



March 6, 2014

The Honorable John Rockefeller
United States Senate
Washington, D.C. 20515

The Honorable John Thune
United States Senate
Washington, D.C. 20515

Dear Chairman Rockefeller and Ranking Member Thune:

On behalf of the roughly 14,000 financial institutions of all sizes and charters represented by the American Bankers Association (ABA), the Credit Union National Association (CUNA), and Independent Community Bankers of America (ICBA), we are writing to commend you, Mr. Chairman, and Senator Claire McCaskill for introducing S. 2049, the Transparency in Assertion of Patents Act. S. 2049 is a positive step towards addressing the burden banks and credit unions face when trying to decipher vague and misleading demand letters. We look forward to working with you and your colleagues on the Commerce Committee to address this great and growing problem.

This legislation takes an important step toward addressing the exponentially growing threat of Patent Assertion Entities (PAEs), commonly referred to as “patent trolls,” that assert patents of dubious quality against legitimate businesses, including banks and credit unions. S. 2049 takes specific aim at the problem of unfair and deceptive demand letters, but does not affect the rights of legitimate patent holders to send demand letters or otherwise assert their patent rights.

S. 2049 would clarify the Federal Trade Commission (FTC)’s authority to help fight back against deceptive practices by requiring basic information be included in letters sent by patent trolls. The required information is elementary, such as the owner of the patent and specific technology involved. This will help the victims of trolls to quickly and inexpensively understand the infringement claim and how best to respond to it. S. 2049 would also benefit legitimate patent holders because the FTC would be allowed to specify exactly what constitutes a deceptive demand letter. This would provide patent holders with certainty of how to assert a patent without any risk that it could be labeled unfair or deceptive. Civil penalties would be imposed on those that continue to send out “bad faith” demand letters, with exceptions provided for communications between parties on existing licensing agreements.

We believe that applying the prohibition on unfair and deceptive practices to demand letters would help prevent the abuses that are currently occurring. Just in our industry, there are many examples of a patent troll selling a product—the patent license—to a bank or credit union using tactics resembling fraud or extortion. Financial institutions, especially small institutions, are not familiar with the patent system. Rather, banks and credit unions are in the business of managing risk, and in targeting small institutions that may not have a lawyer on staff

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competent to evaluate the claims, patent demand letters reach a captive mass of people afraid of getting sued.

This growing problem will not be solved until Congress passes bipartisan legislation that makes clear patent trolls can no longer get away with abusing the system through misleading and threatening demand letters. S. 2049 is a positive step towards addressing the problem and sends a strong message to patent trolls that this type of activity will not be tolerated. We look forward to working with members of the Commerce Committee to find a bipartisan solution that directly addresses the growing abuse of our patent system and the specious demand letters that are having a negative impact on our industry, our customers, and the American economy.

Sincerely,

American Bankers Association

Credit Union National Association

Independent Community Bankers of America

CC: Members of the Senate Commerce Committee