonably value for investment purposes, as is the case today.

3. **Independence:** The capabilities of a patent must be independent of its use. Whether it is practiced or licensed, its presumption of validity, exclusive right and transferability must not change. Independence creates a marketable asset of stable value regardless of its use, strongly supporting the investment qualities of patents.

If a patent's capabilities are dependent of the type of use (practiced or non-practicing), its ability to attract investment is substantially degraded, as it is today. For example, many cutting-edge companies are commonly valued at *multiples of revenue* even if they are losing money. This is because there is a difference between *market value* and *revenue*. Market value is assessed by looking to the future of the market. Revenue value is assessed by what sold to date. In cutting-edge markets, such as those created by many patented technologies, that difference is substantial. The value created by a patent is the market that the invention creates, not the revenue.

In today's legal landscape, a practiced patent earns *market value* because it can exclude others from the market and those excluded are willing to pay a high price to enter the market. Conversely, a non-practiced patent earns a *percentage of revenue* because the infringer is already in the market and cannot be excluded.

Treating an asset differently solely based on its use, as it is today, (see *eBay vs MercExchange*) degrades the investment value of the asset from a *multiple of its revenue* value (market value) to a *percentage of its revenue* value. There are magnitudes of difference in potential return on investment solely based on usage, which substantially devalues a patent. This difference can make the patent unmarketable on its own.

4. **Transferability:** A patent must fully transfer all capabilities enjoyed by one owner to any subsequently owner. This creates a marketable asset that maintains its value regardless of the ownership.

The failure to transfer all of a patent's capabilities, such that the subsequent owner cannot enforce it using the same capabilities, significantly devalues the asset. For example, if a patent provides a greater value to an inventor than it can to a purchaser, as is becoming the case now, the sale value of the patent is degraded to the level of value that it can provide to the purchaser.

The government is failing to provide this capability transfer as the courts and congress attack patent investors, sometimes pejoratively called Patent Trolls or Non-Practicing Entities, with legislation designed to damage their businesses.

If any of these patent attributes fail, a patent does not function as an investment grade asset causing the patent system to fail.

Legislation Needed to Return a Patent to an Investment Grade Asset

Eliminate Post Grant Reviews

Ex Parte Reexamination, Post Grant Review, Inter Partes Review, and Covered Business Method (CBM) Patent Review (collectively PGR) eliminate the presumption of validity, which degrades investment value of the patent.

PGR's enable anyone (named or anonymous) to ask the PTO to reexamine a patent to double check that it was prosecuted correctly in the first place. A PGR does not necessarily invalidate a patent. It instead corrects an alleged error in issuing the patent, which in effect invalidates the patent.

Courts use a standard of "*clear and convincing evidence*", the highest form of evidence, and place the burden to prove invalidity on the infringer. A PGR circumvents the courts by opening a path through the administrative branch, which uses a "*more likely than not*" standard of evidence, the lowest form of evidence, and places the burden on the inventor to prove patentability all over again. These paths conflict with each other, have different standards of evidence and opposite burdens of proof, and they obfuscate the line between two coequal branches of government. The PGR problem is clearly illustrated in *SAP v. Versata*.

PGR's should be eliminated because PGR's remove the presumption of validity and degrade the investment value of a patent.

Reinstate the "Exclusive Right"

eBay v. MercExchange destroyed the "*exclusive right*" for non-practiced patents only. The loss of the "*exclusive right*" has significantly and fundamentally degraded patent's investment value making patents an asset of arbitrary value.

New law must uphold the *exclusive right* regardless of use.

Rebuttable Loser Pays

Many inventors sue unjustly based on questionable patents or on unsound legal theories causing damage to companies who do not infringe in an effort to extort a settlement.

Conversely, many infringers engage in excessive and hostile litigation as a strategy to clock out the inventor.

A simple and effective solution is to default patent infringement suits to a rebuttable loser pay system. Some cases are a close call, especially when the case involves highly complicated technology. In close cases, the loser should be allowed to rebut the default loser pay law, and then a judge or jury can determine who pays what based on the specifics of the case. A court is certainly in the best place to make this call. It is my experience that infringers drive the cost of litigation far more than inventors do.

