

**Opening Statement of the Honorable Michael C. Burgess, M.D.**  
**Subcommittee on Commerce, Manufacturing, and Trade**  
**Hearing on “Update: Patent Demand Letter Practices and Solutions”**  
**February 26, 2015**

*(As Prepared for Delivery)*

Unfortunately, abusive patent demand letters are not a new problem, and they are not new to this Committee. Patent trolls continue to send demand letters in bulk to induce victims to pay unjustified license fees rather than fight back.

Last year, this Subcommittee held an oversight hearing, a legislative hearing, and eventually produced and marked up draft legislation targeting bad-faith demand letters. As this Committee learned through its process, the act of defining a “troll” is a difficult task. In protecting companies from trolls, legislation must also not prevent legitimate patent holders from protecting their rights from being infringed by other actors. But a task that is difficult is not a task that is impossible. I have a sincere belief that the realm of patent demand letters, like so many other areas under the jurisdiction of this committee, can result in bipartisan agreement and legislation.

Thus, in a new year, in a new Congress, we renew the effort to forge ahead to achieve such a goal. We again take aim to solve a small piece of the patent world that has caused some of the greatest consternation—patent trolls. I sincerely believe that a targeted solution to this problem is the best one, and hope that our hearing today will restart the conversations on how to best to stop patent trolls yet allow legitimate patent holders to proceed.

The truth is that the destructive business model of the trolls has largely skated just beyond the reach of law—and as a result, it still pays to be a patent troll. And because federal law has been slow to keep up with the evolving world of patent trolls—even in a subject area where federal jurisdiction is clearly delineated in the Constitution’s Article I enumerated powers of Congress—the states have felt an obligation to begin looking at ways to protect their constituent companies.

Protection of intellectual property rights is a federal issue. Indeed, Article I, Section 8, clause 8 clearly envisions Congress as having both the power and the duty to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” It would appear from the stories we have all heard of patent trolls that the protection of these rights is being abused. This committee wishes to change that equation.

I am especially concerned about the effects these fraud schemes have on small businesses. When a business receives a demand letter—especially one that is intentionally vague or misleading—many small business owners lack the tools necessary to distinguish a bogus assertion from a legitimate infringement claim. However, the U.S. Patent and Trade Office lists three websites—Stand Up To the Demand, ThatPatentTool, and Trolling Effects—as resources companies can use to protect themselves.

There is work going on beyond this subcommittee to address some of these issues. For example, a number of websites have popped up for demand letter recipients to verify the legitimacy of infringement claims against them. Eighteen states have also enacted legislation and a handful of state attorneys general have brought cases under their consumer protection laws. As we will discuss today, however, it may be that State efforts to curb patent abuses are on uncertain legal footing due to preemption and First Amendment doctrines developed in federal courts.

These doctrines are designed to protect the fair assertion of patent rights, and any legislation this Subcommittee produces must allow legitimate assertions. It is my intent that this committee can work with companies who own large patent holdings to address this issue. As many companies have seen, illegitimate claims could ultimately undercut the value of legitimate patents.

To help us strike the proper balance, we will hear from experts in the field as well as representatives from both abusive demand letter victims and a large patent holder. We hope this will inform the direction of whatever legislation this Subcommittee ultimately produces. I hope that we may use last year's draft, the Targeting Rogue and Opaque Letters—or "TROL"—Act, as a place to begin these discussions.

One area we will need to focus on is how the "bad faith" standard in that legislation would work with the required disclosures in the Act. Further, how those required disclosures fit with the prohibited bad acts included in the draft legislation is also an area I hope people will look at closely.

This Subcommittee is eager to work with the panelists before us and others to address this problem.

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