

Prepared Statement of Sen. Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on “S. 1137, the PATENT ACT –
Finding Effective Solutions to Address Abusive Patent Practices”
Thursday, May 7, 2015

Good morning. We’re here to discuss the problem of abusive patent practices and the solutions offered by S. 1137, the PATENT Act. Abusive patent litigation is having a serious impact on small companies, innovators, manufacturers, Main Street businesses, high tech firms, and consumers. The patent troll problem is being felt across every sector of the economy, and from small town Iowa to Silicon Valley. It’s critical that we enact reforms to prevent this from further stifling the innovation and entrepreneurship that our patent system is designed to protect.

The volume of abusive patent litigation has exploded in recent years. By some accounts it’s costing the U.S. economy upwards of \$80 billion annually. Bad actors are exploiting the high costs of patent litigation and using deceptive tactics to prey on businesses.

Last week, several of us on the Judiciary Committee introduced the bipartisan PATENT Act. Since the process started in the last Congress, we’ve engaged stakeholders that have been targeted by patent abuse. In addition, we’ve sought to be responsive to concerns raised by other industries and constituencies. Because of this, we’ve made significant progress. As I’ve maintained from day one, patent holders have a very legitimate right to enforce their patents against infringement. Our efforts must strike the right balance.

As a result of these efforts, the PATENT Act has received a tremendously positive response. The bill has the support of groups as diverse as hotels, retailers, tech companies, realtors, automakers, broadcasters, homebuilders, and restaurants. Further, other stakeholders such as the associations representing higher education and universities, the Coalition for 21st Century Patent Reform, and the Biotechnology Industry Organization have recognized our commitment to finding effective solutions that don’t produce unintended consequences or impinge upon the ability of good-faith actors to enforce their patent rights. I ask unanimous consent to put several letters and statements in the record in support of the bill.

The PATENT Act deters abusive litigation through a series of targeted reforms. Let me state briefly some of the key provisions contained in the bill. The PATENT Act establishes clear uniform pleading standards in patent infringement lawsuits and gives defendants clear notice of the claims against them. It increases transparency of the parties bringing lawsuits.

It places standards on demand letters and clarifies that the widespread sending of deceptive demand letters are covered by Section 5 of the FTC Act. The bill also allows manufacturers – rather than end users – to litigate cases in order to protect customers who are targeted for patent infringements cases just because they use a product they purchased off the shelf.

Further, the bill deters frivolous suits and abusive litigation practices by allowing the award of attorney fees if a court determines the position or conduct of a non-prevailing party was not objectively reasonable. It creates a mechanism for a court to recover fees where an abusive

litigant is judgment-proof. Finally, in order to deal with asymmetries in discovery burdens and litigation costs, the bill requires courts to stay discovery pending the resolution of certain preliminary motions such as motions to dismiss and transfer venue.

Because of the wide-ranging positive reactions to the PATENT Act, I'm comfortable with where we are on the language contained in the bill. However, I'm also aware of concerns about processes at the Patent and Trademark Office that have been recently raised by patent holders. They worry that administrative proceedings created by the America Invents Act – the inter partes review (IPR) and post-grant review (PGR) proceedings – are being abused and are stacked against patent holders. Other stakeholders however are of the view that these new proceedings have been very effective at weeding out weak patents.

I've committed to looking at these concerns, determining whether they are valid or not, and working with my colleagues to see what can be done to improve this process.

We'll be hearing from the witnesses on where they stand on these proceedings, so we'll be able to evaluate what should and can be done to ensure that they are fair to all parties.

As we move forward on this legislation, it's important that we continue the collaborative process that has characterized its creation. Again, I thank my colleagues for their dedication and constructive engagement on this bill.