



December 16, 2013

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

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

Dear Mr. Adkinson:

The Internet Commerce Coalition (“ICC”) appreciates the opportunity to respond to the request for comment on the Commission’s proposed 6(b) request. The ICC is comprised of leading Internet and e-commerce companies and trade associations. We work to promote policies that support the growth of lawful communication and commerce on the Internet through reasonable and workable rules governing liability.

We strongly support the Commission’s inquiry into patent assertion entity (PAE) activity and urge the Commission to undertake a comprehensive analysis of the often murky world of PAE activity in order to shed light on its effects on competition and innovation.

Although this study will be very useful for uncovering the hidden conduct of and abuses by PAEs, we agree with Chairwoman Edith Ramirez (for example, in her Nov. 12, 2013 ABA remarks) that it will still be important to reform the law in this area.

I. The Scope of the Inquiry Should Be Expanded in Several Ways and Should Not Be Cut Back

A. Do Not Narrow the Inquiry

The secrecy of PAEs and their often complex structures make it very difficult to understand the issues in the Commission’s proceeding without a reasonably broad inquiry.

An FTC investigation is the only realistic way to obtain information about these entities. Civil discovery rules favor plaintiffs and courts in the past have had little interest in the secrecy of PAE business models and as a result, there is little information currently available. Furthermore, without information about the “patent troll” business model, the debate in this area cannot be empirically based.

It is entirely appropriate for the FTC to study these issues fully in light of its previous reports on the patent thicket and its recent proceedings, as well as the significant market effects of PAE activities.

The narrower case study should by no means be limited to wireless as the effects of PAE activity are far, far broader than that.

B. The Inquiry Should be Expanded in Several Ways

Although we do support all the items on the current list of documents to request, we believe that several augmentations would significantly improve the quality of the results of this inquiry:

The documents requested should be expanded to include:

- a. Communications among PAEs.
- b. Communications with investors.
- c. Information revealing entities or individuals supporting PAEs and their contributions in any non-financial manner.
- d. In addition to pledges, commitments or encumbrances related to Standard Setting Organization (SSO) patents, information on whether any pledge, commitment or encumbrance applies to any asserted patents.

The Number of Entities reviewed should be increased, as this is the first study of its kind in an area shrouded in considerable secrecy.

The definition of PAE should be expanded to focus on PAE behaviors, instead of focusing on entities that are in the secondary market of patent acquisition. The current definition would provide information on only a part of the PAE market. Instead, the definition should focus on PAE behaviors, including: litigation behavior, licensing demand behavior, investor relationships and communications, privateering behavior, asserting patents against multiple players in a single supply chain, patent aggregation with members who compete with each other in a horizontal relationship, and asserting third party patents against a competitor's rivals with the main objective being to tie up the rivals in litigation, .

In particular, it is important to examine a spectrum of PAE business models:

- a. Big assertion PAEs (e.g., Intellectual Ventures)
- b. Single entity PAEs
- c. Emerging PAEs
- d. PAEs that don't generally sue but subcontract out litigation to others (e.g. Acacia).

e. PAEs that are owned or controlled by other entities

f. Hybrid PAEs

A 6(b) inquiry of this scope would provide very useful information about the range of PAE activity in the U.S. from which to base further Commission activity on this subject.

II. Timing of the Report

To the extent that the this request will take a long time to clear the interagency process, we respectfully request that the Commission issue an interim report to provide information about trends or issues it is discovering in this important area.

III. Conclusion

We look forward to working with the Commission on this important inquiry, and thank you for considering our views.

Sincerely,

Jim Halpert
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