

UNITED *for* PATENT REFORM

September 10, 2019

The Honorable Thom Tillis
United States Senate
185 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chris Coons
United States Senate
218 Russell Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
United States Senate
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Chair Tillis, Ranking Member Coons, Chair Graham, and Ranking Member Feinstein:

The undersigned write this letter to express serious concerns about the STRONGER Patents Act of 2019, which will not only undermine vital congressional reforms that American businesses have relied on to fight back against frivolous, abusive patent litigation, but also embolden litigation abusers and significantly worsen the ability of American companies of all sizes to grow, innovate, and create jobs.

Congress overwhelmingly passed the America Invents Act (AIA) of 2011 after years of careful bipartisan consideration, debate and negotiation. Among the most significant advancements made possible by the AIA was the creation of new post-grant review procedures, including the Inter Partes Review (IPR) program at the Patent and Trademark Office (PTO). The intent of Congress in creating IPR was to improve patent quality by allowing the PTO to take another look at patents of questionable validity, which erode public confidence in the patent system and are the primary fuel of patent litigation abuse.

Since its inception, IPR has proven to be a fair and successful program that improves the patent system. For example, through the IPR program the PTO has reconsidered and invalidated patents on basic processes like sending an email when a new real estate listing is posted, scanning a document and sending it to email, and posting a podcast. Each of these invalid patents fueled abusive litigation against American companies, many of which were small businesses and startups that could not afford to fight in court. The STRONGER Patents Act would dismantle this beneficial program, allowing licensing demands and litigation on poor quality patents that would continue to drain precious resources away from job creation and the development of new products and services.

Among the many destructive proposed changes, the bill would create a bright-line rule that only one IPR petition can be filed against a patent regardless of how many businesses a patent owner sues. This unnecessary restriction is based on unfounded complaints of "multiple petitions" being used to harass patent holders--claims that the PTO's own study has debunked. Instead of preventing abuse, this change would do the opposite, promoting gamesmanship by patent owners protecting invalid patents from careful review.

The actions of the PTO over the past year have already significantly weakened IPR, contrary to Congress's intent for the program. Through new regulations, precedential decisions, and guidance to its judges, the PTO has made it harder to invalidate low quality patents. Through regular use of its unfettered discretion to deny IPRs, the PTO has turned away challenges to invalid patents for procedural reasons, forcing businesses to choose between fighting expensive district court litigation or settling. The non-practicing entities have noticed, and the frequency of abusive patent litigation is rising as a direct result. We urge Congress to defend IPR, not destroy it through the STRONGER Patents Act.

Beyond dismantling IPR, the STRONGER Patents Act would overturn the Supreme Court's unanimous 2006 *eBay* decision, a case that clarified and brought balance to the patent landscape. This change would usher in the return of automatic injunctions at district courts, allowing the non-practicing entities who make no competing products and only want licensing payments to halt the availability of complex products covered by thousands of patents based on infringement of one patent by a trivial feature. Additionally, it would once again provide the non-practicing entities with, as Justice Kennedy noted in his concurring opinion in the *eBay* case, a "bargaining tool to charge exorbitant fees" because of the threat of an injunction.

The STRONGER Patents Act would significantly weaken the U.S. patent system to the detriment of American businesses. Congress should instead be evaluating how to defend IPR, improve patent quality and decrease abusive patent litigation that drains the resources of U.S. businesses.

Sincerely,

Acushnet	American Public Power Association
Adobe Systems	American Society of Travel Agents
Alliance of Automobile Manufacturers	American Trucking Associations
Amazon	Association for Accessible Medicines
American Apparel & Footwear Association	Association of Global Automakers
American Association of Advertising Agencies: 4A's	AT&T
American Gaming Association	BrandsMart U.S.A.
American Hotel & Lodging Association	California Technology Council

Capstone Photography	Internet Association
CEDIA	Internet Infrastructure Coalition
Cisco Systems	iZi Survey LLC
Coalition for Patent Fairness	JCPenney
Comcast	Johnson Controls
Computer & Communications Industry Association	Kickstarter
Consumer Technology Association	Medici Ventures, Inc.
Culver's	Motorola Solutions
Demand Progress	MPA - The Association of Magazine Media
Developers Alliance	Mylan
Dillard's	National Apartment Association
Direct Marketing Association	National Association of Convenience Stores
Dropbox	National Association of Home Builders
Electronic Transaction Association	National Association of REALTORS®
Engine Advocacy	National Council of Chain Restaurants
Entertainment Software Association	National Grocers Association
Facebook	National Multifamily Housing Council
Food Marketing Institute	National Restaurant Association
General Motors	National Retail Federation
Google Inc.	NCTA – The Internet & Television Association
High Tech Inventors Alliance	Overstock.com, Inc.
Home Builders Association of Iowa	Printing Industries of America
HTC America, Inc.	Qurate Retail Group
Independent Bankers Association of Texas	R Street Institute
Intel	Rackspace
International Franchise Association	Red Hat, Inc.

Retail Industry Leaders Association	Texas Communications
Salesforce.com, Inc.	tZERO Group, Inc.
Samsung Electronics	US*MADE
Seagate Technology LLC	U.S. Travel Association
Security Industry Association	Verizon Communications Inc.
Software and Information Industry Association	Vizio
Southeastern Employment Services	Wisconsin Grocers Association
Sprint	Yum! Brands, Inc.

cc: The Honorable Members of the Senate Committee on the Judiciary
The Honorable Jerry Nadler, Chair, House Committee on the Judiciary
The Honorable Doug Collins, Ranking Member, House Committee on the Judiciary
The Honorable Hank Johnson, Chair, House Committee on the Judiciary Subcommittee on
Courts, Intellectual Property, and the Internet
The Honorable Martha Roby, Ranking Member, House Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet