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H.R. ____, A BILL TO ENHANCE FEDERAL AND STATE
ENFORCEMENT OF FRAUDULENT PATENT DEMAND LETTERS

THURSDAY, MAY 22, 2014

House of Representatives,

Subcommittee on Commerce, Manufacturing, and Trade,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:15 a.m., in Room 2123, Rayburn House Office Building, Hon. Lee Terry [chairman of the subcommittee] presiding.

Present: Representatives Terry, Lance, Blackburn, Harper, Olson, McKinley, Kinzinger, Bilirakis, Johnson, Long, Sarbanes, McNerney, Welch, and Barrow.

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Staff Present: Charlotte Baker, Deputy Communications Director; Kirby Howard, Legislative Clerk; Brian McCullough, Senior Professional Staff Member, Subcommittee on Commerce, Manufacturing and Trade; Paul Nagle, Chief Counsel, Subcommittee on Commerce, Manufacturing and Trade; Shannon Weinberg Taylor, Counsel, Subcommittee on Commerce, Manufacturing and Trade; Graham Dufault, Subcommittee on Commerce, Manufacturing and Trade Policy Coordinator; Michelle Ash, Minority Chief Counsel; and Will Wallace, Minority Professional Staff Member.

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Mr. Terry. For our panel and for our witnesses, we do expect to vote somewhere between 10:00 and 10:15. So I am just going to say good morning to everyone, and this is a really important hearing because of the numerous complaints that we have received, particularly from end users regarding the perceived fraudulent demands on patent infringements.

The committee has taken an approach to be -- what would be the right term -- intellectual about this, realizing that there are First Amendment implications, as well as we do not want to make it more difficult for valid patent holders to pursue their remedies when there is a violation, and so therefore, this is really the art and science of wording.

And that is why we have this hearing today is to get the experts to help us make sure that we have the needle thread appropriately so that we don't injure or make it more difficult for valid patent holders of any size, but that we are able to curtail the abuses that we see occurring.

At this point, I will yield back my time and recognize Jerry for an opening statement, unless you waive.

Mr. McNerney. No, I will just say a few words. Thank you, Mr. Chairman.

Mr. Terry. Okay. So you are recognized for your 5 minutes.

Mr. McNerney. Thank you, witnesses, for coming this morning. I

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am a patent holder. I have a couple patents. I do have concerns of patent violations, but I also understand the challenge of making sure that we don't have a patent system where companies, entities are able to gain the system because that hurts everyone except the gamers. And threading that needle is going to be a challenge. I appreciate the chairman's viewpoint on this to protect the patent holders as well as providing the right words in the law that make this a viable law.

So I am going to be brief and yield back, Mr. Chairman, and I thank you for holding this hearing.

Mr. Terry. I appreciate that. And now I will recognize, we have the esteemed first panel, which are Members of Congress that are also active on patent and patent abuse issues. Mr. Polis from Colorado, and Mr. Marino.

And Mr. Polis, you will be first. You are recognized for your 5 minutes, although you said you needed 40. If we can compromise at 5. You are recognized.

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**STATEMENT OF THE HON. JARED POLIS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF COLORADO**

Mr. Polis. Thank you, Mr. Chairman, in the proud tradition of compromise. Thank you, Chairman Terry, Acting Ranking Member McNerney for allowing me the opportunity to testify on this important topic of patent demand letter reform. I deeply appreciate, on behalf of my constituents, the attention your committee is devoting to the issue of abuse of demand letters.

As an entrepreneur and former venture capital investor, like my colleague, Mr. McNerney, an inventor of several patented inventions, I got to experience from several perspectives the challenges of starting and running a small business. Today these challenges are exacerbated by patent trolls who prey on our core job creators including many startups in my home district in Colorado by sending misleading and scary demand letters without basis.

Patent trolls increase the cost of doing business and cause small businesses to shell out millions in legal fees or settlement fees to address illegitimate and unfounded claims. While many of these patents should never have been granted in the first place, but since they have, one of the ways to crack down on patent trolls is by requiring demand letter transparency and allowing enforcement against bad

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actors.

Last November, I was pleased to introduce, along with my colleague, Representative Marino, as well as Representative Deutch, a bipartisan comprehensive bill that accomplished these goals, the Demand Letter Transparency Act. Our bill would require certain patent holders to disclose information relating to the patent in their demand letters and file their letters in a searchable and accessible public registry maintained by the PTO. Our bill truly would help prevent trolls from hiding behind anonymity, empower defendants to take action together and share information as well as alert regulatory authorities and the PTO about frivolous enforcement of patents.

Let me be clear, addressing abuse of patent demand letters is only a part of a much larger issue. Our patent system, in many ways, was designed to protect physical innovation, machines and contraptions and now attempts are being made to apply it to apps and the Cloud and digital innovation.

Much more needs to be done to ensure that the innovations of tomorrow have the same protections as the innovations as yesterday without casting a power on the ongoing innovations of our economy. I was sad to hear Senator Leahy's recent announcement with regard to the patent bill in the Senate, but I want to remind this committee of the urgency that we have to find common ground and bring our patent system into the 21st century.

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While I wish the discussion draft took a more comprehensive approach to combating abusive demand letters, I certainly understand the limited jurisdiction of this committee, and I am encouraged that this committee is moving forward on the issues under its jurisdiction. However, I also want to point out, with regard to the committee's proposal, some language that may inadvertently actually take us backwards in addressing the troll problem at the pre-litigation stage.

First, I am concerned that the bill may inadvertently limit the FTC's Section 5 authority to target harmful behaviors. The FTC already has enforcement authority to go after certain entities who are engaging in unfair and deceptive practices by sending abusive demand letters. I commend the committee for its inclusion of a savings clause in its discussion draft, which is a great improvement over the original draft, but I believe that the language may not be sufficient to preserve the FTC's existing Section 5 authority.

By delineating a list of unfair and deceptive acts or practices in the bill, the legislation may actually limit the ability of the FTC to target other unnamed harmful behaviors and unforeseen abusive behaviors. So to ensure this legislation does not foreclose the FTC's existing enforcement authority, I urge the committee to include a catch-all provision that would allow the FTC to bring actions to address other harmful behaviors than aren't expressly listed in the legislation.

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Second, I am concerned with the draft's broad preemption clause, which may inhibit state attorney generals from seeking civil penalties against bad actors. The United States have passed strong laws that are pro-innovation, prohibiting abusive demand letters. 42 State AGs have explicitly stated their desire for Federal demand letter reform along with concurrent State authority.

Until we can act decisively at the Federal level, I hope that this body can support the actions that States are taking to protect their small businesses and entrepreneurs. I am thus concerned that this discussion draft may strip State AGs of an important tool that we need to combat bad actors.

Third, I have concerns that the rebuttable presumption language may create a loophole. The inclusion of this language may place a large burden on demand letter recipients and the FTC to prove their case.

Finally, I am concerned that the bill's scope is only limited to systems integrators, consumers and end users. I am hopeful we can expand the bill's definition to protect all recipients of demands by bad actors. In the real world, these examples include restaurants, app developers, retail software or services.

Thank you, again, for allowing me to testify today. I truly believe that the FTC, under the jurisdiction of this committee, does have a critical role to play with regard to improving the climate for entrepreneurship across our country. I greatly appreciate your

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attention to patent demand letter reform, and I look forward to working with you on this legislation.

Mr. Terry. Thank you.

[The prepared statement of Mr. Polis follows:]

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Mr. Terry. Gentleman from Pennsylvania is now recognized for 5 minutes.

STATEMENT OF THE HON. TOM MARINO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Marino. Thank you, chairman, and thank you acting ranking member and the additional members of the committee for allowing me to testify here today.

Nonpracticing entities or patent trolls have created a new business model that takes advantage of our patent laws in our court system. They have crafted a system of borderline extortion that is a major threat to our economy and jobs. While I am disappointed to hear that the Senate has fumbled the ball in the patent troll litigation reform for this year, I can tell you with full assurance, many of us and my colleague and I in the House will continue to fight this battle until we have won.

While there are many issues in patent troll litigation, each case begins the same, with a recipient of vaguely worded, highly-threatening demand letter. Unlike other areas of litigation, when it comes to demand letters, things are very out of balance.

One party to the equation asserts a patent infringement with little to no specificity and often is unclear who owns the patent being

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asserted or how the patent was even allegedly infringed. However, the other party to the equation is typically an honest entrepreneur or business person and must make a decision to either pay the threatening entity to go away or face them in court for extended litigation with an exorbitant price tag attached.

It is time for the entity sending out demand letters, like their community mass mailers, do their due diligence just as we expect in just about every other area of the law. In addition to the amendments I offer on demand letter transparency to the Innovation Act, I have been pleased to work with my colleague across the aisle, Congressman Jared Polis, who is very well addressed in this issue, to address issues throughout the demand letter, the Transparency Act.

This bill would put a lot of specific information about these patent assertion entities and their claims at the fingertips of small companies and retailers who lack the time, money and the resources to respond to the demand letters. We need to require individuals sending an excessive number of demand letters to file information for the U.S. Patent and Trademark Office or the Federal Trade Commission as the chairman's bill would legislate.

We must shine a flashlight on these deceptive fraudulent actors who are operating behind closed doors in the dark. By requiring more transparent litigation practices, we will deter many of the bad actors from being in the litigation abuse business completely, and if that

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should happen, I would say, good riddance.

Mr. Chairman, while demand letters constitute just one piece of the patent troll litigation problem, it is an important part of any patent troll litigation reform effort. While we discuss the various proposals, we must be careful to strike the right balance to ensure that right shareholders are still able to protect their property, while also going far enough to provide real relief for the victims of this litigation abuse. It is time we start standing up for job creators and innovative businesses and allow them to get back to doing what they do best, growing companies and invigorating our economy.

To close, I would like to share with you a few sample demand letters that might illustrate the abuse practices we are viewing here today. I will just give a couple of examples. We have one letter here that shows that an individual who has their personal computer but happens to send an email, go to local files, get on the Internet, get on a server, get on a printer, get on a digital copier and any other peripheral matters is infringing upon an patent. It is ridiculous.

Another one simply says that in addition to an alleged patent on this person who sent this letter, they are saying that the person being accused of the patent violation may induce others to infringe on the patent -- may induce others to infringe on the patent.

And then finally, we have a situation where they are saying that to prevent, we want to prevent irreparable harm in the future in absence

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of injunctive relief. It is just another way of saying, if you don't pay the money now, we are going to tie you up in court so long that we will put you out of business.

Chairman, I have some letters that I want to enter into the record, a letter dated from Ni Wang on January 24, 2014; Farney Daniels of August 1, 2012; Innovative Wireless Solutions, April 10 of 2013; and IsaMai from June 16 to 2013. I thank the committee for allowing us to do this, and I yield back.

[The letters follow:]

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[The prepared statement of Mr. Marino follows:]

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Mr. Terry. Thank you. And without objection, those letters will be inserted into the record with your oral statement. So appreciate the two of you being active on this important and delicate issue, and taking the time out of your day to participate in our hearing today. Thank you very much.

Mr. Marino. You are welcome.

Mr. Terry. Now, at this time, while our friends, Mr. Polis and Mr. Marino are exiting, I am going to start introducing our next panel.

We have Lois Greisman, Associate Director, Bureau of Consumer Protection at the Federal Trade Commission. We are blessed to have Wendy Morgan, Chief of the Public Protection Division, Office of the Attorney General of Vermont; Adam Mossoff, Professor of Law, George Mason University; Rob Davis, counsel for Venable on behalf of the Stop Patent Abuse Now Coalition; we have John Potter, president and co-founder of Application Developers Alliance; and Alex Rogers, Senior Vice President, legal counsel for Qualcomm.

Some of you have been before us in the past and know how these things work. Each of you will have 5 minutes. There is a little box there with green, yellow and red. I would appreciate it that when it hits the yellow mark that you jump to your conclusions so we can stay on time. And then at the conclusion of the statements, we will go into questions, if we are not on the floor voting at that time.

So at this time, would recognize the gentlelady from the FTC, Lois

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Greisman. You have your 5 minutes. Will you turn your microphone on. I forgot to mention that part. And we have to have them a little closer, as well.

STATEMENTS OF LOIS GREISMAN, ASSOCIATE DIRECTOR, BUREAU OF CONSUMER PROTECTION, ON BEHALF OF FEDERAL TRADE COMMISSION; WENDY MORGAN, CHIEF OF THE PUBLIC PROTECTION DIVISION, OFFICE OF THE ATTORNEY GENERAL OF VERMONT; ADAM MOSSOFF, PROFESSOR OF LAW, GEORGE MASON UNIVERSITY; ROB DAVIS, COUNSEL, VENABLE LLP, ON BEHALF OF STOP PATENT ABUSE NOW COALITION; JON POTTER, PRESIDENT AND CO-FOUNDER, APPLICATION DEVELOPERS ALLIANCE; AND ALEX ROGERS, SENIOR VICE PRESIDENT AND LEGAL COUNSEL, QUALCOMM

STATEMENT OF LOIS GREISMAN

Ms. Greisman. Congressman, can you hear me?

Mr. Terry. We can hear you now.

Ms. Greisman. Good. Good morning, again, Chairman Terry, Ranking Member Sarbanes. I am delighted to be here this morning on the behalf of the Federal Trade Commission. I very much appreciate the opportunity to present the Commission's testimony. As you know, my oral remarks are my own, as are any responses to questions you may have, not those of the Commission or any individual commissioner.

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I appreciate the subcommittee's sustained interest in the activities of PAEs and the related issues of patent demand letters. Clearly, this is an area of keen interest across the business community as well as among Federal and State law enforcement agencies. Further, the Commission shares the subcommittee's goal of stopping deceptive demand letters without intruding on the right of patent holders to assert legitimate claims.

As you know, the Commission continues to examine PAEs and demand letters from the policy perspective. The Commission's testimony and my remarks, however, focus on patent demand letters from the angle of consumer protection law enforcement. Briefly, the Commission's Section 5 authority to prevent unfair and deceptive acts and practices can and should be brought to bear with respect to demand letters when appropriate.

While our analysis always will be fact specific, Section 5 may be violated, for example, if a PAE asserts a patent claim where it has no ownership interest or a standing to assert the claim; where the patent or the relevant statute of limitations has expired; where the patent would be covered by an existing license; or where the patent, on its face, relates to a topic obviously unrelated to the claim of infringement.

Further, the PAE also may violate Section 5 where it makes false or deceptive claims that are unrelated to the merit of its patent such

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as false threats of litigation. On this last point, a ready analogy exists in past cases the Commission has brought dealing with potentially deceptive representations made in connection with attempts to collect a debt. The debt collection actions, some of which preceded passage in 1977 of the Fair Debt Collections Practices Act included a number of cases involving false threats of legal action.

Briefly, these cases hold that a false threat that legal action will be taken, or that legal action will be taken imminently may violate Section 5. Indeed, the FDCPA itself prohibits false threats of legal action in connection with the collection of a debt. Thus, in addition to decisions under the FTC Act, there exists a robust body of FDCPA law, Federal case law that addresses false threats of litigation and false threats of imminent litigation.

It is important to reemphasize that the assertion of a patent claim in and of itself, of course, is not deceptive, and it serves the important purpose of protecting patent rights. Still, the distress experienced by businesses that receive demand letters is real as are the challenges to that business in evaluating how to proceed after the receipt of a demand letter.

It is equally important to keep sight of the fact that concerns about demand letters do not get at the deeper and highly complex issues that underline many businesses' grievances with respect to the patent demands. These critical issues are related to the broad scope of many

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patents, the ease with which patent infringement claims can be asserted and the cost of defending against such claims, of which some businesses report are simply prohibitive.

Thus, while the current bill provides the Commission with civil penalty authority that it does not currently have, and we believe that civil penalties authority in this area is of potential benefit and may well deter some bad actors. Such new authority does not reach these broader, more fundamental issues.

Additionally, and as outlined in the Commission's testimony, we do have some concerns about the draft's inclusion of a bad faith scientist requirement and its possible application outside the civil penalty context. At the same time, we do appreciate the bill's inclusion of a savings clause that preserves the Commission's existing authority.

In sum, the Commission's goal is to stop deceptive patent demand letters while respecting the rights of patent holders to assert legitimate claims. We are happy to work with the subcommittee to strike the right balance on this very important consumer protection issue. Thank you.

Mr. Terry. Thank you, and you have, and we thank you for your effort and help on this matter.

[The prepared statement of Ms. Greisman follows:]

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Mr. Terry. Ms. Morgan, you are now recognized for 5 minutes.

STATEMENT OF WENDY MORGAN

Ms. Morgan. Thank you, Chairman Terry, Ranking Member Sarbanes and subcommittee members. Thank you for this opportunity to appear before you to give you the perspective of the Vermont Attorney General's Office into your discussion draft. I am glad that the witnesses that have gone before me have laid out the general problems relating to this area because, thinking that I was the last witness, my focus is really much more in the weeds as with regards to your draft.

You asked if there were ways that the draft might be improved to further balance the need to prevent the bad actors from abusing the patent demand letter process while preserving the legitimate purpose of communicating intellectual property rights. That balance is critically important here. I would suggest that there are three ways in which your draft might be improved, all of which would increase the likelihood that the States will take action under any statute that you enact.

There are additional points in my written testimony, which I hope you will consider as well, but I would like to just focus on three this morning. Those will be with regards to the preemptions section; the definition of bad faith, which was already briefly discussed by

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Ms. Greisman; and also the provision for State action and the jurisdiction for State action.

So as you know from the written testimony, we would prefer that there is no preemption at all within this statute. But if there is, at a minimum, the State laws that exist now should be maintained. But if they are not to be maintained, we would ask that you include a review of your Section 4(a)1. In that section, your general preemption section, you say that the Act preempts any law, rule or regulation, and you also say requirements standard or other provision having the force and effect of law which expressly relates to the transmission or contents of communications relating to the assertion of patent rights.

The difficulty we have with this section is that if we go to court under our Consumer Protection Act, or under our UDAP in other States, the Unfair and Deceptive Acts and Practices Act, then the court will be articulating a standard relating to the transmission or contents of communications, and therefore, at least arguably, we would be preempted under 4(a)1.

So we would suggest that you both eliminate the requirement standard language that is contained in (a)1 to avoid that possibility, and also in the savings clause in (a)2, that you add language that would be comparable to this; that these States may proceed including actions relating to transmissions or contents of communications relating to

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assertions of patent rights.

In other words, it may be that the preemption statute, as you have it here, would not preempt the State from proceeding under the Consumer Protection Act. But it would be far safer for the States if you were completely clear about that, and the statute as it is here is not clear about that.

With regards to bad faith, our concern is that the current draft requires actual knowledge or knowledge fairly implied that the information in the demand letter is false. States under their Consumer Protection Acts and UDAP laws do not have to prove knowledge, and that is a very important distinction. If we have to prove knowledge, we are not going to be able to in many instances, and therefore, will be much less likely to proceed under your statute.

Similarly, if even with the language of knowledge fairly implied, again, that requires that it be a false statement and it will not always be a false statement. The people that you are trying to address, the bad actors here are going to change their behavior to meet your statute, and so they will not include false statements. They will include misleading or deceptive statements. So we would recommend that you change the definition of bad faith to be false, misleading or deceptive.

Finally, my third recommendation with regards to the jurisdiction under which the States would bring an action, we would ask that you make it very clear that these are not under patent law, but rather under

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the Section 5 of the FTC Act, because otherwise, we will end up in a situation where we have the risk of having any decision in district court appealed to the Federal circuit rather than the regional circuit, and the Federal circuit is not used to engaging in UDAP analysis. Thank you.

Mr. Terry. Thank you.

[The prepared statement of Ms. Morgan follows:]

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Mr. Terry. And Professor, you are now recognized for 5 minutes.

STATEMENT OF ADAM MOSSOFF

Mr. Mossoff. Thank you. Chairman Terry, Ranking Member Sarbanes, and members of the subcommittee, thank you for this opportunity to speak with you today about the draft bill prohibiting false statements and mandating disclosures in demand letters. My name is Adam Mossoff, and I would like to note that I am speaking in my personal capacity as a law professor at George Mason University and not on behalf of my employer or any organizations with which I am affiliated.

The draft bill is directed at bad actors who engage in bad faith communications in asserting patents against alleged infringers. Since the draft bill defines bad faith in terms of deceptive or fraudulent statements in demand letters, it is a laudable effort at addressing bad behavior by some patent owners who act illegitimately.

But the draft bill goes beyond this prohibition. It also mandates specific disclosures in all demand letters sent by all patent owners including those sent by legitimate patent owners who are properly licensing their patented innovation in the marketplace or are properly asserting their patents against real infringers.

Unfortunately, as a result, the draft bill raises concerns under the

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First Amendment, and my testimony will focus on two First Amendment concerns with these mandated disclosures.

