

(Billing Code: 6750-01S)

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;

Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for public comment.

SUMMARY: The FTC is soliciting public comments on proposed information requests to Patent Assertion Entities (“PAEs”) and other entities asserting patents in the wireless communications sector, including manufacturers and other non-practicing entities and organizations engaged in licensing. For purposes of this notice, PAEs are firms with a business model based primarily on purchasing patents and then attempting to generate revenue by asserting the intellectual property against persons who are already practicing the patented technology.¹

These comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review of the compulsory process orders described in this notice under the Paperwork Reduction Act (PRA). The compulsory process orders will seek information from those firms concerning, among other things, patent acquisition, litigation, and licensing practices.

DATES: Comments must be received on or before [insert date 60 days from the date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “PAE Reports: Paperwork Comment; Project No. P131203” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/paestudypra>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to William F. Adkinson, Jr., Attorney Advisor, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington DC, 20580; (202) 326-2096; paestudy@ftc.gov.

¹ The Commission distinguishes PAEs from other non-practicing entities or NPEs that primarily seek to develop and transfer technology, such as universities, research entities and design firms. FED. TRADE COMM’N, THE EVOLVING IP MARKETPLACE: ALIGNING PATENT NOTICE AND REMEDIES WITH COMPETITION, 8 n.5 (2011), *available at* <http://www.ftc.gov/os/2011/03/110307patentreport.pdf>.

SUPPLEMENTARY INFORMATION: On December 10, 2012, the FTC and the Antitrust Division of the United States Department of Justice (DOJ) jointly sponsored a workshop to explore the impact of PAE activity on innovation and competition.² The FTC and DOJ also received public comments in conjunction with the workshop. While workshop panelists and commenters identified potential harms and efficiencies of PAE activity, they noted a lack of empirical data in this area, and recommended that the Federal Trade Commission use its authority under Section 6(b) of the Federal Trade Commission Act, 15 U.S.C. § 46(b), to collect information on PAE acquisition, litigation, and licensing practices. Senator Amy Klobuchar and Representative Daniel Lipinski likewise have called on the Commission to conduct a Section 6(b) study of PAE activity.³ Responding to these requests, and recognizing its own role in competition policy and advocacy, the Commission proposes a Section 6(b) study that will provide a better understanding of PAE activity and its costs and benefits.

I. Description of the Collection of Information and Proposed Use

The proposed study will add significantly to the existing literature and evidence on PAE behavior. Earlier studies have focused primarily on publicly available litigation data and concluded that PAE litigation activity is on the rise. The Commission, however, has unique Congressional authority to collect nonpublic information, such as licensing agreements, patent acquisition information, and cost and revenue data, which will provide a more complete picture of PAE activity.

Because the Commission believes a broader study will enhance the quality of the policy debate surrounding PAE activity, it proposes information requests directed to the following questions:

- How do PAEs organize their corporate legal structure, including parent and subsidiary entities? (Request B)
- What types of patents do PAEs hold, and how do they organize their holdings? (Request C & D)
- How do PAEs acquire patents, and how do they compensate prior patent owners? (Request E)
- How do PAEs engage in assertion activity (i.e. demand, litigation, and licensing behavior)? (Request F)
- What does assertion activity cost PAEs? (Request G); and
- What do PAEs earn through assertion activity? (Request H)

² See Patent Assertion Entity Activities Workshop, Fed. Trade Comm'n, <http://www.ftc.gov/opp/workshops/pae/>.

³ Letter from Senator Amy Klobuchar to The Honorable Edith Ramirez, Chairwoman, The Honorable Julie Brill, Commissioner, The Honorable Maureen K. Ohlhausen, Commissioner, and The Honorable Joshua D. Wright, Commissioner (June 24, 2013), and Letter from Representative Daniel Lipinski to The Honorable Edith Ramirez, Chairwoman (June 25, 2013).

The FTC proposes to send these information requests to approximately 25 PAEs (PAE Firms). To understand how PAE behavior compares with patent assertion activity by other patent owners, the FTC also proposes sending information requests to approximately 15 other entities asserting patents in the wireless communications sector, including manufacturing firms (Manufacturing Firms), and other non-practicing entities and organizations engaged in licensing (Other Firms).

Definitions

The following definitions apply to Information Requests A-H:

“Acquire” and **“Acquisition”** mean to purchase or obtain all legal rights to a Patent from another Person.

“Assert,” “Assertion,” and **“Asserted”** mean: (i) any attempt to license any Patent, in whole or in part, including any communication relating to licensing of the Patent, (ii) any communication relating to alleged infringement of the Patent by the recipient of the communication, (iii) any Demand that a Person obtain a license, or (iv) any civil action threatened or filed (by the Firm or other Person) relating to any Patent.

“Class,” “Subclass,” and **“Art Unit”** have the meanings defined by the United States Patent and Trademark Office (USPTO).

“Firm” means the Person or entity served with the information requests described in this notice and also includes all domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, directors, officers, employees, agents, representatives, and all other persons acting or purporting to act on its behalf, regardless of how it is legally organized and established.

“Demand” means any communication, whether by letter or otherwise, to any Person, Relating to any effort to Assert Patent(s) held by the Firm since January 1, 2008. Demand does not include complaints or pleadings filed with a United States District Court or the United States International Trade Commission.

“Economic Interest” means rights or claims to current or future revenues derived from a Patent, whether as lump sum payments, royalty streams, or access to other Patents as part of a cross-licensing agreement.

“Litigation” means any civil action arising from a complaint filed in a United States District Court or with the United States International Trade Commission.

“Maintenance Fee(s)” has the meaning defined by the USPTO.

“Patent” means a United States patent or United States patent application as defined by 35 U.S.C. §§101, *et seq.*

“Patent Portfolio” means a collection of patents held by a single entity, including all of the patents held by the entity and any sub-groups into which the entity organizes its patents.

“Person” means any natural person, corporation, association, Firm, partnership, joint venture, trust, estate, agency, department, bureau, governmental, judicial, or legal entity, however organized or established.

“**Relating to**” means, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting, in connection with, dealing with, discussing, describing, identifying, reflecting, stating, or summarizing.

“**Standard-Setting Organization**” or “**SSO**” means any organization, group, joint venture or consortia that develops standards for the design, performance or other characteristics of products or technologies.

Information Requests

The FTC will have PAE Firms and Other Firms respond to Information Requests A-H. The FTC will have Manufacturing Firms respond to Information Requests A-B and E-H. The instructions will specify the Information Requests to which the Firm is required to respond.

A. Identification of Report Author: Identify by full name, title, business address, telephone number, and official capacity the Person(s) who prepared or supervised the preparation of the Firm’s response to the Information Requests and specify the steps taken by the Firm to respond to the Information Requests.

B. Company Information:

1. State the Firm’s complete legal name and all other names under which it has done business, its corporate mailing address, all addresses from which it does or has done business, and the dates and states of its incorporation.
2. Describe the Firm’s business or corporate structure, and state the names of all parents, subsidiaries (whether wholly or partially owned), divisions (whether incorporated or not), affiliates, branches, joint ventures, franchises, operations under assumed names, websites, or entities over which the Firm exercises supervision or control, or any other Person(s) or entities with a contractual or other legal right to a share of revenues, profits, or other Economic Interest tied to profitability or financial performance of the Firm. For each such entity, describe the relationship with the Firm, including the percentage of ownership, control, or other legal entitlement to a share of revenues, profits or financial performance between the Firm and the entity. When responding to Requests A-H, provide all information for the Firm and all related entities identified in response to this request.
3. Identify each Person or entity having an ownership interest in the Firm, or other legal entitlement to share in the financial performance of the Firm, as well as their individual ownership or financial performance stakes, and, if relevant, their positions and responsibilities within the Company.

C. Patent Information:

1. Identify each Patent held by the Firm since January 1, 2008, and specify:
 - a. the Patent number;
 - b. the date the Patent was acquired;
 - c. the Patent title;

- d. the Patent's Class, Subclass, and Art Unit;
- e. the Patent's filing date;
- f. the Patent's issuance date;
- g. the Patent's expiration date;
- h. the maintenance status of the Patent, including whether the Patent has expired for failure to pay Maintenance Fees;
- i. whether the Firm is engaged in pre-grant prosecution for any identified Patent application;
- j. whether the Firm has abandoned any identified Patent application;
- k. whether the Firm is engaged in post-grant prosecution for any identified Patent, and describe the nature of the post-grant prosecution;
- l. whether the Firm has engaged in any research and development activities Relating to the Patent, and specify the nature and estimated cost of this research and development activity;
- m. whether any Person(s), other than the Firm, holds any legal rights to the Patent. As part of your response:
 - (1) identify the Person(s) who holds any legal rights to the Patent;
 - (2) describe the nature of the legal rights held;
 - (3) submit all documents(s) Relating to the legal rights held;
- n. whether any Person, other than the Firm, has an Economic Interest in the Patent, and:
 - (1) identify the Person(s) who hold an Economic Interest in the Patent;
 - (2) describe the nature of the Economic Interest held by the Person(s);
 - (3) submit all documents Relating to this Economic Interest;
- o. whether the Patent (or any claims therein) is subject to a licensing commitment made to a Standard-Setting Organization and specify:
 - (1) all Standard-Setting Organizations to which a licensing commitment has been made;
 - (2) all standards to which such a licensing commitment applies;
 - (3) the Person(s) who made the licensing commitment;
 - (4) the date(s) on which the licensing commitment was made;
 - (5) all encumbrances, including, but not limited to, all commitments to license the Patent or any of its claims on reasonable and non-discriminatory (RAND), fair, reasonable, and non-discriminatory (FRAND), or royalty-free (RF) terms;
- p. whether the Firm has included the Patent in any Demand;

- q. whether the Firm has Litigated the Patent; and
 - r. whether the Firm has licensed the Patent to any Person(s).
2. Provide the assignment and Assertion history for each Patent held by the Firm since January 1, 2008. As part of your response, specify:
 - a. all Person(s) to whom the Patent was assigned before the Firm Acquired the Patent and the date(s) of assignment;
 - b. all Person(s) to whom the Patent was licensed before the Firm Acquired the Patent and the date(s) and term(s) of license;
 - c. whether the Patent was Asserted before the Firm Acquired the Patent, and list the Person(s) who Asserted the Patent, the Person(s) against whom the Patent was Asserted and identify whether the Assertion resulted in Litigation(s) or license(s):
 - (1) if the Assertion identified in C.2.c resulted in Litigation, provide all information requested in Request F.2;
 - (2) if the Assertion identified in C.2.c resulted in a license agreement, provide all information requested in F.3;
 - (3) state whether the Assertion identified in C.2.c involved a technology transfer provision, and provide all technology transfer agreements Relating to this response.
 3. Submit all documents Relating to any communication since January 1, 2008 between the Firm and any investor or potential investor, financial or otherwise, Relating to any Patent(s) held by the Firm since January 1, 2008.

D. Patent Portfolio Information:

1. Describe all Patent Portfolios held by the Firm since January 1, 2008; and specify:
 - a. how the Firm organizes the Patent Portfolio(s);
 - b. the numbers of the Patents included in the Patent Portfolio(s); and
 - c. the Firm's valuation of the Patent Portfolio(s) and the date of the valuation.
2. Submit all documents Relating to the Firm's reasons or business strategy for organizing the Patent(s) into Portfolio(s), including but not limited to, market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.

