

UNITED *for* PATENT REFORM

September 10, 2019

The Honorable Thom Tillis
United States Senate
185 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chris Coons
United States Senate
218 Russell Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
United States Senate
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Chair Tillis, Ranking Member Coons, Chair Graham, and Ranking Member Feinstein:

The undersigned write this letter to express serious concerns about the STRONGER Patents Act of 2019, 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 erode public confidence in the patent system and 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, 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.

Among the many destructive proposed changes, the bill would create a bright-line rule that only one IPR petition can be filed against a patent regardless of how many businesses a patent owner sues. This unnecessary restriction is based on unfounded complaints of "multiple petitions" being used to harass patent holders--claims that the PTO's own study has debunked. Instead of preventing abuse, this change would do the opposite, promoting gamesmanship by patent owners protecting invalid patents from careful review.

The actions of the PTO over the past year have already significantly weakened IPR, contrary to Congress's intent for the program. Through new regulations, precedential decisions, and guidance to its judges, the PTO has made it harder to invalidate low quality patents. Through regular use of its unfettered discretion to deny IPRs, the PTO has turned away challenges to invalid patents for procedural reasons, forcing businesses to choose between fighting expensive district court litigation or settling. The non-practicing entities have noticed, and the frequency of abusive patent litigation is rising as a direct result. We urge Congress to defend IPR, not destroy it through the STRONGER Patents Act.

Beyond dismantling IPR, the STRONGER Patents Act would overturn the Supreme Court's unanimous 2006 *eBay* decision, a case that clarified and brought balance to the patent landscape. This change would usher in the return of automatic injunctions at district courts, allowing the non-practicing entities 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. Additionally, it would once again provide the non-practicing entities with, as Justice Kennedy noted in his concurring opinion in the *eBay* case, a "bargaining tool to charge exorbitant fees" because of the threat of an injunction.

The STRONGER Patents Act would significantly weaken the U.S. patent system to the detriment of American businesses. Congress should instead be evaluating how to defend IPR, improve patent quality and decrease abusive patent litigation that drains the resources of U.S. businesses.

Sincerely,

Acushnet

American Public Power Association

Adobe Systems

American Society of Travel Agents

Alliance of Automobile Manufacturers

American Trucking Associations

Amazon

Apps Alliance

American Apparel & Footwear Association

Association for Accessible Medicines

American Association of Advertising Agencies:
4A's

AT&T

American Gaming Association

Best Buy

American Hotel & Lodging Association

BrandsMart U.S.A.

Capstone Photography

CEDIA

Cisco Systems

Coalition for Patent Fairness

Competitive Carriers Association

Computer & Communications Industry Association

Consumer Electronics Association

Culver's

Demand Progress

Dillard's

Direct Marketing Association

Dropbox

Electronic Transaction Association

Engine Advocacy

Facebook

Food Marketing Institute

General Motors

Google Inc.

HTC America, Inc.

Internet Association

Internet Infrastructure Coalition

iZi Survey LLC

JCPenney

Johnson Controls

Kickstarter

Motorola Solutions

MPA - The Association of Magazine Media

Mylan

National Apartment Association

National Association of Convenience Stores

National Association of Home Builders

National Association of Realtors

National Council of Chain Restaurants

National Grocers Association

National Multifamily Housing Council

National Restaurant Association

National Retail Federation

Newspaper Association of America

Overstock.com

Printing Industries of America

QVC, Inc.

R Street Institute

Rackspace

Red Hat

Retail Industry Leaders Association

Salesforce.com Inc.

Samsung Electronics

Seagate Inc.

Security Industry Association

Software and Information Industry Association

Southeastern Employment Services

Sprint

Toyota

Verizon Communications Inc.

tZERO Group, Inc.

Vizio

US*MADE

Yum! Brands, Inc.

U.S. Travel Association

cc: The Honorable Members of the Senate Committee on the Judiciary
The Honorable Jerry Nadler, Chair, House Committee on the Judiciary
The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary
The Honorable Hank Johnson, Chair, House Committee on the Judiciary Subcommittee on
Courts, Intellectual Property, and the Internet
The Honorable Martha Roby, Ranking Member, House Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet