

1717 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1303
(202) 225-5701
(202) 225-1012 FAX
TOLL FREE FROM IL (866) 822-5701

Congress of the United States
House of Representatives

Washington, DC 20515-1303

June 25, 2013

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Ave. N.W., Room 404
Washington, D.C. 20580

Dear Chairwoman Ramirez:

There is growing concern about the rise of “patent assertion entities” and their effect on innovation. While Congress recently passed legislation intended to strengthen our patent system, “PAEs” continue to threaten a wide array of legitimate entities.

I understand that you have proposed the Federal Trade Commission conduct a “Section 6(b)” investigation of PAEs and their business practices. I strongly urge the FTC to follow through with that action for the following reasons.

PAEs, as the FTC is aware, are companies that don’t invent, produce or sell a product, but instead acquire patents and assert them to demand royalties from other entities that develop or use similar technology. Some deride these companies as “patent trolls,” like the troll who demands a toll to cross the bridge he didn’t build.

I am concerned by the increasing frequency with which PAEs are suing governmental agencies over questionable claims of patent infringement. PAEs have targeted public and governmental entities that are end-users of technology, including transit agencies, cities, public utilities, and the U.S. Postal Service. I have attached a report by my staff that highlights how some of these companies have impacted the public sector.

Two off-shore companies, ArrivalStar S.A. and Melvino Technologies, have sued or threatened to sue about 20 transit agencies nationwide, including Metra in Northeast Illinois, which serves riders in my district. These companies hold multiple patents, and accuse transit agencies of infringement by using vehicle-tracking systems that notify riders when their bus or train will arrive. Transit officials think they could challenge these claims but feel forced to settle to avoid legal and related discovery fees that potentially could cost taxpayers \$1 million to \$2 million.

I think this type of litigation undercuts the purpose of the U.S. patent system and exploits the fact that public agencies are at a financial disadvantage. These lawsuits only hurt taxpayers in my district and elsewhere who rely on a vital public service, especially when many transit agencies already are struggling in tight fiscal times.

A Section 6(b) inquiry would be a logical follow-up to the FTC's comprehensive 2011 report on the U.S. patent system, entitled "The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition." It also could be a significant step to protecting public agencies from nuisance litigation filed by patent trolls.

Should the FTC decide to undertake a Section 6(b) investigation, I ask that it address the following questions:

- Which companies are the most prolific patent assertion entities, and who are the financial interests behind them?
- How prevalent are patent infringement lawsuits against government agencies, and how often are they successful? Are PAEs bringing legitimate patent claims against public entities, or are they using the threat of high-cost litigation to win settlements on otherwise unenforceable patents?
- What is the effect of PAE litigation on the costs of technology that is sold or licensed to public agencies by a third party when that technology becomes the focus of a patent lawsuit against a public agency? How does that affect the availability of that technology to other public entities and consumers?
- How does PAE litigation against public entities affect innovation and competition between entrepreneurs who do business with government, including those who work with public data to develop technology such as Web and Smartphone applications?

Such an inquiry also would complement an empirical study of PAEs that the Government Accountability Office plans to release this year as mandated under the America Invents Act of 2011. Altogether, this information would benefit Congress as it considers future reforms to the U.S. patent system.

Please feel free to contact me or Scott Gutierrez of my staff should you need more information or wish to discuss this further.

Sincerely,



DANIEL LIPINSKI

Member of Congress

cc:

The Honorable Julie Brill
The Honorable Maureen Ohlhausen
The Honorable Joshua Wright