Rebuttable Loser Pay will improve pleadings because it incentivizes information sharing to reduce cost. It will also incentivize both sides to reduce litigation activities rather than increase them as is the case for infringers now.

This will improve the value of patents by reducing the cost of litigation, drive settlements, and improve the quality of patents being asserted.

Fund and Fix the PTO

It often takes the PTO over a decade to allow a patent. The causes of these delays are simple. The examiners do not read the patent applications, they do not read the prior art, and they throw up frivolous and ridiculous rejections based on what they did not read and do not understand. These delays are PTO generated by irresponsible patent examiners and their equally irresponsible management. One examiner told my attorney that his group *"is just not granting any patents so you have to appeal."* Appeal I did, and making the same arguments I made to the examiner, I won the appeal – three years later. The PTO regularly violates law when filing rejections and appeal briefs with the effect, and I believe the intent, of delaying the grant. The bullheaded, irrational entrenchment of patent examiners drives up the risk, extends prosecution time, encourages infringement and devalues patents.

PTO created delays enable potential infringers to strip inventions right off the PTO website, incorporate those inventions into their existing products, and saturate the market long before the inventor has an allowed patent that can protect against the infringers who just stole it.

If there is a Patent Troll problem, the PTO is creating it by causing excessively long delays. It takes so long to get a patent allowed that infringers fearlessly steal it, make millions (or billions) of dollars on it, and then loudly proclaim that the inventor is abusing them when the inventor seeks some redress for the theft. These adrenalized complaints have driven most of the recent anti-patent reforms and are driving the current round of proposed legislation. Just the fact that Congress is seriously considering changes hostile to patent protection creates uncertainty and degrades the investment value of patents.

The problem sits within the PTO and must be corrected

First, the PTO is not funded with all of the fees it generates. The PTO cannot hire enough examiners and those on staff are overworked. The PTO must be funded with 100% of the fees it generates so it can hire enough examiners.

Second, while the appearance of PTO hostility may be, in reality, driven by a lack of funding and resources, the PTO needs a cultural change. No group can simply declare that they are not allowing patents. Any patent reform must include PTO reform and training on their own laws.

Comments on Other Current Proposed Legislation:

Patent Abuse Reduction Act of 2013 (S. 1013) (Senators Cornyn and Grassley)

Bad Law

Smaller version of the Innovation Act that would focus on
(1) raising pleading requirements
(2) limiting discovery costs (especially pre-claim-construction); and
(3) awarding attorney fees for the prevailing party.

This bill cuts out the most egregious parts of the Innovation Act. Loser pay will correct the pleadings and discovery issues being addressed by these provisions, so these provisions are not necessary.

Patent Litigation and Innovation Act of 2013 (H.R. 2639)

Bad Law

Includes many provisions in parallel to the Innovation Act, but also includes a "sanction for abusive litigation" with mandatory review of each case by the court to ensure that no Rule 11(b) violations occurred.

Currently, a damaged party must file a Rule 11 complaint. If a party does not think it has been damaged, the courts should not presume it. This will damage patent values because it will increase litigation for no purpose.

STOP Act (H.R. 2766)

Bad Law

Expanding the covered-business-method post-grant-review to also cover non-financial business methods and removal of the sunset provision. This is roughly parallel to the Patent Quality Improvement Act of 2013 (S. 866).

SAP vs Versata is a classic case illustrating the problem of the "Covered Business Method" review. Patents classified as a CMB patent are already degraded substantially. Expanding this review to all patents will degrade the investment quality of all patents.

PATENT Jobs Act (H.R. 2582)

Good Law

Proposed elimination of the PTO from the sequestration rules.

I support this. In addition, the PTO should keep 100% of its fees. This will help eliminate the problems in the PTO

End Anonymous Patents Act (H.R. 2024)

No Opinion

Requirement that the patent owner regularly update ownership information in the public record, including the "ultimate parent entity."

No opinion.

