

UNITED *for* PATENT REFORM

April 21, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable Michael Burgess
Chairman, Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable Jan Schakowsky
Ranking Member, Subcommittee on
Commerce, Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Chairmen and Ranking Members:

We, the co-chairs of United for Patent Reform on behalf of the coalition members represented below, acknowledge and appreciate the efforts of the Energy and Commerce Committee to mitigate the devastating impact that patent trolls -- and specifically demand letters -- cause the American economy.

Unfortunately the discussion draft of the Targeting Rogue and Opaque Letters Act ("TROL Act") falls short of addressing the urgent need for strengthened enforcement of demand letter abuse. We support the goal of reducing the number of bad faith demand letters that our businesses receive, but this bill falls short.

The drain on commerce and innovation that vague, misleading, or deceptive letters have on businesses across many sectors of the economy is well understood, and we have encouraged the subcommittee to make changes to the draft legislation that would help alleviate the problem.

Regrettably, none of the changes many of us sought to the 2014 draft have been adopted.

We once again encourage the committee to make the following changes.

1. Remove the requirement of a "pattern of practice of sending" demand letters. The pattern of practice language creates unnecessary ambiguity about the number of letters that constitute a pattern of practice.
2. Remove the definition of "bad faith." Regardless of the intention of the sender, misrepresentations or omissions can be harmful to consumers.

3. Remove separate “bad faith” requirement from listed factors. Requiring a demonstration of bad faith could nullify the Act’s provisions.
4. Separate third party licensees and prior knowledge of infringement from factor 1, which requires a separate showing that assertions were made without a reasonable basis in fact or law.
5. All demand letters should identify the allegedly infringed claims. Failure to include such information is evidence that the assertion is objectively baseless and thus made in bad faith.
6. Remove affirmative defense.

We acknowledge and appreciate the attempts of Chairman Upton, Chairman Burgess, and all the subcommittee members to address the devastating impact that patent trolls and specifically demand letter abuse cause the economy, but regret that the current legislative product does not alleviate those concerns.

We hope that the subcommittee will revise the draft legislation and see fit to address our concerns, but as currently written, we must oppose the TROL Act.

Sincerely,



Beth Provenzano
Co-Chair, United for Patent Reform
Vice President, Government Relations
National Retail Federation



Dejan Pavlovic
Co-Chair, United for Patent Reform
Senior Director, Government Affairs
Oracle

CC: The Honorable John Boehner, Speaker, United States House of Representatives
The Honorable Nancy Pelosi, Minority Leader, United States House of Representatives

UFPR Members Represented in This Letter:

