

April 7, 2014

The Honorable Lee Terry
Chairman
Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Subcommittee on Commerce,
Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Terry and Ranking Member Schakowsky:

On behalf of the Credit Union National Association (CUNA), I am writing to thank you for scheduling the Tuesday's hearing entitled, "Trolling for a Solution: Ending Abusive Patent Demand Letters." CUNA is the largest credit union advocacy organization in the United States, representing America's state and federally chartered credit unions and their 99 million members. We appreciate the opportunity to submit this letter for the record of the hearing.

Patent Assertion Entities, commonly referred to as "patent trolls," have targeted credit unions with demand letters claiming infringement on a broad range of obscure and vague patents. In some cases, the patents have already expired or been held invalid by courts. These demand letters are intentionally vague and target credit unions that may lack the legal expertise on staff to fight the claim, often resulting in quick settlements. The technologies for which patent demand letters and litigation have become common against credit unions include some of the things that make financial services most accessible to consumers – ATMs, online and mobile banking, remote check capture, and check processing.

These letter writing campaigns work because trolls know that an early settlement is much, much cheaper for a defendant than fighting. In almost every case, just to pick up the phone to consult a patent lawyer to determine the validity of the infringement claim and evaluate the demand costs tens of thousands of dollars. Credit unions are filled with staff in the business of managing risk, and in targeting small institutions that may not have a lawyer on staff competent to evaluate the claims, demand letters are sure to reach a captive mass of people who will be afraid of getting sued. Most credit unions will be willing to do almost anything to avoid the risk and uncertainty litigation creates.

As you look for solutions to address this growing problem, we ask that you consider provisions that increase transparency and strengthen disclosure requirements for demand

The Honorable Lee Terry
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Page Two

letters, and clarify that the Federal Trade Commission (FTC) has enforcement authority over patent trolls that operate in unfair or deceptive ways. In the same way heightened pleading requirements can help keep frivolous lawsuits out of court, minimum disclosure standards would help ensure that only demand letters truly asserting a potentially valid claim of infringement are sent. The minimum standards of transparency could be established by Congress, or a federal agency through rulemaking, whether that agency is the FTC or Patent and Trademark Office (PTO).

In addition, we support the creation of a demand letter registry and a requirement on entities which sends more than 10 demand letters in a single calendar year to enter all letters into a registry. The registry should be publicly available and maintained by a federal agency, perhaps the PTO or FTC. Such a registry would facilitate the sharing of information among demand letter recipients and also provide law enforcement with the information necessary to conduct proceedings against abusive trolls. Moreover, it would reduce the intimidation factor associated with the demand letter scheme.

We encourage the Subcommittee to pursue this issue and these recommendations and would be happy to discuss this further at your convenience. On behalf of America's credit unions and their 99 million members, thank you very much for holding this hearing and considering our views.

Best regards,

A handwritten signature in black ink, appearing to read 'Bill Cheney', with a long, sweeping underline that extends to the right.

Bill Cheney
President & CEO