

Opening Statement of the Honorable Michael C. Burgess, M.D.
Subcommittee on Commerce, Manufacturing, and Trade
Hearing on “HR ____, Targeting Rogue and Opaque Letters (TROL) Act”
April 16, 2015

(As Prepared for Delivery)

Last year, the subcommittee held a series of negotiations resulting in the draft legislation we consider today.

Although the draft bill passed our subcommittee with bipartisan support, I believe the text could be amended narrowly to achieve better protections for recipients of demand letters.

So today we look forward to hearing from the panelists about how we can make some targeted changes to the draft text to achieve this goal.

The problem of abusive demand letters has set off a surge in state activity to address the issue.

Unfortunately, many states have unintentionally created problems for patent holders in trying to address the harms created by bad actors.

For example, state courts should not be empowered to determine the “reasonable” cost of a patent license. Nor should the definition of a bad faith demand letter be allowed to disregard the First Amendment rights of patent owners.

Causes of action under state law are in trouble in the demand letter space—when they have been removed to federal court, Federal Circuit doctrine generally controls patent matters. As we heard in our first demand letter hearing this year, Federal Circuit jurisprudence preempts all but a narrow set of cases in the demand letter context.

When Nebraska attempted to enjoin MPHJ from victimizing Nebraska businesses and residents, the case wound up in federal court. There, it was dismissed under the Federal Circuit’s Noerr-Pennington doctrine, among other things.

Most of us agree that MPHJ was, indeed, attempting to trick demand letter recipients into paying undue license fees. Federal legislation would provide state attorneys general a remedy for those demand letter recipients who may not be protected because state level safeguards are negated.

These are a couple of the compelling reasons for federal legislation and for preempting the state laws that directly deal with demand letters.

We aim to move this bill forward and I believe it could become law so long as it narrowly addresses the demand letter problem with due respect to the Constitution.

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