



**Statement for the hearing
“The Impact of Patent Assertion Entities on
Innovation and the Economy”**

**Before the United States House of Representatives
House Energy & Commerce Subcommittee on
Oversight & Investigation**

**By Mr. Jamie Richardson
Vice President, Government and Shareholder
Relations
White Castle System, Inc.**

**On behalf of the
National Restaurant Association**

November 14, 2013

Chairman Murphy, Ranking Member DeGette, and esteemed members of this subcommittee, thank you for the opportunity to testify regarding patent assertion entities' impact on innovation and the economy.

I am Jamie Richardson, Vice President of Government, Shareholder and Community Relations at White Castle System, Inc. (White Castle). It is an honor to share our perspective, on behalf of our company and the National Restaurant Association.

White Castle System, Inc.

Currently based in Columbus, Ohio, White Castle first opened its doors in 1921 in Wichita, Kansas. To this day, we are a family-owned, privately-held company. The majority of our nearly 10,000 team members work in our 406 restaurant locations across 12 states. We have built several locally-based divisions to supply each restaurant, including bakeries, meat processing plants, frozen food plants and manufacturing plants that, together, produce everything we offer to White Castle customers.

White Castle is the Taste America Craves - We believe good business, great food, and responsible citizenship should all go together. Our dedication to serving our community isn't just a company priority – it's a personal commitment. It is through this commitment that White Castle has consistently been a front-runner in providing our customers with the offerings they crave. We have prided ourselves on a number of "firsts" ever since we opened our doors in 1921 as the nation's first fast food hamburger chain. White Castle was the first fast food chain to offer carry out or "to go" food packages, the first fast food chain to sell a million and then later on a billion burgers, the first fast food chain to get our product on grocery store shelves, and more recently the first fast food chain to have a website, and the first fast food hamburger chain to offer online ordering.

At White Castle, we have employed some of these newer "firsts" in an effort to enhance the restaurant experience for our loyal customers. Unfortunately, it is these newer "firsts" that have come under fire from frivolous patent assertion entity claims – claims which are impacting our business decisions and inhibiting our ability to provide our customers with the experience both we and they want. In order for us to continue to strive as a leader, job-creator, and innovator in the industry, it is critical that we have the ability to integrate these new technologies without the daily fear of receiving frivolous patent assertion litigation demands. The same holds true for the restaurant and foodservice industry more broadly as consumer demand for new, innovative technologies and an enhanced restaurant customer experience continues to grow.

The Restaurant and Foodservice Industry

The National Restaurant Association is the leading trade association for the restaurant and foodservice industry. Its mission is to help members establish customer loyalty, build rewarding careers, and achieve financial success.

The industry is comprised of 980,000 restaurant and foodservice outlets employing 13.1 million people who serve 130 million guests daily. The simple fact is that restaurants are job-creators. While small businesses comprise the majority of restaurants, the industry as a whole is the nation's second-largest private-sector employer, employing about ten percent of the U.S. workforce. The industry also accounts for roughly 4% of the nation's GDP with an estimated \$660 billion in annual sales.¹

National Restaurant Association data shows that restaurant operators are investing millions of dollars in new technologies to provide customers with the technology and choice they crave. Roughly 50% of all combined full-service and limited-service restaurants plan to spend a bigger share of their budgets this year on customer-facing technology such as Wi-Fi, iPads/tablets, and smartphone apps.² Many of these products and features, or the technology processes affiliated with them, have been the target of patent assertion entity infringement claims in the industry, which is impacting individual operator's decisions to bring these customer value-add products to market.