PACES Act (S. 1478) (Senator Cardin)

No Opinion

The Bill would remove certain patent infringement actions from Federal District Courts to the Court of Federal Claims. In particular, the bill focuses on causes of action against the unlicensed use patented inventions in the provision of 9-1-1, enhanced 9-1-1, or other emergency services. The CFC tends to favor the accused infringer both in terms of procedure and remedies available.

No opinion.

Manufacturing Innovation in America Act of 2013 (H.R. 2605)

No Opinion

Tax deduction carryover for patent development expenditures where profit is made years later.

No opinion.

MODDERN Cures Act of 2013 (H.R. 3091)

No Opinion

Extension of patent term for four to seven years for diagnostic medical tests. The program would be run through the FDA.

No opinion

PARTS Act (S.780)

No Opinion

Act would prevent design patent owners from using those patents to prevent the use unauthorized spare-parts in the auto industry.

No opinion.

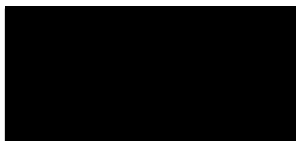
Medical Innovation Prize Fund Act (S. 627) (S. Sanders)

No Opinion

The bill would seemingly end drug patents with the text "no person shall have the right to exclusively manufacture, distribute, sell, or use a drug, a biological product, or a manufacturing process for a drug or biological product in interstate commerce."

No opinion.

Submitted by: Bob Rees, Jr.





December 11, 2013

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

I believe Patent Trolls are costing the U.S. millions, possibly billions, of dollars in unwarranted costs which impacts not only individual companies, but also the American economy.

Having personally owned several technology companies, I have fallen victim to this practice that is now completely out of control. In my experience, I have seen these patent lawyers prey on smaller companies that they know don't have the means to litigate or appear in court. This leaves companies with no choice but to settle at a reduced cost without a fight, and through no fault of their own, end up further endorsing the practice or face costing their company several million dollars.

Aside from the damage being caused to small companies, large organizations are also impacted. Patent Trolls know most companies will not go to the expense of going to court. These lawyers know this and collect substantial dollars based on trickery and little legal evidence.

This type of litigation causes organizations, both large and small, to invest time, resources, and significant dollars, which distracts from time that could and should be spent growing their business, essentially taking money away from the company and the overall business community.

Personally, I have had three different patent lawyers attack my last organization, an electronic health record company (EHR). There were 20 companies in one lawsuit (over half of which were smaller businesses) and there were thousands of hours of legal fees tied up in that lawsuit. In addition, two other lawsuits were brought against my company which included other EHR companies as well. In all of these cases we settled out of court to avoid additional litigation costs, however, in all the cases I do not believe any patents were infringed upon, but I didn't have the resources or money to invest in a lengthy court battle, so these patent lawyers ultimately cost my company over one million dollars over a two-year period of time.

The bigger issue at hand is that in the majority of cases with Patent Trolls, there is only a potential for infringement and there is no significant impact on anyone's business. There is no true harm, and the Patent Trolls are unethically targeting businesses they know will settle to make money. We must find a way to strengthen the requirements around patent infringement so unscrupulous lawyers can't work through loopholes to take resources and dollars from companies that are trying to make a positive impact on businesses in their community and the overall economy.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don Schoen", written over the word "Sincerely,".

Don Schoen
CEO
BettrLife Corporation



December 11, 2013

The Honorable Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

Patent troll abuse is an increasingly burdensome issue for businesses across Iowa. I am grateful the Senate Judiciary Committee will convene a hearing to examine how to protect businesses from this abusive practice.

Kum & Go, LC has been a target of patent trolls. Most recently, we received correspondence from U.S. Ethernet Innovations, LLC (USEI) claiming infringement with ethernet technologies utilized in many of Kum & Go's day-to-day business activities. These activities include internet connections, security cameras, point of sale and inventory management systems, to name a few. In their letter, USEI stated that they had retained Robbins, Geller, Rudman & Dowd, LLP, "the largest and most successful plaintiff's law firm in the world" to assist in patent enforcement efforts. They claim to have filed a patent infringement lawsuit against 23 major corporations believed to be infringing on ethernet patents. In the interest of "avoiding protracted litigation," USEI offers to sell Kum & Go a Retail Operator License Agreement at a discounted pre-litigation fixed fee basis.

