



December 4, 2013

The Honorable John Boehner
Speaker
U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204 The Capitol
Washington, D.C. 20515

Dear Speaker Boehner and Minority Leader Pelosi:

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 urge House passage of H.R. 3309, the Innovation Act.

This legislation takes a positive 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. We commend Chairman Goodlatte for his leadership on this issue and his Judiciary Committee colleagues for reporting H.R. 3309 by a strong 33-5 bipartisan vote.

We are encouraged by the inclusion of language in H.R. 3309 granting the Director of the Patent and Trademark Office (PTO) discretionary authority to waive the filing fee for the transitional proceeding for the review of Covered Business Method Patents (CBM program) described under section 18(a) of the Leahy-Smith America Invents Act (AIA). This provision would be beneficial for smaller financial institutions by helping deter patent trolls from sending abusive and extortive “demand” letters and ensuring that institutions of all sizes have access to the CBM program. We share the views of others in the financial services industry that the transitional CBM program should be made permanent.

Another concern of our members is the uncertainty surrounding what constitutes an “accusation of infringement” in regards to qualifying for a proceeding under the CBM. We are very pleased that the Committee’s report clarifies that a demand letter qualifies as an accusation of infringement. There are several other provisions in the bill that could potentially deter patent trolls from sending abusive demand letters, but we hope that these can be strengthened as the process moves forward in the House and Senate, in particular by requiring demand letters to be more transparent and descriptive when alleging infringement and seeking exorbitant licensing fees. **In that regard, we urge support for the amendment offered by Rep. Jared Polis (D-CO) that requires the claimant to provide additional disclosure information in any pre-suit notification.**

Any final legislation enacted into law must also deal effectively with a pervasive dilemma facing “end users.” This is a paramount concern for financial institutions. Credit unions and banks are in almost all circumstances buyers (end users) of technology and rarely develop it themselves. Simply, they should not be sued for patent infringement for buying something in good faith, off the shelf. While H.R. 3309 is a starting point, more needs to be done to provide a common sense solution to this problem. Specifically, there should be mandatory joinder or at least a “right of contribution” added to

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patent law to help put in place a more equitable distribution of liability between end users and suppliers.

There are several other ways that H.R. 3309 should be improved. Language in the bill requiring the PTO to conduct claims construction proceedings in a manner similar to the federal courts should be removed because this shift away from the current “broadest reasonable interpretation” could weaken PTO’s ability to invalidate or narrow low-quality patents. Finally, we support the fee shifting provision, but believe it would be strengthened by adding a bonding requirement to assure that parties are able to meet this obligation.

While not perfect, H.R. 3309 is an important step in the right direction and we look forward to working with you and your House colleagues as the process continues.

Sincerely,

American Bankers Association

Credit Union National Association

Independent Community Bankers of America

Cc: Members of the House of Representatives