Byte-Size Convenience									
Proportion of consumers likely to utilize the following convenience technologies if offered at fullservice restaurants									
	All Adults	Age Group					Frequent Fullservice Customers	Frequent Quickservice Customers	Frequent Off-Premises Dinner Customers
		18-34	35-44	45-54	55-64	65 or Older			
Electronic payment system at the table	52%	68%	57%	53%	41%	26%	55%	57%	59%
Smartphone app allowing customers to view menu, order takeout or delivery, and make reservations	50%	70%	54%	52%	35%	24%	61%	60%	61%
Electronic ordering system at the table	44%	59%	52%	42%	34%	19%	50%	50%	55%
Menu on iPad or electronic tablet at the table	42%	56%	50%	41%	32%	17%	47%	46%	48%
Mobile or wireless payment options, such as Google Wallet or a smartphone app	32%	46%	36%	31%	19%	13%	37%	41%	49%

Source: National Restaurant Association, *National Household Survey*, 2012

¹ 2013 Restaurant Industry Forecast.

² National Restaurant Association, *Restaurant Trends Survey*, 2012.

The ability for operators to bring these technologies to market will be critical as restaurateurs compete in an effort to fulfill consumer demand for new technologies. For example, if the technology was provided by a full-service restaurant, 50% of all adults would use a smartphone app to view a menu, order takeout or delivery, or make reservations. That number is a staggering 70% for adults ages 18 to 34. For limited-service restaurants, that number is 40% and 59% respectively. In short, these are technology features customers want.³

Stepping Up the Pace
 Proportion of consumers likely to utilize the following convenience technologies if offered at limited-service restaurants

	All Adults	Age Group					Frequent Fullservice Customers	Frequent Quickservice Customers	Frequent Off-Premises Dinner Customers
		18-34	35-44	45-54	55-64	65 or Older			
Option to place order using a self-service customer-activated ordering terminal	44%	61%	47%	45%	36%	19%	53%	52%	56%
Option to place order online through a website	41%	62%	47%	37%	28%	15%	51%	54%	59%
Smartphone application with features such as viewing menu and ordering takeout or delivery	40%	59%	42%	39%	30%	15%	51%	54%	56%
Mobile or wireless payment options, such as Google Wallet or a smartphone app	27%	40%	29%	26%	17%	8%	32%	36%	38%

Source: National Restaurant Association, National Household Survey, 2012

The Problem & Specific Examples

White Castle and many other restaurant and foodservice companies have seen an increasing number of patent assertion entity infringement claims related predominately to new technologies and technological processes. Patent trolls often seek to extort settlements, knowing that it will be expensive and time consuming for businesses to fight the baseless claims in court. Patent assertion entities stifle innovation and inhibit the implementation of customer facing technologies at the store or e-commerce level, while draining necessary time and money from businesses.

In addition to the tangible cost, there are opportunity costs both to the business and consumer. These frivolous patent assertion entity (PAE) demands stifle retailers’ ability to utilize and consider new forms of technology that consumers demand and deserve. Ultimately, PAEs’ conduct harms everyone through higher prices and less innovation to the detriment of job-creating industries like ours and the customers we serve.

³ National Restaurant Association, National Household Survey, 2012

White Castle is an end-user of the technologies in question. We have major, upfront, challenges when we receive a demand from a PAE. First, the initial demand letter is very obscure. Often, it is unclear what type of settlement a PAE is seeking or the basis of their claim. For example, we have a difficult time discerning whether or not the PAE is asking for a one-time fee or a separate license for every use. Furthermore, we almost always have to have the patent infringement claims examined by an outside patent specialist to understand if the patent infringement claim is legitimate, including whether or not such a patent exists and whether or not it is valid. At White Castle, we have some in-house legal resources, but the necessity of seeking outside counsel to investigate these PAE demands is expensive, and potentially cost prohibitive for other operators in the industry. Improved transparency in these initial demand letters would help provide a first line of defense in determining the legitimacy of PAE claims.

Second, we do not always receive a demand letter before a PAE files a suit against us. This has been our experience with one PAE. This type of litigious behavior is a bullying tactic, and an activity that can hopefully be curbed by responsible and meaningful patent litigation reform. Such reform would shift the economic dynamics that empower PAEs to employ these tactics with very limited financial risk, while preserving the ability of legitimate patent holders to bring rightful claims.