An additional letter was sent from Niro, Haller & Niro, Ltd. on behalf of their client Innovatio IP Ventures, LLC, claiming "likely" infringement with wireless local area network (WLAN) or "Wi-Fi" technology and wireless "mesh" networking. The Niro firm claims that Innovatio's portfolio includes 31 United States patents. Further, their letter directs Kum & Go to obtain copies of and review the referenced patents. Innovatio suggests the "likely" areas of infringement are similar to those referenced by USEI. Additionally, the letter claims that any "hotspot" provided by Kum & Go to its customers or associates would constitute a violation of their patents. Similarly, Innovatio offers a discounted license fee if the parties are able to finalize an agreement within a specified window.

These claims have cost Kum & Go thousands of dollars in legal fees and corporate counsel has wasted numerous hours dealing with these frivolous claims – time and money that should have been spent on core business functions.

Again, I thank you for your attention to this matter. I look forward to a productive hearing, and the passage of much needed legislation to protect Iowa and the nation's businesses.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charley W. Campbell".

Charley W. Campbell
General Counsel and Corporate Secretary



800.383.0592

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202 Blue Creek Drive
Urbana, Iowa 52345

December 12, 2013

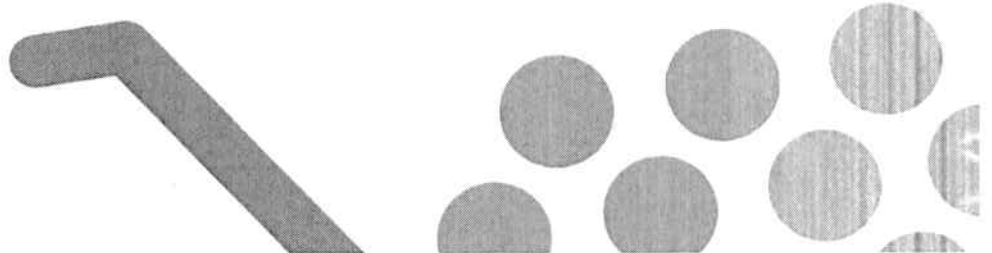
The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley:

We were first contacted by a patent troll in October of 2012 when they presented us with an "opportunity" to license a patent that we may have interest in. That quickly escalated to what the troll referred to as a "situation" because of our unwillingness to respond. The patent presented was complicated, but in no way were we infringing on this patent. The covered business method would have covered us in this instance, and would likely limit the trolls ability to have success using this patent to harass small businesses like ours. We received multiple emails, had a few short phone calls, and spent about 20-30 hours of our Senior Leaderships time as well as 8 hours of our attorney's time to effectively encourage the troll that we were not a good target. Our concern now is that it has been 2 months since they have contacted us, but since they threatened to include us with the next group of companies they plan to sue, all we can do is wait. So far this has been not much more than a distraction, but it also places some uncertainty. If this escalates, I can only imagine the threat it will pose to our company.

Sincerely,

Tim Guenther
Clickstop, Inc.
202 Blue Creek Drive
Urbana, Iowa 52345





December 13, 2013

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

RE: S. 1720 - Patent Transparency and Improvements Act of 2013

Dear Senator Grassley:

Kinze Manufacturing strongly supports efforts to stop Patent Trolls from abusing the patent system and hurting American businesses. Founded and headquartered in Iowa, Kinze employs nearly 1000 Iowans who work hard every day to provide thousands of American farmers with the planters and grain carts they need to help feed the world. Time and again, Kinze innovations have changed the way farmers plant—increasing their efficiency and yields. A strong and healthy patent system helps Kinze maintain its market leadership and deliver these innovations to the farmers.

