



STATE OF ARKANSAS  
THE ATTORNEY GENERAL  
DUSTIN MCDANIEL

June 18, 2014

Mr. Brian Deese  
Acting Director  
The Office of Management and Budget  
725 17<sup>th</sup> Street NW  
Washington, D.C. 20502

FILED ELECTRONICALLY

RE: Second Notice, Patent Assertion Entities; P13120

Dear Mr. Deese:

I encourage The Office of Management and Budget (OMB) to provide approval to the Federal Trade Commission (FTC) so that it can conduct its proposed study regarding Patent Assertion Entities (PAEs).

This study is important. Consumers and businesses need protection from PAEs that make questionable claims of patent infringement to extort high fees. Consumers and businesses are often targeted by PAEs because they purchase and use off-the-shelf commercial products that rely on common technology, such as printers, scanners, or wireless routers. PAEs are often successful at getting consumers and businesses to pay them because defending complex patent infringement lawsuits can be expensive.

The FTC's wide-ranging national study and investigation of PAEs is likely to yield information relevant to PAE's practices, methods, and beliefs regarding the veracity (or lack thereof) of infringement claims, and the number and types of their target entities. Knowing more about how PAEs operate will help federal and state authorities better protect consumers and businesses. Attached is a letter to the FTC that I and 42 other attorneys general previously submitted voicing strong support for the FTC's study.

I commend the FTC for undertaking this study and strongly encourage OMB to provide whatever approval may be necessary so that the FTC's work in this area can move forward in an expeditious manner.

Sincerely,

Dustin McDaniel

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February 24, 2014

The Honorable Patrick Leahy  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable John D. Rockefeller IV  
Chairman, Committee on Commerce,  
Science and Transportation  
United States Senate  
254 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck Grassley  
Ranking Member, Committee on the  
Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable John Thune  
Ranking Member, Committee on  
Commerce, Science and Transportation  
United States Senate  
254 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Leahy, Ranking Member Grassley, Chairman Rockefeller, and  
Ranking Member Thune:

We, the Attorneys General of 42 states,<sup>1</sup> write to express our support of your efforts to enact bipartisan patent reform legislation, and to share our concerns with the currently proposed S. 1720 and the recently passed H.R. 3309. So-called patent trolls stifle innovation and harm our economy by making dubious claims of patent infringement and using the threat of expensive litigation to extort money from small businesses and nonprofits. We have received many complaints from these businesses and nonprofits, our constituents, who are desperate for relief from the misuse of the patent system. While these threats were once focused on tech businesses, they are now levied at all manner of businesses, including banks, hospitals, restaurants and hotels.

Our offices have responded to these complaints by launching investigations and bringing enforcement actions against patent trolls, which have threatened thousands of businesses and non-profits for their use of common, everyday technology such as scanners and Wi-Fi networks. Our authority to protect businesses derives primarily from state statutes that prohibit unfair and deceptive acts. Though any patent holder has a right to fight infringement, it may not do so in a manner that is unfair or deceptive.

We are encouraged by your attempts to enact patent reform, but would like Congress to consider amendments to address the following:

<sup>1</sup> Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wyoming.

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- 1. Confirmation of state enforcement authority.** We support the provision in S. 1720 which expressly prohibits unfair and deceptive demand letters and would clarify the Federal Trade Commission's authority to prohibit bad-faith demand letters. However, federal legislation should also confirm the concurrent authority of state attorneys general to bring the same types of enforcement actions under state law. State attorneys general work closely with the FTC on many consumer protection matters and generally have the same authority to protect consumers and bring enforcement actions. In many states, the interpretation of state law and its enforcement expressly track federal law. H.R. 3309's study on demand letters is important to understanding what is occurring, but a study by itself does not provide adequate, timely relief for the serious problem that small businesses around the country currently face – the threat of immediate litigation for failing to pay often unfounded and exorbitant licensing fees.
- 2. Clarification of state-court jurisdiction over bad-faith demand letters.** Patent trolls typically argue that sending demand letters into a state – even misleading or deceptive demand letters – is insufficient to support a finding of personal jurisdiction in the courts of that state. That argument is flatly inconsistent with longstanding interpretations of state consumer protection laws and the due process requirements for actions brought under those laws. Federal legislation should confirm that state courts have personal jurisdiction over entities that direct unfair or deceptive patent demand letters into the state.
- 3. Transparency for patentees that send demand letters.** We support any efforts to increase transparency in the patent enforcement process, as sunlight and transparency may deter the worst abusers of our patent laws. However, the key transparency provisions in S. 1720 and H.R. 3309 apply only when a patentee files a civil action alleging infringement. That is too late. Patent trolls often succeed in extracting licensing fees and settlements before any litigation is filed. Instead, disclosure should be required of all those with a financial interest in the patent at the time a patent demand letter is sent.
- 4. Patent litigation reform.** One reason that the patent troll business model is successful is that the cost of patent litigation usually far outstrips the cost of a settlement. Though our focus is primarily on addressing patent trolling from a consumer protection standpoint, often centering on demand letters, we recognize the importance of pending Congressional legislation on this issue. We are generally supportive of structural federal patent litigation reform which would create an environment in which abusers of the patent enforcement system cannot thrive.

Again, thank you for your continuing leadership in maintaining the quality and effectiveness of our patent system. We look forward to working with you in the effort to deter the bad actors who are exploiting the system for undeserved gain.

Sincerely,

Jon Bruning  
Nebraska Attorney General

William H. Sorrell  
Vermont Attorney General

Luther Strange  
Alabama Attorney General

Michael Geraghty  
Alaska Attorney General

Tom Horne  
Arizona Attorney General

Dustin McDaniel  
Arkansas Attorney General

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Colorado Attorney General

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Connecticut Attorney General

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Greg Zoeller  
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Tom Miller  
Iowa Attorney General

Derek Schmidt  
Kansas Attorney General

James "Buddy" Caldwell  
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Martha Coakley  
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Bill Schuette  
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Rhode Island Attorney General

Alan Wilson  
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Marty J. Jackley  
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Sean Reyes  
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Mark Herring  
Virginia Attorney General

Robert W. Ferguson  
Washington Attorney General

Peter K. Michael  
Wyoming Attorney General

Copy: The Honorable Harry Reid, Majority Leader, United States Senate  
The Honorable Mitch McConnell, Minority Leader, United States Senate