E. Patent Acquisition and Transfer Information:

1. For each Patent Acquired by the Firm since January 1, 2008, state whether the Firm Acquired the Patent individually or as part of a Patent Portfolio, and provide the following information:
 - a. for all Patents that the Firm Acquired individually, identify the Patent, and specify:
 - (1) the Person(s) from whom the Firm Acquired the Patent and state whether that Person(s) was the original inventor;
 - (2) the date on which the Firm Acquired the Patent;
 - (3) whether the Patent was Acquired in bankruptcy;
 - (4) the financial terms of the Firm's Acquisition of the Patent. As part of your response, specify:
 - (a) whether the Firm paid a lump sum, the amount of the lump sum; the Person(s) to whom the lump sum was paid, and the date the payment was made;
 - (b) whether the Firm paid, or is paying, an ongoing payment, and specify:
 - i. how the ongoing payment is calculated;
 - ii. the total amount of the ongoing payment paid as of the date of this Request;
 - iii. the amount of each individual payment paid as of the date of this Request, the Person(s) to whom each payment was made, and the date of each payment;
 - iv. the total amount of the ongoing payment expected to be paid in the future, and all Person(s) expected to receive future payments;
 - (c) whether another Person(s) contributed financially to the purchase of the Patent(s), and if so, identify the Person(s) and percentage share of ownership or other legal entitlement to the licensing or other revenue derived from such Patent(s).
 - b. for all Patents that the Firm Acquired as part of a Patent Portfolio, specify:
 - (1) all Patents included in the Patent Portfolio;
 - (2) the Person(s) from whom the Firm Acquired the Patent Portfolio;
 - (3) the date on which the Firm Acquired the Patent Portfolio;
 - (4) the circumstances in which the Firm Acquired the Patent Portfolio, including, but not limited to, whether the Patent Portfolio was

Acquired in bankruptcy, or whether it was acquired from the original inventor;

(5) the financial terms of the Firm's Acquisition of the Patent Portfolio; As part of your response, specify:

(a) whether the Firm paid a lump sum, the amount of the lump sum; the Person(s) to whom the lump sum was paid, and the date the payment was made;

(b) whether the Firm paid, or is paying, an ongoing payment, and specify:

i. how the ongoing payment is calculated;

ii. the total amount of the ongoing payment paid as of the date of this Request;

iii. the amount of each individual payment paid as of the date of this Request; the Person(s) to whom each payment was made; and the date of each payment;

iv. the total amount of the ongoing payment expected to be paid in the future; and all Person(s) expected to receive future payments; and

(c) whether another Person(s) contributed financially to the purchase of the Patent Portfolio, and if so, identify the Person(s) and percentage share of ownership or other legal entitlement to the licensing or other revenue derived from such Patent(s).

2. Identify each Patent the Firm has sold or transferred since January 1, 2008. As part of your response, specify:

a. the Person(s) who Acquired the Patent;

b. the date(s) on which the Person(s) Acquired the Patent;

c. the financial terms of the Person(s)' Acquisition of the Patent. As part of your response, specify:

(1) whether the Person(s) paid a lump sum, the amount of the lump sum, the Person(s) to whom the lump sum was paid, and the date the payment was made;

(2) whether the Person(s) paid, or is paying, an ongoing payment, and specify:

(a) how the ongoing payment is calculated;

(b) the total amount of the ongoing payment paid as of the date of this Request;

- (c) the amount of each individual payment paid as of the date of this Request, the Person(s) to whom each payment was made; and the date of each payment;
 - (d) the total amount of the ongoing payment expected to be paid in the future, and all Person(s) expected to receive future payments, and
- (3) whether another Person(s) contributed financially to the purchase of the Patent(s), and if so, identify the Person(s) and percentage share of ownership or other legal entitlement to the licensing or other revenue derived from such Patent(s).
- 3. Identify any Patent not identified in response to E.1 or E.2 for which, since January 1, 2008, the Firm has had standing to sue and submit a copy of the license agreement that grants the Firm standing to sue.
- 4. Submit the Patent purchase or Acquisition agreement for all Acquisitions identified in response to Request E.1.
- 5. Submit all documents Relating to the Firm's Acquisitions identified in response to Request E.1, including but not limited to, market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.
- 6. Submit all documents Relating to the Firm's sales and transfers identified in response to Request E.2, including but not limited to, market analyses, financial analyses, business plans statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.