Unfortunately, the actions of Patent Trolls threaten the health of the system. Kinze has experienced the impact of patent assertion entities first hand. Recently, Clear with Computers sued Kinze alleging the Kinze website infringed two patents. Clear with Computers makes no products and has filed over 60 patent lawsuits since 2008. This suit cost us many hours of time and resulted in significant legal fees before we were able to resolve Clear with Computers' allegations.

That experience has left a lasting impact on Kinze. Contract negotiations with suppliers and service providers now routinely include allocation of liability in the event of Patent Trolling. These negotiations require additional resources and delay research, development and production of new products. This slows farmer's access to the latest technology. Technology which will help them get more out of every acre while reducing their costs and protecting their soil.

To help, something must be done to restore balance to the patent system. As you consider legislation to address the threat posed by Patent Trolls, we strongly encourage you to consult representatives from all industries, including agricultural manufacturing. Kinze supports efforts to increase the pleading requirements for filing suit, reduce the burden of discovery and increase transparency of ownership in patent litigation. At the same time, we urge caution on provisions which could create significant hurdles for all inventors seeking to enforce their patent rights, such as blanket cost shifting provisions.

Kinze Manufacturing, Inc.

I-80 at Exit 216 · 2172 M Avenue · P.O. Box 806
Williamsburg, Iowa 52361-0806
Phone: 319-668-1300 · Fax: 319-668-3013
www.kinze.com



Kinze is more than happy to provide additional information or answer any questions you may have concerning the serious impact of Patent Trolls within our industry. Please feel free to address any inquiries to me using the contact information below.

Sincerely,

Brad Powers
Corporate Counsel
Kinze Manufacturing Inc.

Kinze Manufacturing, Inc.

I-80 at Exit 216 · 2172 M Avenue · P.O. Box 806
Williamsburg, Iowa 52361-0806
Phone: 319-668-1300 · Fax: 319-668-3013
www.kinze.com

Date: December 13, 2013

To: Senator Grassley

Subject: Patent Reform

My name is Paul Morinville. I am an individual inventor and entrepreneur. I ask for your time to understand the patent system from the perspective of a prolific inventor, and I ask for your help.

My premise is a single thing. A patent, standing on its own, must be an investment grade asset in order for the patent system to work. A patent must be capable of attracting capital so that an inventor can practice and protect the invention.

In today's patent system, our government is failing to support the value of patents. This failure is degrading a patent's ability to attract capital investment. With no investment, most inventors cannot protect or practice their inventions. If a patent is incapable of attracting investment, no person will disclose their ideas because there will be no return on the investment required to patent an idea. They will instead keep them secret.

Several government actions have caused this situation. *eBay v. MercExchange* eliminated injunctive threat. *KSR* and *Bilski* made it easier to invalidate patents. The AIA added new *Post-Issuance Procedures* (PIP) in the executive branch of government (separate and distinct from existing procedures in the judicial branch) using different rules of evidence, different standards of review, and opposite burdens of proof. PIP's destroy the presumption of validity that is the core principle of our patent system. The Federal Circuit produces conflicting and confusing decisions and appears at times to legislate from the bench (*Soverain v. Newegg*). Today, these issues have aggregated to radically increase the risk that a patent will be invalidated in one way or another, and to ensure that litigation will go on for years and years. (I refer you to the letter by Robert Rees of Milo, IA to Senator Grassley dated December 10, 2013).

This situation does not go unnoticed by infringers. If infringers stand no chance of injunction, they cannot lose the market, so they only risk money. Large infringers normally are well capitalized and set up for litigation. Inventors are neither. An inventor can easily be litigated into oblivion. Therefore, a weak patent system acts to encourage infringement and to escalate litigation. All of issues above combine to devalue the investment qualities of a patent to the point that inventors can scarcely attract investment to practice or protect their invention.

In short, our government is killing the patent system for inventors and small businesses.

Weak patents act to create so called patent trolls. As an inventor with dozens of patents and pending patents, I have sat in many discussions with multiple law firms and industry experts related to licensing my patents. All of these discussions wrap around risk management. If you go after a large company, you run the risk of daisy-chained perpetual litigation and a high probability of invalidation. Conversely, if you sue smaller companies or end users, that risk is substantially lower because they do not have the resources or sophistication to carry on an extended suit. They are much more likely to settle. This is the primary reason for the recent spree of demand letters and suits against small companies. Thus, we have a so called patent troll problem.