First, the mandatory disclosure provisions likely violate the First Amendment's guarantee of the right to free speech in communicating freely and truthfully in the marketplace. The Supreme Court has held that the First Amendment necessarily protects the decision of both what to say and what not to say. As a result, the Supreme Court has consistently invalidated as unconstitutional laws and regulations that compel speech in both commercial and noncommercial activities.

A demand letter serves the function of informing its recipient that it is infringing a property right. Without the threat of a potential lawsuit, infringers would hold out and continue infringing, and thus, patent owners would no longer have a right to their patented innovation as secured to them under Federal law. For this reason, demand letters do not fit the Supreme Court's definition of pure commercial speech, which historically has received less protection under the First Amendment.

Instead, a demand letter identifies a violation of a property right and proposes either a legal process in Federal court or a settlement of this legal claim; thus, a law mandating disclosures and demand letters would be strictly scrutinized under the First Amendment's guarantee of the right to free speech. The court will

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follow the many cases involving similarly compelled speech, even speech by commercial actors in a commercial context and find these mandates likely to be unconstitutional under the First Amendment.

Second, by burdening the legal process of taking the necessary first steps in enforcing legitimate property rights, the draft bill's mandated disclosures likely violate the right to petition also secured under the First Amendment. Now, the Noerr-Pennington doctrine prohibits the use of antitrust law to prevent the exercise of the First Amendment right to seek redress for one's legal rights in court.

The draft bill states that violating this provision constitutes a violation of the antitrust laws and it authorizes the Federal Trade Commission to enforce its mandates. As such, the draft bill directly implicates the Noerr-Pennington doctrine.

Now, courts have generally recognized in a wide variety of cases that the Noerr-Pennington doctrine extends to all activities that are necessarily connected to filing a lawsuit in a courthouse. One such activity includes pre-lawsuit communications to settle a legal claim asserted against a defendant. Courts have thus applied the Noerr-Pennington doctrine to patent demand letters.

In one case in 2006, involving an antitrust challenge to a patent owner who sent over 100,000 demand letters to consumers, the court held that applying the antitrust laws in that case violated the Noerr-Pennington doctrine. Several other Federal Courts have reached

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similar conclusions in recent years. Thus, the draft bill likely imposes an unconstitutional burden on the right to petition secured to all persons under the First Amendment.

In conclusion, excising the bad actors in the patent system is important and laudable because they undermine the efficient operation of our innovation economy. But we must not forget that it is legitimate patent owners engaging in legitimate licensing and assertion activities who make possible America's innovation economy in the first place, which is the engine of economic growth, new jobs and high standards of living. And this is what is being secured by the First Amendment's protections that are implicated by the mandatory disclosure provisions in the draft bill.

Thank you.

Mr. Terry. Thank you. You may be the first professor to testify in 5 minutes. Thank you.

[The prepared statement of Mr. Mossoff follows:]

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Mr. Terry. Mr. Davis, you are now recognized for your 5 minutes.

STATEMENT OF ROBERT DAVIS

Mr. Davis. Thank you Chairman Terry, Ranking Member Sarbanes and members of the subcommittee. The SPAN Coalition thanks you for your leadership in addressing patent troll demand letters. SPAN's members include the American Association of Advertising Agencies, the Direct Marketing Association, the Association of National Advertisers, the National Retail Federation and the Mobile Marketing Association.

Whether you are a coffee shop, or retailer or a hotel, an ad agency or any other business or nonprofit, the smash-and-grab tactics embodied in deceptive patent troll demand letters are a scourge affecting main streets across the country. This sad fact was clearly established in the committee's earlier hearings.

Congress can help, and we are extremely pleased that the subcommittee has circulated the discussion draft. We want to commend you and your staff for your excellent work. I was asked to provide SPAN's comments in the discussion draft, and there are seven points. At the outset, I want to flag the definitions of "systems integrator" and "end user."

Given the bill's limitation to only those engaged in the pattern or practice of sending letters, SPAN is concerned that further limiting

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the scope of the bill to letters sent to end users and systems integrators is not only unnecessary, but also may exclude from the bill's protection certain main street victims of patent troll demand letters. We appreciate the efforts of the staff to get this right. This is a threshold issue for SPAN and we look forward to working with you to resolve it.

Next, SPAN strongly supports the bill's primary objective, which is to clarify the FTC's existing Section 5 authority to bring enforcement actions against those who send unfair or deceptive patent settlement demand letters. The bill targets unfair deceptive practices masquerading as legitimate patent demand letters. As such, addressing this problem is not about patent policy, and it is not about the First Amendment.

