

May 13, 2015

The Honorable Chuck Grassley & Patrick J. Leahy
Chairman & Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Senators Grassley and Leahy,

The undersigned organizations represent technology, small business, consumer, and the public interests in the area of patent policy. We write to provide our views on the PATENT Act, S. 1137. We support this bill, as it will target the most problematic abuses in patent assertion, and we encourage members of the Committee to oppose amendments would substantially deflate the effectiveness of this bill in the areas of patent demand letter reforms and post-grant AIA proceedings.

The patent system is intended to promote innovation, but far too often today we see abuses of the system that harm the small businesses, startups, and creators who are the engine of American innovation.¹ We applaud the sponsors of the PATENT Act for taking on this timely, urgent, important issue of patent reform.

I. WE SUPPORT THE PATENT ACT

The undersigned groups believe that the PATENT Act provides strong protections for consumers and small businesses from the worst abusive practices seen in the patent system today. The bill provides for basic fairness in patent litigation, provides procedural protections for consumers of off-the-shelf products, and institutes penalties for the sending of misleading, deceptive, or insufficiently informative patent demand letters. We support the bill, and encourage members of the Committee to support it as well.

II. THE PATENT DEMAND LETTER PROVISIONS PROVIDE REAL PROTECTIONS FOR CONSUMERS AND BUSINESSES

We are particularly pleased to see the provisions of the PATENT Act that protect against improper patent demand letters. Such demand letters continue to be a serious problem for the smallest entities who lack the resources to defend themselves from such predatory activity.

This bill offers real, meaningful protections against abusive patent demand letters. It creates penalties and disincentives for failure to include relevant information, ensures the FTC has authority to deal with misleading and deceptive demand letters unhindered by excessive evidentiary

¹See Brief of Public Knowledge as *Amicus Curiae* in Support of Respondent at 4–8 & nn.2–6, *Kimble v. Marvel Enters., Inc.*, No. 13-720 (U.S. Mar. 4, 2015), available at https://www.publicknowledge.org/assets/uploads/documents/13-720_bsac_Public_Knowledge.pdf (citing twenty-one case law, administrative, academic, and media sources on the harm of patent abuse).

requirements, and permits the states to continue to develop new solutions to demand letters as new abuses arise. We would encourage the Committee to pass these provisions without weakening them with unnecessary proposals that others may raise.

III. CHANGES TO THE AIA POST-GRANT PROCEEDINGS MUST NOT UNDERMINE THE VALUE OF THOSE PROCEEDINGS

The America Invents Act introduced several new proceedings for challenging patents before the U.S. Patent and Trademark Office. These post-grant proceedings are critical for improving patent quality and ensuring that small businesses and individuals are able to challenge patents that interfere with the public's ability to innovate.

At the hearing on the PATENT Act, several witnesses proposed changes to these post-grant proceedings that would raise their cost and make them less accessible to those third parties for whom the proceedings were designed. Several of us have criticized these proposals for being haphazardly developed and not targeted toward the perceived post-grant proceeding abuses.²

Accordingly, we concur with Senator Schumer's statement at the hearing, that he would "not be able to support any deal on post-grant that does not preserve the viability of the process for these little startups." We would oppose any amendments that would weaken these necessary procedures overall.

* * *

We thank you for your consideration of our views, and look forward to working with you to pass strong, meaningful patent reform legislation in the coming months.

Sincerely,

Public Knowledge

R Street Institute

Engine Advocacy

Computer and Communications Industry Association

Electronic Frontier Foundation

Application Developers Alliance

cc: Members of the Senate Committee on the Judiciary

²See Charles Duan, *The STRONG Patents Act Is a Death Squad for Innovation*, ROLL CALL (Mar. 17, 2015), <http://blogs.rollcall.com/beltway-insiders/the-strong-patents-act-is-a-death-squad-for-innovation/>; Adi Kamdar, *The STRONG Patents Act Is a Prime Example of Weak Reform*, ELECTRONIC FRONTIER FOUND. (Mar. 4, 2015), <https://www.eff.org/deeplinks/2015/03/strong-patent-act-prime-example-weak-reform>; Matt Levy, *Myths and the STRONG Act*, PAT. PROGRESS (Apr. 3, 2015), <http://www.patentprogress.org/2015/04/03/myths-and-the-strong-act/>.