

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

December 16, 2013

Dear Commissioners:

Thank you for opening this important investigation into the negative impact patent assertion entities (PAEs) like patent pools and trolls can have on innovation and consumers. Intellectual property (IP) issues are the cornerstone of today's burgeoning digital economy and critical to its continued growth and development. Our organizations are very active on many IP and technology related issues and wish to share our views in this proceeding and raise an issue of growing concern.

We are troubled by the emergence of foreign governments entering the patent trolling business by funding and developing state sponsored PAEs. Therefore, as you examine privately administered PAEs, we ask that you also consider the negative impact that foreign government sponsored patent pools can have on the digital economy – both domestically and globally.

The governments of France, Taiwan, Japan, and Korea have founded state sponsored patent pools. While these government controlled patent pools were established for the purpose of fostering domestic innovation and growth, they have morphed into government sponsored patent trolls (GSPTs) over time. A few of these entities have openly admitted that they will give special favor to companies in their country of origin while taking offensive legal action and threats against foreign companies.

The advent of state sponsored intellectual property dealers adds a deeply concerning geopolitical element to the debate about patent trolls and how to protect legitimate inventions without stifling innovation. These entities threaten to complicate efforts to improve global cooperation on trade-related matters, and distort the free market system and all those who embrace it.

Although enforcement remains uncertain, actions by governments and their state owned trolls potentially run afoul of WTO obligations, such as the Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), the General Agreement on Tariffs and Trade ("GATT"), and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). Offensively-oriented GSPTs also raise concerns given their status as state-owned enterprises (SOEs), as they are able to take advantage of government regulatory preferences and resources in their pursuit of commercial gain.

The market, not a government entity, is the best driver of innovation and competition. The range of negative unintended and intended consequences resulting from a government attempting to act as a commercial entity in the dynamic and innovative high-tech sector are highly concerning in a globalized marketplace. Governments are usually tasked with regulating intellectual property rights, which is a tremendous conflict of interest when the regulators and lawmakers become the controlling shareholders. GSPTs that should be considered as part of the FTC inquiry and closely watched in the future include the following:

- France Brevets is one of the more well-known GSPTs. This Paris based troll has actually vocalized its bias towards protecting French businesses while targeting foreign entities and individuals for

its infringement claims. Their actions should be considered a competitive threat to successful future innovation, economic growth, and competitiveness and fairness within the global economy.

- The Industrial Technology Research Institute (ITRI) in Taiwan holds more than 18,546 patents. ITRI filed a complaint accusing infringement on 20 patents against one major international brand at the U.S. District Court, Eastern District of Texas. The case settled in May 2010. In this first-ever patent infringement lawsuit against a foreign company, ITRI demonstrated determination in aggressively asserting its patents, an act that boosts Taiwanese confidence in ITRI's influence and power.
- The Innovation Network Corporation of Japan (INCJ), a government sponsored patent fund, has invested 90 million yen to create the IP Bridge fund. IP Bridge has plans to procure 5,000 patents at the start, with a long term goal to acquire 30 billion yen in investment.
- Korea's Intellectual Discovery has bought over 200 U.S. patents, including one for retinal eye scan technology. Despite its offensive posture, Intellectual Discovery claims it is a defensive alliance. For example, in the event that a South Korean company finds itself targeted in an IP lawsuit, it can access the patents being compiled by Intellectual Discovery to organize a defense.

Though these four GSPTs may originate in different countries, the threats they pose to the global economy and innovation are very similar and warrant your attention.

We commend the Commission's attention to this matter of crucial importance to IP policy and global markets. Thank you for considering our views.

Sincerely,

Stephen DeMaura, President
Americans for Job Security

Ike Brannon, President
Capital Policy Analytics

Timothy H. Lee, Senior Vice President of Legal and Public Affairs
The Center for Individual Freedom

Seton Motley, President
Less Government

David Williams, President
The Taxpayers Protection Alliance