I am sickened that the shrill and unfounded arguments made by large multi-national infringers has been able to affect law and influence courts to weaken patents to this point. Now the same multi-

nationals leverage the chaos they've created to twist the knife one last time in an attempt to pass legislation fatal to inventors. And, many of the provisions in the current legislation will be fatal.

Today, only the most significant inventions remain investment grade assets. If an invention has less than several hundred million dollars of infringing revenue, it will be very difficult to find a contingency law firm or an investor (otherwise known as a patent troll). A major contingency law firm recently told me that they are no longer taking any software patent cases because of this chaos.

If there is a so-called patent troll problem (a recent GAO report required by the AIA shows there isn't), it is also created by the PTO. My first patent took 7 years to be allowed. During that time, the largest multi-national enterprise software companies on the planet built products infringing on my inventions and the market become saturated with those infringing products. I have patents still pending in the PTO after 12 years.

The current proposed laws fix none of these problems. They instead make these problems worse. (I again refer to the letter by Robert Rees of Milo, IA to Senator Grassley dated December 10, 2013).

In order to fix the patent system, we must move in the opposite direction that we are currently moving - we must strengthen the investment value patents - not weaken it. This will enable inventors to get the capital they need to practice and protect their inventions. It will drive early settlements and reduce costly and often perpetual litigation. It will enable the PTO to speed the allowance of patents and improve quality. In the end, it will eliminate most of the perceived patent troll problem.

Four things must be done to fix the patent system:

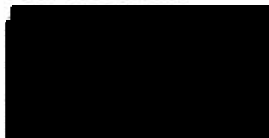
1. We must reinstate the "exclusive right" guaranteed in the Constitution, black letter law and 400 years of precedent, which was judicially eliminated in *eBay v. MercExchange*.
2. We must eliminate the judicially created "*abstract idea*" category of subject matter eligibility and instead invalidate junk patents on the other statutory conditions of patentability.
3. We must eliminate all Post-Issuance Procedures.
4. And finally, we must fully fund the PTO with all of the fees it earns.

None of the proposed new laws deal with any of these issues. If Congress makes even small changes damaging to the value of patents further while patents are as weak as they are now, there will be no patent system except that which remains for large multi-national companies to attack smaller companies.

Our current patent system weakens our economy by reducing economic output historically created by our patent system. This weakness is contributing to low job growth and the economic malaise we are currently experiencing. Fixing it will reverse that.

I pray my point is understood and clear. Please contact me if you have any questions or require more information. Thank you for taking the time to hear me out.

Paul Morinville





December 16, 2013

Dear Ranking Member Grassley:

Due to the exorbitant costs of challenging an infringement claim in court, many alleged infringers settle claims even when that patent is likely invalid or not infringed. PAEs increase the likelihood of favorable settlement outcomes by targeting small or mid-sized companies that do not have in-house patent expertise and are mere end users of an allegedly infringing product or service. The asymmetrical costs and risks of patent litigation have turned patent assertion into a booming industry. The direct costs for defendants in patent assertion cases by PAEs and other non-practicing entities rose from \$7 billion in 2005 to \$29 billion in 2011. The total business costs to defendants of assertions by PAEs may be twice that amount.

PAEs do not face commensurate costs or risks because they have no operating business other than patent assertion. Further, some operating businesses engage in “privateering,” assigning their patents to PAEs in order to shield themselves from cross-licensing obligations or countersuits. PAEs also insulate themselves from risk by operating through shell companies with little or no assets.

The disproportionate costs and risks of litigation harm the entire patent system. The heavy burdens and risks that lead many companies to settle keep in circulation low-quality patents that likely would not survive adversarial testing. The increased patent assertion activity by patent trolls armed with low-quality patents creates risks and disincentives for entities to engage in the very innovation that the patent system was designed to encourage. Resources that would have been devoted to innovation and job creation are instead diverted to fending off or settling with patent trolls. It is for this reason that the White House has repeatedly called for legislation “to protect innovators from frivolous litigation and ensure the highest-quality patents.”

