



To: House Judiciary Committee
From: Haley DaVee, Senior Vice President
Date: March 11, 2015
Re: Support of Sub for SB 38

The Kansas Credit Union Association appreciates this opportunity to comment in support of Sub for SB 38.

About Kansas Credit Unions

Credit unions have a long history in Kansas of working to serve the financial needs of their members. Credit unions operate with a not-for-profit cooperative structure and are governed by a volunteer board of directors elected by and from the membership of the credit union.

Today there are 93 Kansas credit unions whose purpose is to serve the financial needs of their 649,000+ member/owners. The average asset size in Kansas is \$60 million. Kansas credit unions make up 8% of the marketplace by assets in Kansas. Though only a small portion of the overall marketplace in Kansas, credit unions are an important part of the Kansas financial services industry.

Credit Unions and Patent Trolls

There is growing concern in the credit union industry regarding the impact of patent trolls as the number of demand letters being received by credit unions has been increasing in recent years. A report published by the White House in June 2013 noted this trend and cited the negative impact that patent trolls have had on innovation and economic growth. The report notes that "Suits brought by PAEs (patent assertion entities) have tripled in just the last two years, rising from 29 percent of all infringement suits to 62 percent of all infringement suits. Estimates suggest that PAEs may have threatened over 100,000 companies with patent infringement last year alone."

Although the threat of patent troll claims is a serious problem for the entire financial services industry, it is especially problematic for credit unions and other small financial institutions. In many cases, these credit unions simply buy a product or service and then are served for using it, despite the fact that they did not create or manufacture the product or service. In many demand letters, the target is typically the technology that makes financial services accessible to consumers, such as ATMs, online and mobile banking, remote check capture and check processing. These technologies are crucial for smaller credit unions as they work to serve their members in a financial services industry that is growing more complex and competitive every day.

In testimony before Congress on the issue, New England Federal Credit Union CEO John Dwyer shared his experience with patent trolls. Below is an excerpt from his testimony:

My institution is now in the middle of expensive discovery in a patent infringement case I never could have imagined related to our 23 ATM machines. In June 2012, my credit union received a letter from an entity vaguely suggesting one or more of our ATM machines infringed on one or more of 13 patents. The letter did not specify which of our, at that time, 21 ATM machines it believed infringed, nor did it link specific ATM machines to specific patents. In fact, it was obvious to me that the entity and its lawyers performed little or absolutely no research prior to demanding money from our credit union, as the letter was addressed to my predecessor, who departed from our credit union two years earlier. It had other elements that pointed to it being a form letter, as it referred to us as a “bank.”

The letter also contained absolutely no information as to why the entity believed we infringed, leaving us with no way to evaluate the claims. Rather, the letter provided a simple list of patents. The letter also did not include a key fact that we later learned: two months earlier many of the patents on that list were declared invalid by the Federal Circuit, after being held invalid at the Patent and Trademark Office and by a district court years before.

This account is similar to numerous others across the country. Credit unions ranging in size from \$10 million in assets to \$1 billion in assets have received demand letters. We know of at least one credit union in the Kansas City area that has received a demand letter.

Small businesses, such as credit unions, are especially vulnerable because they do not have the resources available to defend themselves and may see settlement as the best option. Faced with the costs of defending themselves against these types of claims, some credit unions may decide that technologies such as these are not worth the risk, despite their tremendous benefits to consumers.

The White House report further asserts that, “PAE activities hurt firms of all sizes. Although many significant settlements are from large companies, the majority of PAE suits target small and inventor-driven companies. In addition, PAEs are increasingly targeting end users of products, including many small businesses.”

To be clear, KCUA does not wish to interfere with the good faith enforcement of patents or good faith patent litigation. Some have expressed concern that reforms will have an impact on legitimate patent holders, but focused measures can stop abuses in the system without harming good actors. For example, the demand letter provisions in Sub for SB38 requires that certain minimum disclosures be made to better identify who is sending the letter, the patent in question, and the specific nature of the infringement being alleged. Having this information at an early stage will help ensure the prompt and efficient resolution of claims.

KCUA supports efforts in the state of Kansas—whether it is Sub for SB 38 or other initiatives—to address the issue of bad faith patent assertions and their impact on Kansas small businesses, including credit unions.