



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

December 16, 2013

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

RE: Proposed Federal Trade Commission Information Requests to Patent Assertion Entities
78 Fed. Reg. 61352 (Oct. 3, 2013)

Dear Secretary Clark:

Over the last several years, abusive “patent assertion entities” (“PAEs”) – often known as “patent trolls” – have forced companies of all sizes to choose between costly litigation and paying licensing fees for patents of dubious value and unclear applicability. With California’s many innovative and productive high-tech companies, overbroad claims of infringing patents debilitate their targets and extract a significant toll on the state’s economy. The private sector has begun to develop new approaches to mitigate the risk of abusive patent claims, such as companies that raise capital through licensing fees in order to acquire patents for defensive purposes. In addition, on-going efforts to develop insurance products designed to mitigate patent litigation risk appear promising.

The Federal Trade Commission (“FTC”) proposal to study PAEs and other entities engaged in patent licensing is an important public sector response to this problem. This study will help guide regulators charged with protecting consumers and, in turn, prevent abuse of the legal system and cultivate technological innovation and investment. Described below, we recommend additional study strategies to enhance the quality, utility and clarity of the PAE information that the FTC proposes to collect.

First, we urge the FTC broaden the number of entities from which it collects information. Increasing the number of responding entities – currently proposed at 40 – will allow for more accurate comparisons of the licensing and enforcement tactics of various patent holders. Robust

Mr. Donald S. Clark, Secretary

December 16, 2013

Page 2

comparisons will enhance regulators' ability to direct their resources and to shape policies that distinguish between abusive PAEs from other non-practicing patent-holding entities such as universities.

Second, we recommend the FTC questionnaire request information about the geographical locations of the studied patent assertion activities. This would help determine the level of PAE operations among the states. Specifically, the queries should determine (1) the U.S. state(s) of residence of each "Person" to which a "Demand" was sent; (2) the U.S. state(s) of residence of each defendant in "Litigation...Relating to the Demand"; and (3) the physical address(es) of each licensee of any licensing agreement "Relating to a Demand." 78 Fed. Reg. at 61355-56.

Third, we propose the FTC ask all respondents for consent to disclose all gathered information to any interested state attorney general who abides by the same confidentiality rules agreed to by the FTC. This information will assist state attorneys general evaluating whether some PAEs use problematic tactics in that state. This approach, already utilized in many federal-state antitrust merger/acquisition reviews, may benefit the respondents by obviating duplicative or similar state information requests. Absent a respondent's consent to share information with state attorneys general, the FTC should disclose the gathered information to the fullest extent legally permitted.

I look forward to cooperating with you to study and to address the problem of abusive PAEs.

Sincerely,


KAMALA D. HARRIS
Attorney General