

Free-market Groups Support Senate Patent Litigation Reform Legislation

The Honorable Chuck Grassley
The Honorable Patrick Leahy
United States Senate Judiciary Committee
Washington, DC 20510

Dear Committee Members,

We write on behalf of the undersigned free-market organizations to express our strong support for your committee's efforts to advance patent-litigation reform and applaud your balanced and judicious approach to this economically significant issue. As advocates for a healthy innovation economy and strong patent system, we urge you to advance S. 1137, the PATENT Act, championed by a diverse and bipartisan group of senators from your committee.

Abusive patent litigation drains tens of billions of dollars from the economy each year, burdening entrepreneurs and innovators with cumbersome deadweight losses and dispiriting uncertainty. The result is reduced spending on research and development, venture capital investment and other activities essential for businesses to thrive.

We firmly believe the bill's proposed reforms are essential to buttress our patent system against predatory litigation and to create more clarity and better protections for legitimate intellectual property rights.

The Progress Clause of the U.S. Constitution established an intellectual property system that promotes innovation and economic growth, balanced with the need for strong and clearly defined property rights for innovators. Its mandate was to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." While many provisions of the document drafted at the Constitutional Convention met with heated debate, this language was agreed to unanimously. That reflects the foundational importance our nation's framers placed on a robust legal structure that could protect inventors' rights in their creations and, at the same time, create a climate that encourages technological progress.

Sadly, a multitude of bad actors have been able to exploit structural weaknesses in the current patent litigation system, undermining the climate of innovation the Constitution sought to encourage and protect.

The victims of this systemic abuse aren't just big tech companies. About half the defendants in these lawsuits are small businesses, who are less well-positioned financially to defend themselves in court. Most of these businesses choose to settle, because patent litigation is risky, time-intensive and can cost millions of dollars in legal fees. Even when they know a claim against them is spurious, small businesses know it's seldom a sensible business decision to put their entire enterprise on hold and risk bankruptcy in an extended legal battle.

Of course these so-called "patent trolls" aren't just shady shell corporations who don't produce anything. Non-practicing entities can and do play a valued role in creating healthy secondary markets. Rather, any entity can be a bad actor, whether it produces its innovations or merely owns the rights to them.

So to address the problem, we believe reform is needed, both to guard against abuse and better protect the rights of legitimate patent holders. We strongly support your committee's efforts to include provisions that make it easier to shift fees to losers of frivolous patent suits; to adopt pleading standards that better identify alleged infringements; to reduce abuse of the discovery process; to provide reasonable protection for end users; and to impose transparency requirements for patent litigation and ownership.

Additionally, we support the PATENT Act's inclusion of a provision to address demand letter misuse, such as the widespread distribution of fraudulent and materially misleading assertion letters. These are a serious threat to small-business owners, who are often coerced to pay extortion settlements.

To address this problem, policymakers must not trample free speech or undercut federalism. Unlike the TROL Act, a superficially similar demand letter bill in the House of Representatives, the demand letter provisions in Section 8 and 9 of the PATENT Act do not preempt stronger state laws or create new and problematic loopholes. Rather, they mandate demand letters include essential information about the alleged infringement, they clarify federal authority to crack down on bad actors and they increase federal penalties for entities shown to be acting in bad faith.

Together, the comprehensive reforms offered by the PATENT Act would reduce the economic harm associated with expensive and frivolous patent troll suits, while improving the overall strength and quality of America's patent system. We therefore urge you to support the advancement of this legislation.

Sincerely,

R Street Institute
Institute for Liberty
Citizen Outreach
Hispanic Leadership Fund
Latino Coalition