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Office of Senator Patrick Leahy  
437 Russell Senate Bldg.  
United States Senate  
Washington, DC 20510

December 16, 2013

Dear Senator Leahy,

Thank you for taking the time to speak with me last week and for connecting me with your Judiciary Committee staff. I applaud your efforts to address abusive patent practices and your leadership in sponsoring bipartisan patent reform legislation. It is far too easy for so-called patent trolls to make dubious claims of patent infringement and use the threat of expensive litigation to extract settlements and licensing fees. These practices harm our economy and stunt innovation – and have real consequences in Vermont. The threat of patent litigation has slowed the growth of our tech businesses. Money that could have been invested in growth is spent on legal fees. And, as you know, patent trolls have also targeted small businesses and nonprofits in Vermont and elsewhere with unfair and deceptive demand letters.

My office has devoted considerable resources to this problem. I was the first state attorney general to sue a patent troll (MPHJ Technology Investments) under state consumer protection law. The Vermont Legislature, with the support of local businesses, lawyers, our Agency of Commerce, and my office, passed a groundbreaking state law that helps businesses targeted by patent trolls. I have been working with my colleagues across the country to find ways to deter abusive patent practices and get some relief for the victims of patent trolls.

I was therefore heartened to see that the Innovation Act, H.R. 3309, recently passed the House. I strongly support the goals of your proposed patent reform legislation, S. 1720, including staying litigation against customers, greater transparency of patent ownership, PTO reforms, and remedies for misleading or deceptive patent demand letters. I ask, however, that you consider amendments to address the following:

- 1. Clarification of state enforcement authority.** The bill would grant the Federal Trade Commission authority to enforce the prohibition on bad-faith demand letters. It does not mention the concurrent authority of state attorneys general to bring the

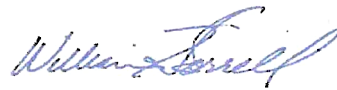
same types of enforcement actions under state law. Most states have laws that prohibit unfair and deceptive acts in commerce (sometimes called mini FTC acts). State attorneys general work closely with the FTC on many consumer protection matters and generally have the same authority to protect consumers and bring enforcement actions. In Vermont, the interpretation of state law and its enforcement expressly track federal law. Any federal legislation on this issue should confirm that state attorneys general share enforcement authority with the FTC and that a state may bring an enforcement action under state consumer protection law against a person who sends bad-faith demand letters into the state.

- 2. Clarification of state-court jurisdiction over bad-faith demand letters.** Patent trolls typically argue that sending demand letters into a state – even misleading or deceptive demand letters – is insufficient to support a finding of personal jurisdiction in the courts of that state. That argument is flatly inconsistent with longstanding interpretations of state consumer protection laws and the due process requirements for actions brought under those laws. Federal legislation should confirm that state courts have personal jurisdiction over entities that direct unfair or deceptive patent demand letters into a state.
- 3. Transparency for patentees that send demand letters.** The key transparency provision in S. 1720 applies only when a patentee files a civil action alleging infringement. That is too late. Patent trolls often succeed in extracting licensing fees and settlements before any litigation is filed. I urge you to consider requiring disclosure of all those with a financial interest in the patent whenever a patent demand letter is sent. We believe that sunlight and transparency may deter the worst abusers of our patent laws.
- 4. Customer Stay.** Instead of going after sophisticated manufacturers of technology, patent holders often target end-users. These customers are commonly less sophisticated and have fewer resources to fully evaluate the patent's validity or scope than the manufacturer. This makes the customer stay provision, proposed in S. 1720, important. However, as currently drafted the stay is only available if the patent holder also sues the manufacturer and the manufacturer consents. To be effective, we believe such a provision will need to allow the customer to join the manufacturer in the lawsuit. This would prevent patent trolls from getting around the customer stay by only suing customers, and never the manufacturers.
- 5. Patent litigation reform.** One reason that the patent troll business model is successful is that the cost of patent litigation usually far outstrips the cost of a settlement. H.R. 3309 would make several key changes that would reduce those

costs and give companies wrongly accused of patent infringement incentives to litigate. The proposed reforms include heightened pleading standards for complaints alleging infringement; limits on unnecessary and expensive discovery; and a somewhat more relaxed standard for awarding attorneys' fees to the prevailing party. Although these provisions are not directly relevant to enforcement actions by state attorneys' general, they would help deter meritless infringement cases and allow businesses targeted by patent trolls to litigate on fairer, more reasonable terms.

Again, thank you for your continuing leadership in strengthening the quality and effectiveness of our patent system. I look forward to working with you in the effort to deter the bad actors who are exploiting the system for undeserved gain.

Sincerely,

A handwritten signature in blue ink, appearing to read "William H. Sorrell".

William H. Sorrell  
Attorney General