Third, many of the PAE demands we receive negatively impact our business decision-making processes, and stifle innovation by limiting our ability to employ emerging technologies in everyday aspects of our business. Specific examples of PAE demands that have impacted our ability to communicate with customers include claims against inserting a hyperlink in Shop Alerts promotions or the sending of tweets containing URLs to White Castle followers via our Twitter Feed.

Other patent infringement claims have prevented us from using White Castle's logo to pinpoint locations on our website restaurant locator. Additionally, PAEs challenged White Castle's use of QR codes on our packaging during a recent promotional campaign by inferring the use of QR codes by White Castle caused our customers to potentially use unlicensed software to scan the QR code. Both of these examples have major implications for the future of our promotional and loyalty programs, development of our website, and enhancement of our mobile smartphone app.

Impact of PAEs on Business and Innovation

White Castle's entire approach to marketing has changed as a result of threatening PAE demands. Rather than pay fees to patent trolls, or spend significant resources to hire outside patent counsel, we have refrained from utilizing the alleged infringed activities. The unfortunate byproduct is that our use of QR codes and hyperlinks will be limited in the future despite the value those basic technologies can bring to our customers. Creative website designs will be passed up. And, we may make the strategic decision to cease using digital menu boards despite the potential business efficiencies they create for our operators and customers by allowing us to

provide real-time up-to-date information about our latest products, promotions, and offering. Where we continue to utilize any of these, or similar technologies in social media, advertising, or other parts of the business, we will proceed with extreme caution treating uncharted territory like a field of landmines.

As a result of PAE demands, commonplace, everyday business risks have turned into expensive liabilities. Existing PAE demands, and the threat of further PAE demands, have significantly impacted White Castle's approach and willingness to utilize third-party technology providers. For example, we seek broader indemnification provisions in our agreements and we are less willing to take a chance on emerging technologies or new providers if the potential for a PAE claim exists.

If we at White Castle have modified our approach to partnering with third-party technology providers, there are certainly others in our industry doing the same. Suppliers of the technology services who are threatened by these types of dubious PAE litigation claims cannot shed the shadow of doubt cast upon their enterprise. This stifles the growth of entrepreneurs that are trying to gain a foothold in the industry. All of this results in the stifling of profitability, ingenuity, and growth, three things that we desperately need in an economy that is straining to grow.

Conclusion:

It is clear that PAE demands are negatively impacting innovation and the economy as evidenced by White Castle's experience and that of others within our industry.

On behalf of our customers, the industry, and the 13.1 million employees who depend on us for their very livelihood, we strongly encourage Congress to seek PAE reforms that create transparency; remove barriers to innovation so the free market for new, emerging technologies can flourish; and to provide end-users of technology critical relief from egregious PAE demand tactics. In a letter to Congress (Attachment #1), thirty-six state restaurant associations joined the National Restaurant Association in calling for meaningful and responsible patent reforms that begin with increased demand letter transparency.

Thank you, once again, Chairman Murphy, Ranking Member DeGette and members of this subcommittee for holding this critical hearing. This is a vital step in shedding light on the growing problem of PAEs and the negative affect they have on business, innovation, and the economy. We urge Congress to pass meaningful reforms, without delay, so White Castle, and others in the restaurant and foodservice industry can continue to invest in our business, our employees, and our loyal customers by enabling the seamless rollout of innovative, new technologies that improve business efficiencies and meet consumer demand. Thank you.



November 12, 2013

Chairman Bob Goodlatte
United States House of Representatives
Judiciary Committee

Ranking Member, John Conyers, Jr.
United States House of Representatives
Judiciary Committee

Chairman Fred Upton
United States House of Representatives
Energy & Commerce Committee

Ranking Member, Henry Waxman
United States House of Representatives
Energy & Commerce Committee

Chairmen Goodlatte and Upton and Ranking Members Conyers and Waxman:

On behalf of our nation's restaurant and foodservice industry, the National Restaurant Association strongly supports reforms to provide technology end-users with relief from abusive patent assertion entities' (PAEs or patent trolls) demands. The restaurant and foodservice industry consists of roughly 980,000 locations nationwide with estimated sales of \$660 billion accounting for roughly 4% of our nation's GDP. The industry is also the 2nd largest private employer in the United States with over 13.1 million employees. Roughly 90% of the industry consists of small business owners.

