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Via Electronic Mail

Congressman Peter Welch
128 Lakeside Avenue
Suite 235
Burlington, VT 05401

RE: Patent Trolling

Dear Congressman Welch:

I am very heartened by the thoughtful and important work that the House Judiciary Committee has begun addressing the pervasive problem of abusive patent enforcement. As I'm sure you are aware, there are numerous bills that have been introduced in recent legislative sessions aimed at addressing the problem of so-called patent trolling; most recently H.R. 3309, introduced by Chairman Goodlatte.

Patent trolling is a misuse of the patent system. Instead of promoting innovation and invention, patent trolls utilize the system as a means of extorting payments from small and large businesses based on threats of expensive litigation. Often they are able to extract payments not based on the merits of their patents or their claims against the alleged infringers, but rather based on the high costs that the alleged infringer would incur to fight back. This has harmed our national economy, and has personally affected many Vermont businesses that have to divert and expend resources to address often weak and unfounded allegations of infringement.

My office has been active in working on solutions to address the concerns of businesses that are faced with unfair and deceptive patent enforcement letters. I filed the first lawsuit in the country by an attorney general against a patent troll alleging violations of the state's law prohibiting unfair and deceptive trade practices. Additionally, the state legislature recently passed a law that provides some recourse for individuals targeted with bad faith patent assertions. These efforts have been significant, and will benefit tremendously from the simultaneous work that is occurring in Congress.

In light of my office's active participation and experience in this area, I would like to share some comments regarding H.R. 3309. I strongly support the goals of the bill, including greater transparency of patent ownership, discovery limitations, attorney's fees, and enhanced pleading requirements.

One particular concern of my office and other state attorneys general – consistent with our enforcement of state consumer protection law – is that some entities engage in unfair and deceptive practices when sending demand letters to alleged infringers. I recommend adding a provision, similar to the one in S. 1720, sponsored by Senator Leahy, which expressly prohibits unfair and deceptive demand letters. However, I would recommend that such provision: (1) give state attorneys general concurrent enforcement authority with the FTC and confirm 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; and (2) clarify that state courts have personal jurisdiction over patentees that send patent assertion letters containing unfair and deceptive statements into the state.

Finally, the primary transparency provisions in H.R. 3309 apply only when a patentee files a civil action alleging infringement. Such detailed disclosures of the real party in interest come 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.

Thank you for consideration of the comments that I have set forth in this letter. I am excited about the work occurring on the federal level to address abusive patent practices, and I look forward to continuing the work necessary to protect Vermont businesses from these practices.

Sincerely,

A handwritten signature in blue ink that reads "William H. Sorrell". The signature is fluid and cursive, with the first name "William" and last name "Sorrell" clearly legible.

William H. Sorrell
Attorney General