The Internet Association is encouraged by the legislative proposals in the Senate that address abusive litigation by patent trolls and that improve patent quality. Senator Cornyn's "Patent Abuse Reduction Act" would make litigation more efficient and less costly by requiring better



The Internet Association

information in the initial complaint, staying discovery until claim construction, and requiring parties to pay for discovery that goes beyond core documents. Senator Hatch's "Patent Litigation Integrity Act" would curb frivolous patent claims by clarifying the standard for fee shifting. Chairman Leahy and Senator Lee's "Patent Transparency and Improvements Act" includes a customer stay and measures aimed at bad-faith demand letters to address some of the concerns of end users. Finally, Senator Schumer's "Patent Quality Improvement Act" would expand and extend the Patent & Trademark Office's review program for covered business method patents to reduce the amount of litigation driven by low-quality patents.

The legislative response to abusive practices of patent trolls must be comprehensive and include elements of each above-mentioned proposal. It must change the incentives in patent litigation and also ensure that there is an effective way to challenge low-quality patents. The Internet Association is encouraged by the progress that has been made on this issue to date and looks forward to working with you as the Senate progresses toward legislation that stops patent trolls, protects small businesses and promotes innovation.

Sincerely,

Michael Beckerman
President & CEO



December 16, 2013

The Honorable Charles Grassley
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senator Grassley:

Illinois Tool Works (ITW), a \$14 billion global manufacturer, was founded more than 100 years ago based on a single patent. Today, ITW has its global headquarters in Glenview, IL and employs nearly 100,000 employees. We have more than 12,000 active patents worldwide, and on average we are issued more than 1,000 new patents each year. In fact, ITW is consistently among the top 150 companies annually for patents issued in the U.S. Once characterized by Fortune Magazine as "the ultimate nuts-and-bolts company", many products we invented and patented decades ago are still used in commerce, produced by us or by others who have improved on our original patents over time and received patents of their own.

ITW owes its very existence and its continued global success to innovation and the ability to protect that innovation through a strong patent system. We have participated in numerous public policy debates on intellectual property rights throughout our history, including being actively involved in the development and ultimate passage of the Leahy-Smith America Invents Act (AIA) during the last Congress. We appreciated your involvement and support of that legislation, which brought about significant reform of our patent system for the first time in 50 years.

Legislation to reform our patent system is again being considered in Congress, this time in response to allegations of litigation abuse by so-called "non-practicing entities" (NPEs), or "patent trolls". Many believe such abuse could cause significant damage to our system if left unchecked. The House of Representatives has already passed legislation on this subject, HR 3309 by Rep. Goodlatte (R-VA), and similar (though narrower) legislation, S 1720 by Sens. Patrick Leahy (D-VT) and Mike Lee (R-NE), is pending in the Senate. S 1720 is scheduled for a hearing in the Senate Judiciary Committee on December 17.

We agree that litigation abuse does occur in the patent arena, and we support curbing such abuse in theory. However, we are concerned that some suggested methods for discouraging abusive litigation by patent trolls, if not carefully crafted, will have unintended consequences and could actually limit the ability of legitimate innovators and patent holders to protect their intellectual property. We therefore urge you and the Senate to proceed with caution in considering additional changes to the patent system. The first principle of any proposed legislation in this area should be to do no harm to the current system.

We should note that there are some positive aspects to both HR 3309 and S 1720. For example, both contain language that would correct an inadvertent "scrivener's error" that found its way into the AIA involving judicial estoppel in the Post-Grant Review process. Another improvement to the AIA involves a clarification regarding the use of District Court Claim Construction rulings in Post-Grant and Inter Partes Reviews.

However, we do want to highlight several areas of concern that we hope will be addressed before the bill reaches the Senate floor.