F. Patent Assertion Information:

- 1. Demand Information:
 - a. identify all Demands sent by, or on behalf of the Firm since January 1, 2008 and specify:
 - (a) all Person(s) to which the Demand was sent;
 - (b) the Patent(s) Relating to the Demand;
 - (c) the total time spent and costs incurred by the Firm, or any Person working on behalf of the Firm, for any research Relating to the Demand, including but not limited to any attempt to compare the allegedly infringing product(s) or process(es) with the Asserted Patent claims;
 - (d) any Litigation initiated by the Firm Relating to the Demand, and the outcome of any such Litigation;
 - (e) any license agreement Relating to the Demand;

- (f) any revenue obtained by the Firm Relating to each Demand, separately listed for each year since January 1, 2008, and for each Patent Portfolio held by the Firm.
 - b. for each year since January 1, 2008, identify the Firm's total expenses Relating to all Demands identified in response to Request F.1;
 - c. for each year since January 1, 2008, identify the Firm's total revenue Relating to all Demands identified in response to Request F.1;
 - d. submit a copy of each Demand identified in response to Request F.1, and all documents reflecting communications Relating the Demand;
 - e. submit all documents that reflect business strategy or financial research Relating to the Demand(s) identified in response to Request 6.A; and
 - f. submit all license or settlement agreements Relating to the Demand.
2. Litigation Information:
- a. identify all Litigation(s) pending since January 1, 2008 to which the Firm is a party involving any Patent(s) held by the Firm since January 1, 2008. As part of your response, specify:
 - (1) whether the Firm is a plaintiff or defendant in the Litigation;
 - (2) the Patent(s) and claim(s) Asserted;
 - (3) the court, date filed, docket number, parties, current or final status (including dates);
 - (4) the remedies sought in the Litigation, including, but not limited to damages, enhanced damages, injunctive relief, or an exclusion order;
 - (5) whether the Patent was found infringed, invalid, or unenforceable and whether an injunction or an exclusion order issued;
 - (6) whether past damages were awarded, and the amount of any such award;
 - (7) whether future damages were awarded, and all projected revenue expected by the Firm as a result of the award for future damages, by year, together with the method for calculating future damages (e.g. as a fraction of revenue or a fee per unit sold);
 - (8) if the Litigation resulted in a settlement agreement, provide a copy of that agreement and specify:
 - (a) the stage of Litigation at which settlement was reached, e.g. before an order on a motion to dismiss, before an order on a motion for summary judgment;
 - (b) whether the Court issued an order construing any claim(s) of the Patent(s) Asserted before settlement was reached;

- (c) the terms of the settlement agreement, and if the settlement included a license or cross-license, all licensing information requested in Request F.3;
 - (9) for each year since January 1, 2008, the costs the Firm incurred for the Litigation;
 - b. for each Litigation identified in Response to Request F.2, submit all orders Relating to disposition of any dispositive motions;
 - c. state whether the Firm has any contingency fee agreement(s) Relating to any Litigation(s) identified in response to Request F.2; and specify:
 - (1) the Person(s) with whom the Firm shares the contingency fee agreement(s);
 - (2) how the contingency fee is calculated;
 - (3) for each year since January 1, 2008, the amount paid pursuant to the contingency fee arrangement; and
 - (4) submit a copy of the contingency fee agreement(s).
3. License Information:
- a. identify all license agreements the Firm entered into with any other Person(s) since January 1, 2008 Relating to any Patent(s) held by the Firm since January 1, 2008. As part of your response, specify:
 - (1) the Patent(s) licensed;
 - (2) the date and length of the license agreement;
 - (3) the licensor(s) and licensee(s);
 - (4) whether the license agreement Relates to any Litigation. As part of your response:
 - (a) identify the Litigation to which the license agreement Relates;
 - (b) for license agreements Relating to any Litigation, state when settlement was reached and when the license agreement was executed, e.g. after an order on a dispositive motion, on the eve of trial;
 - (c) state whether the Court issued an order construing any claim(s) of the Patent(s) Asserted before the license agreement was executed;
 - (5) all revenue obtained by the Firm Relating to each license agreement, separately listed for each year since January 1, 2008, and for each Patent Portfolio held by the Firm; and specify:
 - (a) the effective royalty rate, and the base to which it is to be applied;

