December 16, 2013

Mr. Donald S. Clark
Office of the Secretary
Federal Trade Commission
Room H-113 (Annex J)
600 Pennsylvania Avenue NW
Washington, DC 20580

Submitted to: https://ftcpublic.commentworks.com/ftc/paestudypra

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

Dear Mr. Clark:

Intellectual Property Owners Association (IPO) submits this letter in response to the FTC's request for comments on a proposed information collection concerning "Patent Assertion Entities" ("PAEs"). *See* 78 Fed. Reg. 61,352 (Oct. 3, 2013) (the "notice"). We appreciate the opportunity to comment.

IPO is a 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 12,000 individuals who are involved in the association either through their companies or law firms or as IPO individual members.

The notice stated the FTC intends to send requests for information to PAEs and "other entities asserting patents in the wireless communications sector, including manufacturers and other non-practicing entities and organizations engaged in licensing." Pursuant to FTC Act section 6(b), the FTC intends to collect information about "patent acquisition, litigation, and licensing practices," to study PAE activity, costs, and benefits.

IPO supports the use of empirical data where it is not already available, and understands the need to examine PAE activities to better understand their impact on the economy. We acknowledge that the full effect of PAE activity on competition and innovation is unknown, particularly to the extent it may be conducted by holding companies or third parties and confined within the protections of non-disclosure agreements.

IPO is concerned that some of the proposed information requests may place an undue burden on intellectual property owners without concomitant benefit to the public or the

stated objectives of the study. In particular, the proposed requests are overbroad and underestimate the time and resources necessary for compliance.

The breadth of the information request will likely return millions of documents that will offer little practical utility, are already publicly available, or both. For example, the request calls for significant information about each patent held by the company, including number; title; class, subclass, and art unit; filing, issue, and expiration dates; maintenance status; and abandonment status. Once a patent number is identified, the remaining information is publicly available. And merely identifying the patent number would burden companies with large portfolios.

Moreover, the proposed information collection would seek the cost of R&D related to each patent held by the company. Trying to track down which project spawned a given invention and track how much spent on that project was related to that particular invention will often be nearly impossible for a single patent, much less thousands of them. Similarly, the proposal seeks cost and revenue at so fine a level of detail that many companies will find difficult, if not impossible, to comply with the request.

The notice also significantly underestimates the collection burden, stating that mid-management personnel will be able to answer the questions, and clerical personnel will be able to retrieve and copy the documents, all in approximately 90 to 400 hours. Many large practicing entities have offices worldwide with paper documents, electronic documents, email, etc. that would be responsive to the requests. It would be a huge effort to go through all the different types of documents in all the offices to comply with the requests.

Many of the requests will require legal analysis not included in the collection burden estimate. For example, the notice asks for identification of the parties holding any legal rights to the patent and the nature of those rights. The request may impose additional costs associated with legal analysis to review documents prior to collection for confidential or privileged information, and legal rights to a share of revenues, profits, or other economic interest, which have not been accounted for in the FTC calculations.

In addition, for any large practicing entities that are targeted by the FTC's proposed study, the collection burden could affect many of their departments, including R&D and sales. Resources of these large practicing entities devoted to collecting information for the study will be unavailable for further innovation.

Thus, IPO urges the FTC to ensure that all of its proposed information requests are necessary and narrowly tailored. The FTC should explain why the proposed information collection seeks documents that date back to 2008 and identify the reasons for this specific time period. With this in mind, IPO suggests the FTC consider creating a model response to the proposed information collection.

***

While IPO has several significant concerns about the scope and potential burden of the proposed information collection, IPO appreciates the opportunity to comment and looks forward to working with the FTC on this issue.

Sincerely,

Richard F. Phillips
President