This time last year, very few industry members had heard of patent trolls. Unfortunately, since then, our industry has been increasingly barraged with ill-founded patent infringement litigation demand letters challenging the use of basic technologies in our establishments, on our websites, and on individuals' smartphones. Many of the technologies that have come under fire from patent trolls are ones that provide extensive value-added services to our customers, such as in-store Internet WiFi access, online nutrition calculators, and restaurant locators on websites and in store-branded smartphone applications. The restaurant industry is constantly evolving to provide exceptional service to our customers. In the process, we work closely with innovative entrepreneurs in the technology space. Unfortunately, even the threat of litigation deters restaurants from partnering with new and innovative third-party technology providers. We in no way wish to inhibit small inventors and other patent holders' ability to bring legitimate claims, but trolls, with frivolous claims, provide no value to the overall economy and must be tempered from steering valuable resources and time away from job-creating industries.



It is critical to create a more equitable and transparent environment that changes the economic dynamics for patent trolls. Currently, there is very little risk or exposure for patent trolls who send frivolous patent infringement demand letters. In order to shift these economic dynamics, patent litigation reform and increased transparency on demand letters are key reform priorities for our industry, along with any other reasonable solutions that make it more difficult for patent trolls to prey on end-user companies, such as restaurants.

When a business receives a litigation demand letter, it has to weigh the validity of the patent infringement claims and make a decision about how to respond to the letter. Often, it is easier to settle even baseless infringement claims rather than fight the patent trolls because of the extensive time and resources it would take to litigate the claim. For all businesses, and particularly small businesses, the first step in this decision-making process is determining the legitimacy of the patent assertion entity's claims. Demand letters often lack the information and transparency necessary for business owners to research and make a simple assessment about whether the patent infringement claim has merit. Requiring additional information and transparency on the actual demand letters, as well as increased information online at a trusted third-party website about pending patent litigation and patent troll companies, will help provide small business owners with a first line of defense to assess the validity of many of the patent infringement claims they are seeing at an increasingly alarming rate.

We are pleased that Senator Leahy and others have encouraged the Federal Trade Commission to utilize its existing authority and powers to combat abusive patent troll behavior, including egregious demand letter practices. We are hopeful that legislators will make demand letter transparency a top priority for any patent reform legislation as Congress moves forward. The bottom line is that patent trolls and their frivolous litigation demand letter claims are drain on business and the economy, and it is critical that we reform the system to make it more difficult for the patent trolls to prey on industries like ours who add value to the communities we serve.

Sincerely,

National Restaurant Association
Alabama Restaurant & Hospitality Alliance
Arizona Restaurant Association
Arkansas Hospitality Association
California Restaurant Association
Colorado Restaurant Association
Delaware Restaurant Association
Florida Restaurant & Lodging Association
Georgia Restaurant Association
Iowa Restaurant Association



Idaho Lodging & Restaurant Association
Illinois Restaurant Association
Louisiana Restaurant Association
Restaurant Association of Maryland
Michigan Restaurant Association
Mississippi Hospitality & Restaurant Association
Nebraska Restaurant Association
New Hampshire Lodging & Restaurant Association
New Jersey Restaurant Association
New Mexico Restaurant Association
New York State Restaurant Association
North Carolina Restaurant & Lodging Association
North Dakota Hospitality Association
Ohio Restaurant Association
Oklahoma Restaurant Association
Oregon Restaurant & Lodging Association
Pennsylvania Restaurant & Lodging Association
Rhode Island Hospitality Association
South Carolina Restaurant & Lodging Association
South Dakota Retailers Association – Restaurant Division
Tennessee Hospitality Association
Texas Restaurant Association
Utah Restaurant Association
Vermont Chamber of Commerce
Virginia Hospitality & Travel Association
West Virginia Hospitality & Travel Association
Wisconsin Restaurant Association

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