- (b) state whether this revenue was shared with any Person;
 - (c) identify the Person and the revenue shared;
 - (d) submit the revenue sharing agreement(s);
 - (6) all projected revenue expected by the Firm as a result of the license agreement, by year, and the method for calculating the projected revenue, e.g. as a fraction of revenue or a fee per unit sold;
 - (7) whether the license agreement includes any cross-license, and submit a copy of the cross-license;
 - (8) whether the Firm conducted a valuation of the cross-license, and submit all documents Relating to the valuation; and
 - (9) whether the license agreement includes any provisions for technology transfer from the Firm to the licensee(s).
4. For each license agreement identified in Response to Request F.3, submit a copy of the agreement and all documents Relating to the agreement, including but not limited to, documents reflecting communications Relating to the license, documents summarizing sales made by the licensee, and documents reflecting arrangements to share revenue generated by the license.
 5. Submit all documents Relating to the Firm's rationale for all Assertions identified in response to Request F, including but not limited to, market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.
 6. Submit all documents Relating to the Firm's projected gross revenue or return-on-investment for all Assertions identified in response to Request F, including, but not limited to, market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.

G. Aggregate Cost Information:

1. For each year since January 1, 2008, identify:
 - a. the total cost to and amount paid by the Firm Relating to all Acquisitions identified in response to Request E.1. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (1) the Person(s) with whom costs are shared;
 - (2) how this amount is calculated;
 - (3) the total cost shared to date;
 - (4) any cost expected to be shared in the future;
 - b. the total cost to and amount paid by the Firm Relating to all Assertions identified in response to Request F, and specify:

- (1) the total cost to and amount paid by the Firm Relating to all Demands identified in response to Request F.1. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom costs are shared;
 - (b) how this amount is calculated;
 - (c) the total cost shared to date;
 - (d) any cost expected to be shared in the future;
 - (2) the total cost to and amount paid by the Firm Relating to all Litigations identified in response to Request F.2. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom costs are shared;
 - (b) how this amount is calculated;
 - (c) the total cost shared to date;
 - (d) any cost expected to be shared in the future;
 - (3) the total cost to and amount paid by the Firm Relating to all License Agreements identified in response to Request F.3. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom costs are shared;
 - (b) how this amount is calculated;
 - (c) the total cost shared to date; and
 - (d) any cost expected to be shared in the future.
2. Submit all documents Relating to all costs and payments identified in response to Request G.

H. Aggregate Revenue Information:

1. For each year since January 1, 2008, identify:
 - a. the total revenue received by the Firm Relating to all transfers identified in response to Request E.2. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:
 - (1) the Person(s) with whom revenue is shared;
 - (2) how this amount is calculated;
 - (3) the total revenue shared to date;
 - (4) any revenue expected to be shared in the future;

b. the total revenue received by the Firm Relating to all Assertions identified in response to Request F, and specify:

(1) the total revenue received by the Firm Relating to all Demands identified in response to Request F.1. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:

- (a) the Person(s) with whom revenue is shared;
- (b) how this amount is calculated;
- (c) the total revenue shared to date;
- (d) any revenue expected to be shared in the future;

(2) the total revenue received by the Firm Relating to all Litigations identified in response to Request F.2. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:

