

July 25, 2017

The Honorable Christopher Coons
United States Senate^[SEP]
127A Russell Senate Office Building
Washington, DC, 20510

The Honorable Richard Durbin
United States Senate
711 Hart Senate Building
Washington, DC, 20510

The Honorable Tom Cotton
United States Senate
124 Russell Senate Office Building
Washington, DC, 20510

The Honorable Mazie Hirono
United States Senate
730 Hart Senate Building
Washington, DC, 20510

Dear Senator Coons, Senator Cotton, Senator Durbin and Senator Hirono:

The undersigned write this letter to express serious concerns about S. 1390, the STRONGER Patents Act of 2017, which will not only undermine vital congressional reforms that American businesses have relied on to fight back against frivolous, abusive patent litigation, but also embolden litigation abusers and significantly worsen the ability of American companies of all sizes to grow, innovate, and create jobs.

Congress overwhelmingly passed the America Invents Act (AIA) of 2011 after years of careful bipartisan consideration, debate and negotiation. Among the most significant advancements made possible by the AIA was the creation of new post-grant review procedures, including the Inter Partes Review (IPR) program at the Patent and Trademark Office (PTO). The intent of Congress in creating IPR was to improve patent quality by allowing the PTO to take another look at patents of questionable validity, which are the primary fuel of patent litigation abuse.

Since its inception, IPR has proven to be a fair and successful program that improves the patent system. For example, through the IPR program the PTO has reconsidered and invalidated patents on basic processes like sending an email when a new real estate listing is posted, scanning a document and sending it to email, sending emails with package tracking information, and posting a podcast. Each of these invalid patents fueled abusive litigation against American companies, many of which were small businesses and startups that could not afford to fight in court. The STRONGER Patents Act would dismantle this

beneficial program, allowing licensing demands and litigation on poor quality patents that would continue to drain precious resources away from job creation and the development of new products and services.

In addition, the STRONGER Patents Act would dramatically increase the leverage those same abusers have to threaten all job-creating American businesses by overturning a decade's worth of unanimous Supreme Court patent decisions that have clarified and improved the patent landscape. For example, the bill would usher in the return of automatic injunctions at district courts, allowing patent trolls who make no competing products and only want licensing payments to halt the availability of complex products covered by thousands of patents based on infringement of one patent by a trivial feature. The bill would also greatly expand the liability for induced infringement, allowing trolls to sue companies that merely provide general purpose goods and services because of the way their customers use them, even when the company has no control over the use or knowledge of the patent.

And while the STRONGER Patents Act includes provisions providing the FTC with authority to regulate bad faith assertions of patent infringement, those provisions do not address the abusive demand letters sent by patent trolls. The STRONGER Patents Act limits the FTC's authority, prevents state attorneys general from protecting their citizens from abusive patent trolls, and creates numerous loopholes that will allow trolls to escape liability. These changes will aid, rather than prevent, the abusive litigation tactics favored by trolls.

The STRONGER Patents Act will only distract Congress from the real problems facing the U.S. patent system and plaguing the American economy: abusive patent litigation by patent trolls and poor quality patents.

Sincerely,

4A's (American Association of Advertising Agencies)

Adobe Systems, Inc.

ADTRAN

Alliance of Automobile Manufacturers

Amazon

American Hotel & Lodging Association

Application Developers Alliance

Association of Global Automakers

Birch Studio

BrandsMart USA

Callware Technologies, Inc.

Capstone Photography

Computer & Communications Industry Association

Cisco Systems, Inc.

Collage.com
Consumer Technology Association
Culver Franchising System, Inc.
Dell, Inc.
Emerald People's Utility District
Engine
Etsy
Facebook
Google
Graphics Arts Association
Great Lakes Graphics Association
Hewlett Packard Enterprise
HSN, Inc.
HTC America, Inc.
Innovative Energy Inc.
Intel Corporation
The Internet Association
JCPenney
Macy's
MPA-The Association of Magazine Media
National Association of Convenience
Stores
National Association of Home Builders
National Association of Realtors
National Council of Chain Restaurants
National Grocers Association
National Restaurant Association

National Retail Federation
NetApp, Inc.
New Jersey Gasoline, C-Store, Automotive
Association
The New York Association of Convenience
Stores
Oddcast
Ohio Council of Retail Merchants
Ohio Hotel & Lodging Association
Oracle Corporation
Pacific Printing Industries Association
Printing Association of Florida, Inc.
Printing & Graphics Association
MidAtlantic
PINE
Printing & Imaging Association of Georgia
Printing & Imaging Association of
MidAmerica
Printing Industries Alliance
Printing Industries Association of San
Diego, Inc.
Printing Industries Association Inc. of
Southern California
Printing Industries of the Gulf Coast
Printing Industries of Michigan, Inc.
Printing Industries of Utah
Printing Industries Midwest
Printing Industries of Ohio- North
Kentucky

Printing Industry Association of the South, Inc.

The Printing Industry of the Carolinas, Inc.

Print Media Association

QVC, Inc.

R Street Institute

Rackspace

Red Hat, Inc.

Retail Industry Leaders Association

Salesforce.com, Inc.

Samsung Electronics

SAS

Seagate Technology

Sebasco Harbor Resort

Security Industry Association

Software and Information Industry Association

Southeastern Employment Services

Technology Association of Louisville Kentucky

Texas Communications

U.S. Travel Association

Verizon

Visual Media Alliance

Vizio

Western States Printing Alliance

W.S. Badcock Corporation

Xante Corporation

cc: Members, United States Senate