Third, we believe the bill fairly well captures the universe of unfair deceptive practices embodied in many of the patent troll demand letters that we have seen. However, SPAN is concerned about other unfair deceptive practices that patent trolls may develop in the future not explicitly included in the discussion draft.

Therefore, we strongly recommend the inclusion of language to clarify that the legislation is not intended to foreclose the FTC's Section 5 enforcement authority to pursue any unfair deceptive acts or practices with respect to patent demand letters not expressly listed in the legislation. SPAN would have grave concerns about legislation

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that either did not expressly enable such enforcement by the FTC, or would have the effect of foreclosing such future enforcement by the FTC.

Fourth, we believe the bill fairly well captures the basic elements of transparency that should be included in a demand letter. However, we recommend the inclusion of additional elements addressing the settlement demand amount and the basis for it, as well as further information about real party and interest, all of which we believe would further improve transparency. In addition, we are concerned that certain elements only need to be included to the extent reasonable under the circumstances which would be a loophole that trolls will exploit.

Fifth, the bill seeks to address the concerns of patent holders to send legitimate correspondence by limiting its scope to those who engage in a pattern or practice of sending patent demand letters. SPAN does not oppose such a limitation and concept, provided that it does not get defined in a way that it becomes a loophole easily evaded by trolls.

Similarly, we understand the committee's intent behind including bad faith as an additional condition for certain of the unfair or deceptive practices listed in the discussion draft. SPAN does not necessarily oppose this concept either provided the definition of bad faith is not inconsistent with the FTC's existing standards for unfairness and deception under Section 5, and does not render the law

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unlikely to be enforced.

Sixth, we are concerned that the bill's inclusion of rebuttable presumption may render the law less likely to be enforced, therefore we recommend that the provision be converted to an affirmative defense.

And seventh, the bill enables State attorneys general to enforce it along with the FTC. However, we believe the State attorneys general ought to be able to seek civil penalties.

At the end of the day, nothing in the bill limits anyone's right to enforce patent, nor does it limit anyone's right to send a demand letter provided the letters are not unfair or deceptive.

On behalf of SPAN, thank you, again, for your leadership in addressing this important issue affecting main street businesses across the country. We fully support your effort, and we look forward to working with the committee as it moves this legislation forward. We hope that the committee can act to complement the work being done on other important forums to address the patent troll problem.

Mr. Terry. Thank you, Mr. Davis.

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[The prepared statement of Mr. Davis follows:]

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Mr. Terry. And now, Mr. Potter, you are now recognized for 5 minutes.

STATEMENT OF JON POTTER

Mr. Potter. Chairman Terry, Ranking Member Sarbanes and members of the subcommittee, thank you for shining a light on the deceptive and fraudulent practices of an unseemly new industry. Smash-and-grab patent trolls use shell companies, print-at-home letterhead, and \$0.49 stamps to send baseless patent demand letters that scare small companies, investors and customers, that cause them to pay lawyers instead of hiring new employees and that bully companies into paying extortion settlements simply because they are cheaper than litigation.

I am Jon Potter, and as head of the 2-year-old App Developers Alliance, I have personal spoken with many entrepreneurs and startups that have been shaken down, dispirited and even run out of business by patent trolls. On behalf of our 30,000 members and our 175 corporate members, I am pleased to say that the committee's discussion draft bill is a very good start to a simple antifraud bill.

Despite the background chatter from academics and confused opponents, the committee should rest well, assured that, number one, fraudulent commercial speech is simply not protected by the Constitution; number two, focused legislation to prohibit troll's

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extortion need not inhibit the honest and fair licensing practices of Qualcomm, Dupont, Gore-Tex or any legitimate inventor; number three, Congress has previously and successfully required the exchange of basic information in commercial communications where there has been a documented pattern of fraud.

The Fair Debt Collection Practices Act effectively cleaned up an industry that previously was ripe with bullying fraudsters, sort of like patent trolls. Instead of opposing patent reform, legitimate patent owners should welcome congressional action that similarly helps cleanse their industry.

To strengthen the discussion draft, we urge the following important amendments: First, require demand letters to identify specific claims infringed. A single patent often has more than a dozen claims within it. They legally define the borders of the intellectual property. Only the owner who is asserting infringement knows which of those borders have been crossed or infringed upon. It is reasonable, therefore, to require that demand letters include those details, including how each claim was infringed.