- (a) the Person(s) with whom revenue is shared;
- (b) how this amount is calculated;
- (c) the total revenue shared to date;
- (d) any revenue expected to be shared in the future;

(3) the total revenue received by the Firm Relating to all License Agreements identified in response to Request F.3. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:

- (a) the Person(s) with whom revenue is shared;
- (b) how this amount is calculated;
- (c) the total revenue shared to date;
- (d) any revenue expected to be shared in the future;

(4) any revenue not identified above, shared with any Person(s) and specify:

- (a) the Person(s) with whom revenue is shared;
- (b) how this amount is calculated;
- (c) the total revenue shared to date; and
- (d) any revenue expected to be shared in the future.

2. Submit all documents Relating to all revenue identified in response to Request 8.

It should be noted that pending this information collection, the destruction, mutilation, alteration, or falsification of documentary evidence within the possession or control of a person, partnership or corporation subject to the FTC Act is subject to criminal prosecution. 15 U.S.C. § 50, *see also* 18 U.S.C. § 1505.

II. Estimated Burden Hours

Staff will ask respondents to answer several written questions and to provide documents related to the answers provided. Because the responses will necessarily vary depending on the respondent, we have provided a range of estimated response times from 90 to 400 hours. The total estimated burden of answering the questions and producing documents per respondent is based on the following:

Organize document and information retrieval: 15 – 50 hours

Identify requested information: 15 – 150 hours

Retrieve responsive information: 20 – 80 hours

Copy requested information: 20 – 40 hours

Prepare response: 20 – 80 hours

Thus the cumulative hours burden to produce documents and prepare the response sought will be between 3,600 (90 hours x 40 companies) to 16,000 (400 hours x 40 companies).

III. Estimated Cost Burden

It is not possible to calculate with precision labor costs associated with answering the questions and producing the documents requested, as each will entail various levels of management and/or support staff among many different companies. Individuals among some or all of those labor categories may be involved in the information collection process. Nonetheless, we have assumed that mid-management level personnel will handle most (estimate: 90%) of the tasks involved in gathering and producing the responsive information and we have applied a mean hourly wage of \$52.20⁴ for their labor. We also have applied a mean hourly wage of \$16.54 for the labor of clerical employees⁵ who will prepare the responsive materials for copying or electronic production. Thus the labor costs per company should range between \$3,984.80 [(81 hours x \$52.20/hour) + (9 hours x 16.54/hour)] to \$19,097 [(360 hours x \$52.20/hour) + (40 hours x \$16.54/hour)].

Staff anticipates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may require the respondent to store copies of the requested information provided to the Commission, industry members should already have in place the means to store information of the volume requested. Respondents may need to purchase minimal office supplies to respond to the request. Staff estimates that each respondent will spend \$500 for such costs regarding the information request, for a total additional non-labor cost burden of \$20,000 (\$500 x 40 companies).

⁴ Bureau of Labor Statistics, May 2012 National Occupational Employment and Wage Estimates for the United States, Management Occupations: http://www.bls.gov/oes/current/oes_nat.htm.

⁵ *Id.* (Office and Administrative Support Occupations).

IV. Request for Comment

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by Section 3506(c)(2) of the PRA, 44 U.S.C. 3506, the FTC is providing this opportunity for public comment before requesting that OMB approve the study. Specifically, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information. The FTC encourages recipients of prior compulsory process orders to offer suggestions on how the burden of the proposed collection may be reduced. All comments should be filed as prescribed below, and must be received on or before **[insert date 60 days from the date of publication in the FEDERAL REGISTER]**.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before **[insert date 60 days from the date of publication in the FEDERAL REGISTER]**. Write “PAE Reports: Paperwork Comment; Project No. P131203” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).⁶ Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

⁶ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/paestudypra>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “PAE Reports: Paperwork Comment; Project No. P131203” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[insert date 60 days from the date of publication in the FEDERAL REGISTER]**. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark,
Secretary.