TRANSPARENCY OF PATENT OWNERSHIP

Requiring disclosure of patent ownership may deter patent trolls from abusive behavior, but for companies like ITW, with significant patent portfolios, complex organizations and global operations, requiring the disclosure of all parties with a tangential relationship to the patent will prove administratively burdensome, costly, and require the public disclosure of sensitive or business-proprietary information. Care should be taken in this area to avoid inadvertently requiring disclosure of sensitive information that does not address the real problem of obscured ownership by trolls, and S 1720 as currently drafted does a much better job at this than H 3309.

STAY OF DISCOVERY

A favorite tactic of patent trolls is to file litigation against alleged infringers, then request massive volumes of information through discovery, in hopes that the defendant will settle rather than incur the costs of providing the requested information. To curb that behavior, HR 3309 contains a provision automatically staying discovery in all patent cases for up to one year or until the claim construction has been determined by the Court. While this could provide a disincentive for patent trolls to use this tactic, it would also prevent the resolution of many cases between competitors where the issues can be easily defined or where the defendant can prove through discovery that no infringement occurred. If discovery is automatically stayed in all cases, the cost of litigation will increase unnecessarily.

S 1720 as introduced does not contain such a provision, and we would urge that it not be included. However, if the issue is addressed by the Senate, flexibility is needed to allow cases to be resolved expeditiously when warranted. Our solution is to exempt cases between competitors from the automatic stay.

BAD-FAITH DEMAND LETTERS

S 1720 takes a narrow approach to curbing abusive behavior by patent trolls through a provision that would make it a violation of the Federal Trade Commission Act to send so-called "bad-faith" demand letters. While this approach may be preferable to that taken in HR 3309, we suggest that careful attention be paid to the definition of the practices that would be considered "bad faith" in order to avoid impacting legitimate actions taken by patent holders to protect their rights.

In summary, we appreciate the opportunity to express our views on this important legislation, and we look forward to working with you and your staff as it moves through the process. Please let us know if you have questions or need additional information.

Sincerely,

Mark W. Croll

Mark Croll
Vice President, Intellectual Property

December 2, 2013

Higher Education Community Statement on H.R. 3309, the Innovation Act

As six national higher education associations collectively representing over 2,000 colleges and universities, we write to express our opposition to H.R. 3309, the Innovation Act, in its current form. Although we support the goals of this legislation to reduce abusive patent litigation practices, the cumulative impact of a number of the provisions of this bill would seriously undermine the ability of legitimate patent holders to enforce their patent rights, crippling the capacity of the U.S. patent system to continue to serve as an engine of invention and innovation that has strengthened the nation's economic competitiveness and enriched the lives of its citizens in countless ways.

The impact of H.R. 3309 would run exactly counter to the collaborative efforts of universities, industry, and government to increase the breadth and pace of the commercialization of university research. More than half of U.S. economic growth since World War II is a result of technological innovation, much of which has resulted from federally funded scientific research. The ability of universities to transfer inventions resulting from such research into the commercial sector for development relies heavily on the ability of these institutions and their licensees to defend their patents. But the sweeping provisions of H.R. 3309 would undermine that ability, chilling innovation by discouraging the legitimate enforcement of patent rights.

The most problematic provisions of H.R. 3309 for universities are the extremely broad fee-shifting provisions. Coupled with an uncertain court waiver of fees for nonprevailing parties and joinder provisions that could draw universities into litigation they have not initiated, these provisions present a massive financial risk to universities and their licensees, including the undercapitalized startups that hold the promise of productive new innovations if allowed to develop and flourish. The excessive breadth of additional provisions calling for heightened pleading requirements, increased transparency, limitations on discovery, open-ended customer stays, and the weakening of post-grant review estoppel present additional obstacles to the legitimate defense of patents.

The problem of abusive patent litigation is real, but H.R. 3309 in its current form is so sweeping and poorly targeted in its provisions that it will cause significantly more harm than good to the U.S. patent system so recently reformed by the America Invents Act (AIA). Our associations supported passage of that landmark legislation, but we cannot support H.R. 3309, which we believe will move U.S. patent law in the opposite direction from the AIA. We urge that H.R. 3309 be returned to the Judiciary Committee for further work. If it is brought to the House floor for a vote, we ask you to vote no.