

FTC Office of the Secretary
Room H-113
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Comments of the Main Street Patent Coalition on 6(b) Information Requests for Patent Assertion Entities

The Main Street Patent Coalition (MSPC) supports the proposed Federal Trade Commission (FTC) study which will use the agency's authority under Section 6(b) of the Federal Trade Commission Act to gather data and information regarding the business tactics of Patent Assertion Entities (PAEs). On behalf of the millions of American businesses we represent, we strongly urge the Office of Management and Budget (OMB) to approve the industry study so that previously unavailable information about PAE activity can be accessed as soon as possible.

MSPC is a national, non-partisan coalition of organizations dedicated to stopping patent abuse from PAEs by encouraging Congress to pass comprehensive, common sense patent reform legislation.

MSPC represents businesses in every community in America – retail, restaurants, hotels, travel, grocers and more – that are being attacked mercilessly by extortionist patent trolls. Main street businesses usually lack patent expertise, and cannot afford to fight back when the average infringement litigation costs more than \$2 million.

MSPC hopes the 6(b) study will make important contributions to the public's understanding of often convoluted or, we believe, intentional obscured ownership or financial ties to patent ownership. One of the most daunting challenges facing small businesses of all kinds victimized by patent trolls is determining who is behind a new shell corporation formed simply to extort unjust licensing fees from those small businesses. If America's small businesses can learn more about the ownership structures concocted to facilitate PAE's activity, small businesses can make more rapid, lower cost determinations about how to proceed when they receive demand letters.

Demand letter disclosure rules, which would require a plaintiff to be more transparent about certain information when sending infringement claim letters, are popular amongst businesses and have become a near obligatory component of any legislative proposal to curb the PAE problem. Main street businesses would also greatly benefit from disclosure rules that include asking plaintiffs to name the specific section of the patent that is allegedly being infringed, and what activity on the part of the business is causing the alleged infringement. The more transparent demand letters are, the easier it becomes for a business owner to make sense of a claim and be well-equipped to fend off unwarranted patent litigation. The 6(b) study would provide more clarity around demand letters and the general behavior of PAEs, which we hope would ultimately assist the FTC in identifying and enforcing proper disclosure requirements for patent infringement letters.

We commend and support the Federal Trade Commission for committing to conduct a 6(b) study, which we expect will provide further empirical evidence of the negative impact that PAEs

have on individual businesses and the economy overall. The proposed study would significantly aid the FTC in continuing to carry out its responsibilities to preserve fair competition and protect consumers and business operators from bad faith business practices.

Considering the secretive nature of PAEs, the elevated access to information that a 6(b) study provides is needed to reveal the full scope of an already well-acknowledged crisis. There are thousands of tragic stories from business owners about the impact a PAE can have on a business. But an industry study that collects more of the information we do not have, including the acquisition, assertion, litigation and licensing practices of PAEs, will help supplement the distressing, anecdotal evidence of which many members of the Federal government are already aware. We are confident that the completion of a 6(b) study will soon help inform the best, most precise policy solutions to attack the problem of predatory PAE claims.

We have no doubt that PAEs will continue to drain billions of dollars out of our economy until something is done. Some small business owners are currently handing over precious capital to PAEs through burdensome licensing fees, some are preparing to spend millions of dollars in legal fees defending their business, and nearly every business across the country is under the unpredictable threat of frivolous patent litigation. Further evidence is needed now to guide lawmakers towards the best policy solutions and further convince them that they can no longer wait to address the problem.

The Senate Judiciary Committee's failure to pass the Patent Transparency and Innovation Act, which suffered from several months of delayed markups and several rounds of edits based on input from a wide selection of stakeholders, is further proof that independent FTC action is needed. Congress already has more than sufficient evidence to enact comprehensive reforms but the FTC's study results could identify currently unknown abuses that require additional legislative reform measures to protect America's Main Street businesses from PAEs.

MSPC believes the Commission has done an excellent job preparing the study and accommodating the input from various stakeholders during the study's planning phases. We look forward to the study's approval and reviewing the results upon its completion.

MSPC is a collection of the following industry trade groups: National Retail Federation, National Restaurant Association, American Bankers Association, Printing Industries of America, American Gaming Association, Application Developers Alliance, American Hotel and Lodging Association, Credit Union National Association, Direct Marketing Association, Food Marketing Institute, Independent Community Bankers of America, International Franchise Association, National Association of Realtors, National Council of Chain Restaurants, National Grocers Association, Retail Industry Leaders Association, National Association of Home Builders, The Latino Coalition, American Association of Advertising Agencies, The Emob (online retailers), U.S. Travel Association, Printing Industries of America, Small Business Majority, National Association of Convenience Stores and National Association of Federal Credit Unions