

THE COALITION FOR 21ST CENTURY PATENT REFORM

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State Legislation of Patent Demand Letters Should Target Widespread, Bad Faith Assertions of Patents Against Consumers and Protect Legitimate Patent Licensing Communications

Background:

The impact of patent demand letters sent by so-called patent assertion entities or “patent trolls” on small businesses, consumers and innovators has increased over the past several years. Several state legislatures are considering whether legislation is needed to provide protection against such practices and to empower Attorney Generals (“AGs”) with authority to take action.

The Coalition for 21st Century Patent Reform (“21C”) supports legislation providing AGs the authority to target bad-faith patent demand letters that, especially when sent on a widespread basis to multiple recipients, may constitute unfair or deceptive trade practices.

21C urges caution and balance, however, to ensure that efforts to address what may be a small subset of egregious patent demand letter abuses do not inadvertently chill legitimate patent licensing communications. The patent system is designed to encourage notice and communication of patent rights to foster licensing and technology dissemination.

Guiding Principles:

- The patent troll business model is based on sending hundreds, or thousands, of demand letters to consumers and end users. Legislation should target this practice, to direct AG resources to protecting small businesses and consumers, and to avoid unintended consequences to legitimate patent licensing communications.
- AGs are in the best position to accomplish this consumer protection mission by identifying widespread communications targeting consumers and taking action against patent trolls who send such communications. Empowering AGs will relieve small business of burdensome legal costs. Creating a new cause of action for private parties could actually create a second order of “trolls” hindering legitimate technology exchange as an unintended consequence.
- To ensure consistency across the country, and protect legitimate patent holders, the adoption of model language that defines deceptive acts or practices is needed.
- To mitigate the risk of chilling effects on legitimate patent licensing communications, safe harbor language is necessary to ensure that patent holder rights are not infringed.

The Coalition for 21st Century Patent Reform has approximately 50 members from 18 diverse industry sectors, and includes many of the nation's leading manufacturers and researchers. The Coalition's Steering Committee includes 3M, Caterpillar, General Electric, Johnson & Johnson, Eli Lilly and Procter & Gamble.



Intellectual[®]
Property
Owners
Association

September 3, 2014

The Honorable Lance Kinzer, Chair
Kansas House of Representatives
Standing Committee on Judiciary
Kansas State Capitol, Room 165-W
300 SW 10th Street
Topeka, KS 66612

Dear Chairman Kinzer:

I am writing on behalf of Intellectual Property Owners Association (IPO) regarding the problem of bad faith patent demand letters. IPO is a national trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO's membership includes more than 200 companies and more than 12,500 individuals who are involved in the association through their companies or as inventor, author, law firm, or attorney members.

We appreciate your concern regarding this widespread, abusive behavior. However, IPO opposes patent demand letter legislation at the state level because we believe enacting a patchwork of state legislation will increase compliance costs for legitimate businesses, which will deter innovation. Further, our members are sure to encounter difficulty in attempting to comply with different state laws. The most efficient way to ensure uniformity, proper scope, and content of demand letter legislation is at the federal level. In order to provide uniformity and certainty, IPO supports federal legislation to regulate bad faith demand letters, but strongly believes such legislation should preempt legislation at the state level.

We oppose state legislation that creates a private right of action against patent holders based on insufficient information in a patent demand letter. Most states already have laws that prohibit deceptive trade practices. Demand letters should not generate a right of recovery for an infringer if a patent holder merely fails to include certain required disclosures but the letter's content is not otherwise false or misleading.

We also oppose state legislation that interferes with legitimate practices in business-to-business communications by requiring mandatory disclosures in patent demand letters. First communications from businesses are often very general and introductory in nature. This helps entities efficiently find business solutions. Mandatory disclosures could increase declaratory judgment litigation and potentially require disclosure of confidential information. Innovative businesses would be discouraged from protecting their inventions and licensing to others.

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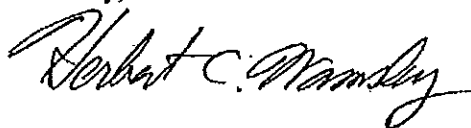
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Executive Director
Herbert C. Wamsley

INTELLECTUAL PROPERTY OWNERS ASSOCIATION

Again, IPO appreciates your attention to this growing problem. We would be happy to discuss our position with you in more detail.

Sincerely,



Herbert C. Wamsley
Executive Director

cc:

The Honorable Rob Bruchman, Vice Chair, Kansas House Standing Committee on Judiciary
The Honorable Janice Pauls, Ranking Minority Member, Kansas House Standing Committee on Judiciary
The Honorable Steve Alford, Kansas House Standing Committee on Judiciary
The Honorable John Barker, Kansas House Standing Committee on Judiciary
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The Honorable Emily Perry, Kansas House Standing Committee on Judiciary
The Honorable Tom Phillips, Kansas House Standing Committee on Judiciary
The Honorable John Rubin, Kansas House Standing Committee on Judiciary
The Honorable Jim Ward, Kansas House Standing Committee on Judiciary
The Honorable Brandon Whipple, Kansas House Standing Committee on Judiciary