

December 2, 2013

Mr. William F. Adkinson, Jr.  
Attorney Advisor  
Office of Policy Planning  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

RE: PAE Reports: Paperwork Comments; Project No. P131203

Dear Mr. Adkinson:

The Software & Information Industry Association (“SIIA”) appreciates the opportunity to submit comments to the Federal Trade Commission (“FTC”) on the issue of whether the demands for answers to the FTC’s list of questions submitted to Patent Assertion Entities and others, under Section 6(b) of the Federal Trade Commission Act, 15 U.S.C. 46(b)(b), would be too burdensome for those companies under the Paperwork Reduction Act, 44 U.S.C. 3501-3521. SIIA files the following comments on behalf of itself and its members.

SIIA is the principal U.S. trade association for the software and digital content industries. With over 700 member companies SIIA is the largest association of software and content publishers in the country. Our members range from start-up firms to some of the largest and most recognizable corporations in the world. SIIA member companies are leading providers of, among other things:

- software publishing, graphics, and photo editing tools
- corporate database and data processing software
- financial trading and investing services, news, and commodities
- exchanges
- online legal information and legal research tools
- protection against software viruses and other threats
- education software and online education services
- open source software
- and many other products and services in the digital content industries.

The innovative companies that make up SIIA’s membership rely upon patent protection to protect their inventions, but also depend upon the ability to manufacture, develop, and sell their products free from improper assertions of patent rights. Consequently, SIIA’s members are involved in patent litigation as both patentees and accused infringers; they cannot be categorized as generally plaintiffs or generally defendants.

SIIA members have benefited from owning thousands of patents. Yet they also rely on the boundaries to patent protection, as these boundaries preserve and protect their ability to innovate. As such, SIIA's collective membership sits at the crossroads of the countervailing interests in the ongoing debate on patent litigation reform and the evolving patent marketplace.

One of the most significant problems facing the patent system and innovation more generally is the growing amount of litigation being brought by companies that do not innovate, make or sell anything, but exist simply to buy patents from others for the sole purpose of suing legitimate companies for patent infringement. Abusive patent lawsuits from these Patent Assertion Entities (PAEs) are a tremendous blight on innovation and competition. Because the PAE business model can be profitable the problem has gotten significantly worse as the number of PAE lawsuits rises exponentially.

SIIA strongly supports the FTC's proposed Section 6(b) study. We believe that the proposed study will add significantly to the existing literature and evidence on PAE behavior. While there have been many other studies of PAE activities and their effects on innovation and competition, those studies have focused primarily on publicly available litigation data. The FTC's Section 6(b) study has the opportunity to be much different and to provide a more complete picture of the PAE landscape and its detrimental effects due to the FTC's unique Congressional authority to collect nonpublic information. Certain licensing agreements, patent acquisition information, and cost and revenue data that was not available to researchers in prior studies would be potentially available to the FTC. As a result, we think that the FTC's proposed collection of information for the purposes of the Section 6(b) study is necessary, will have practical utility and is not unduly burdensome.

In closing, we would like to thank you for the opportunity to provide these comments. If you have questions regarding these comments or would like any additional information please feel free to contact Keith Kupferschmid, SIIA's General Counsel and Senior Vice President of Intellectual Property, at (202) 789-4442 or keithk@siia.net.

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Ken Wasch  
President, SIIA