

Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse Hearing

Written by Grassley Press

Tuesday, 17 December 2013 14:06

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align="center">Prepared Statement of Senator Chuck Grassley of Iowa</p><p

align="center">Ranking Member, Senate Judiciary Committee</p><p align="center">Hearing

on "Protecting Small Businesses and Promoting Innovation by Limiting

Patent Troll Abuse" </p><p align="center">Tuesday, December 17, 2013</p><p>Mr.

Chairman, thank you for holding this important hearing today. The United States is a global

leader in innovating, creating and developing new technologies and products. Intellectual

property protection plays a critical role in supporting technological advances, innovation and

creativity. Patents and the U.S. patent system are a significant component of the American

tradition of invention and innovation.</p><p>However, the innovation and creativity that

patents are supposed to protect is being threatened by purposely evasive and deceptive

blanket demand letters and abusive litigation practices. According to one study, lawsuits by

patent assertion entities have increased at an alarming rate – in fact, 62 percent of all patent

lawsuits filed in 2012 were cases brought by patent assertion entities. Patent litigation abuse

imposes high costs on American businesses, wasting precious resources that could instead be

utilized for research, development, job creation and economic growth.</p><p>Patent

assertion entities, also known as patent trolls, focus on buying and asserting patents, rather

than on developing or commercializing patented inventions. Patent trolls often assert these

weak or poorly-granted patents against companies that are already utilizing technologies as

ubiquitous as wireless email, digital video streaming and the internet. These entities frequently

carry out their tactics behind the shield of patent holding subsidiaries, affiliates and shells of

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operating companies.

Patent troll lawsuits rarely have merit: the statistics are they lose 92 percent of merits judgments. But the extent of the problem cannot be quantified by looking at these numbers alone. Most cases don't even get to this stage. Patent assertion entities usually set their royalty demands strategically below litigation costs. Consequently, companies make the determination that they should settle weak or meritless cases rather than run the risk of taking on expensive and risky patent litigation. The bottom line is that many small businesses just don't have the resources to litigate and so they submit to this kind of patent extortion. That's not right.

This phenomenon of patent trolls has hit companies all over the country, and they've targeted my state of Iowa as well. I recently met with a group of Iowans in Council Bluffs and heard stories about how patent trolls utilize overly broad patents to make claims of infringement against their businesses that are either simply engaging in normal business practices or have bought a technology product or service from a vendor. Further, I've received a number of letters from Iowans outlining their problems and frustration with these abuses. They say that these trolls have forced their businesses to divert resources from productive endeavors to instead focus on researching vague demand letters and defending questionable infringement lawsuits. They're concerned that billions of dollars are being spent in unwarranted legal costs that could be put to more productive use. According to one of my constituents, "this practice is now completely out of control."

I'd like to quote from a letter that I received from groups representing a wide swath of businesses in my state. This letter is from Hy-Vee Food Stores, the Iowa Association of Business and Industry, the Iowa Lodging Association, the Motion Picture Association of Iowa, the Iowa Grocery Industry Association, the Technology Association of Iowa, the Iowa Restaurant Association, the Iowa Credit Union League, the Iowa Association of Realtors, the Iowa Telecommunications Association, the Iowa Biotechnology Association, the Iowa Bankers Association, the Independent Insurance Agents of Iowa, and the Iowa Retail Federation.

They write, "Fighting frivolous and burdensome patent lawsuits threatened and filed by patent trolls is an expensive distraction for a large cross-section of Iowa businesses. Rather than focus their efforts on important economic development catalysts such as innovation, job creation, and business growth, entrepreneurs and business owners from all industries and sizes are more frequently finding themselves diverting valuable attention and limited resources to defending expensive and unnecessary legal threats by patent trolls. Indeed, businesses, everyday Iowans, and Iowa's economy as a whole are adversely affected by the trolls' seemingly endless barrage of legal threats and frivolous suits. The trolls' misguided and unbridled mischief unnecessarily drives up costs that are, in part, passed on to Iowa's hardworking families and consumers." These groups are supportive of Congress taking action because they believe "meaningful reforms that make it difficult for patent trolls to continue their destructive business models, improve patent quality, and streamline patent infringement disputes will drastically reduce costs for Iowa businesses."

I have other letters from Iowans describing their experiences with patent trolls. Quotes from some of these letters – according to BettrLife in Urbandale, "we must find a way to strengthen the requirements around patent infringement so unscrupulous lawyers can't work through loop-holes to take resources and dollars from companies that are trying to make a positive impact on businesses in their community and the overall economy." According to Kinze Manufacturing in Williamsburg, their patent troll experience "has left a lasting impact Contract negotiations with suppliers and service providers now routinely include allocation of liability in the event of patent trolling. These negotiations require additional resources and delay

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research, development and production of new products. This slows farmer's access to the latest technology. Technology which will help them get more out of every acre while reducing their costs and protecting their soil." According to Kum & Go based in West Des Moines, claims of patent trolls have cost the company "thousands of dollars in legal fees and corporate counsel has wasted numerous hours dealing with these frivolous claims – time and money that should have been spent on core business functions."

I've also heard from Iowans that are concerned about the ability of patent holders to protect their intellectual property rights and enforce them against infringers. While they agree that litigation abuse does occur in the patent system, they are concerned that certain proposals will undermine the ability of legitimate patent holders to enforce their patent rights. These constituents include Iowa State University, the University of Iowa and independent inventors Robert Rees and Paul Morinville.

I agree that it is important to maintain an appropriate balance between protecting the rights of legitimate patent holders and protecting against abusive practices and weak patents. We need to preserve patent property rights and valid patent enforcement tools which will promote invention, while targeting bad actors and their tactics that target and shake down businesses with weak and frivolous claims for a quick payday. This will strengthen our patent system and benefit inventors, businesses and consumers alike.

Mr. Chairman, I'd like to put in the record letters from Iowa constituents, both expressing support and concerns with the various proposals we are considering in the Senate. I also have for the record letters from the National Retail Federation and Stop Patent Abuse Now Coalition expressing concerns with the customer stay provision as currently drafted in the House and Senate bills.

Doing something about the abusive practices plaguing our patent system is important to keeping the United States competitive, creating jobs and boosting our economy. Members on both sides of the aisle agree that this abusive patent litigation hurts the ability of businesses to expand and flourish. We should pass effective legislation to curtail abuses of the legal system. I'm encouraged that the House passed the Innovation Act by a large margin, and the White House issued a statement in support of that bill.

So I look forward to hearing from our witnesses today about their experiences with abusive patent litigation tactics by patent trolls. I also look forward to hearing from our witness about their views on how we in Congress can help find a solution to this problem. And Mr. Chairman, I look forward to working with you to pass meaningful legislation that can alleviate the problems that many of our constituents are dealing with and that are harming our economy. Thank you.

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