

November 20, 2013

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Chairman Goodlatte:

We, as members of the application developer community, write today regarding H.R. 3309, the Innovation Act. This bill addresses what we in the tech community see as a growing threat to our businesses: patent trolls.

Patent trolls have had serious negative effects on app developers and the tech industry in general. Patent trolls attack our community by using bad, overly-broad patents in a “throw everything at the wall and see what sticks” approach to patent infringement. They succeed because their claims of patent infringement are confusing and vague, forcing small businesses to pay a licensing fee to avoid more expensive litigation even when the product or software does not infringe on the patent. These broad claims create fear and uncertainty among app developers, many of whom have very limited experience with the patent system.

We appreciate your introduction of the Innovation Act, which contains real solutions that reduce the threat of patent trolls. Patent trolls cost us money, either in paying licensee fees on patents we are not infringing on or legal fees and court costs. We see that the best way to push back on this abuse of the system is to make it more expensive for patent trolls to take action against us. We feel many of the reforms you propose help move the needle; specifically:

- Transparency in patent ownership – demand letters and lawsuits often do not disclose the real party at interest.
- Transparency in what the patent owner claims as infringement – this would allow small businesses to more easily examine the claims against them and make better choices about whether or not their products are actually infringing.
- Fee shifting – make it easier to get attorney’s fees from patent trolls who sue claiming infringement on overly-broad patents.

While shifting the cost is critical, we are concerned with one element of the legislation which may take us back towards greater uncertainty. We believe the expansion of the covered business method (CBM) patent post-grant review process would not substantially punish trolls, who often charge license fees of a few thousand dollars, but would leave the door open to uncertainty about patent viability. Moreover, the program itself is untested and may divert resources from improving patent quality on the front end.

And while we may not be patent experts, it appears that those who are agree CBM review is not ready. In a recent hearing before the House Judiciary Committee, former director of the United States Patent and Trademark Office David J. Kappos testified that extension of the program would be premature, since the program has only been in effect for 14 months and only one case has gone completely through the process. We agree. The expansion of the CBM process changes the rules of the road for software patents and extends uncertainty for small businesses. The reality is that litigation is expensive. While the CBM process would be less costly than straight litigation, we would rather improve the quality of patents before they are granted to remove the need for any litigation costs.

Patent trolls are a serious concern and we thank you for all your work in protecting small businesses like ours from patent trolls.

Sincerely,

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