

**Statement of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee  
Hearing on “Protecting Small Businesses and Promoting Innovation by Limiting Patent  
Troll Abuse”  
December 17, 2013**

Last Congress, members of this Committee and the Congress came together to pass common-sense, bipartisan reform to modernize our patent system. The America Invents Act has taken significant steps to improve the quality of patents that are issued by the Patent and Trademark Office, by allowing outside parties to challenge the validity of a patent after it issues and improving the information available to patent examiners.

Unfortunately, bad actors are continuing to abuse the patent system. I have heard from an increasing number of businesses in Vermont and across the country that are being targeted by so-called “patent trolls.” Instead of asserting a patent claim against the manufacturer of a product, entities are targeting small businesses that merely *use* the product.

In Vermont, small businesses have received aggressive “demand letters” claiming payments of \$1,000 per employee for using document scanners in their offices. Across the country, thousands of coffee shops, hotels, and retail stores received demand letters and were threatened with patent suits simply for using a standard, off-the-shelf, WiFi router. Many of the letters are vague form letters with no description of how the recipient infringes on a relevant patent. I have also heard examples of patent assertion entities sending letters through dozens of differently-named shell companies, so that businesses that receive the letters cannot easily find out who sent them.

These actions abuse the patent system to extort settlements from customers and small businesses that have no real means of fighting back. Predatory conduct that simply takes advantage of end-users does not promote the important goals for which our patent system was intended, to advance science and the useful arts.

Over the past eight months, I have worked with Senator Lee and others to develop legislation to address these abuses in the system. Our bill targets the sending of misleading demand letters as a deceptive trade practice that can be penalized by the Federal Trade Commission. It protects customers who have been sued for merely *using* a product when the defendant really should be the manufacturer who *made* the product and is in a better position to argue whether their technology infringes a valid patent. Our legislation promotes transparency, so that those abusing the system can no longer hide behind “shell companies” to advance their scheme. It improves

the PTO's outreach to business defendants, and strengthens the "post-grant review" process implemented in the Leahy-Smith America Invents Act to improve patent quality.

These measures take significant steps to address the problem of patent trolls and misuse of the patent system. Importantly, the measures also are balanced and targeted to preserve the rights of legitimate patent holders whose inventions help drive our economy. As we discuss proposals to address the problem of patent trolls, I urge this Committee to stay focused on that balance, so that we achieve meaningful but targeted reform.

I thank the witnesses for appearing today to discuss this important issue. I look forward to working with you and with all members of the Committee to reduce abuses in the patent system, while ensuring that innovators and inventors will continue to drive our economy.

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