

**Statement of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
Executive Business Meeting
Consideration of the Patent Transparency and Improvements Act
April 3, 2014**

We have four judicial nominations and one executive nomination listed on our agenda that were held over last week and are ready to be reported to the Senate by the Committee today. We also have the nominee to be U.S. Attorney for the District of New Mexico listed on the agenda for the first time, but I understand that Republicans will not ask that his nomination be held over – so we can report that nomination today as well.

When we have a quorum we will report out all the nominations.

Also on the agenda is my legislation to address abusive conduct in the patent system. Senator Lee and I introduced our bipartisan bill on this issue last November. Members of this Committee have now been working hard on this issue for the better part of a year.

I hope we are in the final stages of hammering out a Manager's amendment that is the result of true compromise between all sides. Stakeholders come to us with concerns from their particular experience. As lawmakers, it is our responsibility to listen to those concerns, but to pass laws that work for the entire community.

Even casual observers may have noticed that the Senate does not operate like the House of Representatives. Not only do Senators like to talk. Senators listen to those who oppose their ideas. There has been a lot of talk about the need for patent reform. And over the past several weeks, I actually think there has been a lot of listening. We have heard concerns about unintended consequences; for instance, this having an impact outside of the context of patent law. We have heard concerns about pending Supreme Court cases, like the case they heard this week about the patentability of software patents. We have heard concerns from businesses on Main Street and the tech community that reforms must be meaningful to address the problems they face.

Anyone who knows my record in the Senate understands that I am not a tort reformer. We should not take steps that in torts or civil rights cases would make it more difficult for a victim to get their day in court. But patents are clearly different from torts. Patent holders enjoy a government-created monopoly as part of a special system to spur innovation. We can and should be able to agree to reforms in the patent context without it creating precedent in other contexts. It is beyond clear that the patent system is being abused and distorted by what are known as patent trolls.

My legislation before the Committee combines several strategies to address this type of conduct. I worked with Senator Lee to make sure that our effort contains a strong measure to curb bad faith demand letters. But addressing that significant problem is not enough. Our bill improves transparency of patent ownership so that trolls cannot hide behind layers of shell corporations. It helps customers that are sued inappropriately, by allowing the case against them to be stayed

while the product's *manufacturer* litigates the suit. It improves patent quality through a provision to strengthen the "post-grant review" process created in the Leahy-Smith America Invents Act, which allows parties to challenge patents at the Patent Office after they issue.

Senator Grassley and Senator Cornyn have prioritized additional provisions to deter abusive conduct by patent trolls. These are not the kind of provisions I would consider in any other context but in the patent system. I do think they have some merit in this context, so long as there are protections for small patent holders and Universities who contribute much to our society.

Patent trolls who pursue lawsuits with no reasonable basis should be required to pay reasonable attorneys fees. I believe judges should have some role in determining that, as they traditionally have in all contexts, and I believe that the prevailing party should have to indicate the unreasonable conduct that is the basis for fee shifting. I am also working with Senator Hatch to address the problem of shell companies that cannot be held accountable because their corporate structure makes them judgment-proof. This last provision has proven to be quite complicated so, rather than rush it, I will convene the Committee to meet again on Tuesday in the hope that we can nail down these remaining issues in the next day.

I thank the members of this Committee for joining me in this work. This is an opportunity for us to come together to pass meaningful legislation that will help American businesses, innovators, and consumers while preserving what makes our patent system great.

I hope we will come together on an agreement in the next day. Then we can post our amendment on the Committee website so all will have time to review it before we meet again to vote on Tuesday.

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