Second, require trolls to detail how an infringement is occurring or that they simply don't know but they undertook a substantial investigation to try to find out. The discussion draft requires that demand letters describe infringing activity to the extent reasonable under the circumstances. In the hands of patent trolls, this exception

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will be abused and the requirements will be ineffectual, unless you also make the troll document that they made a good-faith investigation and that it was fruitless.

Third, protect every business from abusive demand letter fraud. The discussion draft proposes to limit antifraud protection to only some businesses. I know firsthand that often small, creative agencies that build or manage custom Web sites, apps or software networks need protection from trolls. Frankly, all Americans deserve protection from fraud.

Please appreciate a very important distinction. Great American innovators, like Qualcomm, communicate with potential infringers after very careful research. They provide potential licensees with technical and legal background information and documentation. And in good-faith negotiations, they seek legitimate licensing relationships.

In contrast, patent trolls buy cheap patents and use them to extract shake-down royalties from small business. Trolls send ominous and threatening letters but do not include information about how the target's product or technology infringes or which claims are infringed.

Moreover, when targets receive these vague and threatening demand letters and call the troll for more information, they meet stone-faced lawyers who respond with ultimatums: Pay us a settlement or pay lawyers hundreds of thousands of dollars to fight us in court. That

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is not a choice; that is fraud and extortion.

Some argue that recent increases in patent litigation and demand letters are simply a nuisance byproduct of our innovation economy, a blip on the economic landscape that courts will eventually address so legislation is unnecessary. Others argue that deadweight loss and failed companies caused by trolls cannot be helped without stepping on the First Amendment or empowering the FTC to be intrusive speech police.

None of this is true. Fraud is squarely within the purview of this committee, and this antifraud bill simply sharpens the FTC's scalpel and aims enforcement resources in the right direction, a direction urged by more than 40 attorneys general and already traveled by 10 State legislators that have enacted demand letter abuse laws.

Yesterday, patent trolls celebrated when the Senate Judiciary Committee announced that small business, tech startups and main street businesses will endure at least one more year of patent troll abuse. This is disappointing, because comprehensive and effective patent troll abuse legislation is needed. Demand letter reform is an important part of broad reform, but it is also independently important.

On behalf of thousands of innovative App Developers Alliance members, and in support of tens of thousands, if not millions of coffee shops, restaurants, hotels, printers retail stores, banks, credit unions, advertising and marketing agencies, grocery stores, home

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builders, realtors and their main street patent coalition, I urge you to quickly legislate standards for a new and growing strain of garden-variety fraud, abusive patent demand letters.

Thank you for your leadership on this important issue. We look forward to working with you to improve and enact this bill.

Mr. Terry. Thank you, Mr. Potter.

[The prepared statement of Mr. Potter follows:]

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Mr. Terry. Mr. Rogers, you are recognized for 5 minutes.

STATEMENT OF ALEX ROGERS

Mr. Rogers. Chairman Terry, Congressman McNerney and members of the subcommittee, thank you for the opportunity to appear today to discuss patent demand letters. My name is Alex Rogers, and I am senior vice president legal counsel for Qualcomm. Qualcomm is a member of the Innovation Alliance, a coalition of research and development-focused companies that believe in the critical importance of maintaining a strong patent system.

Qualcomm is a major innovator in the wireless communications industry and the world's leading supplier of chipsets than enable 3G and 4G devices. Qualcomm's founders are the quintessential example of American inventors in the garage who built one of the world's foremost technology companies. Through ongoing investments in research and development and broad licensing of our patented technologies, Qualcomm has created thousands of well-paying jobs for U.S. workers and helped foster a thriving mobile industry.

It is worth noting that Qualcomm is not a plaintiff in any pending patent litigation, but we are a defendant in numerous patent infringement lawsuits, some of which were brought by so-called patent assertion entities. However, I am not here to criticize or defendant

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PAEs, but instead to address what we believe should be the proper focus of any patent demand letter legislation; namely, targeting abusive demand letter activities without unintentionally damaging important patent rights.

Notice letters play an important role in the patent system, both for patent holders and accused infringers. Patent law encourages and sometimes requires patent holders to take reasonable steps to notify others of possible infringement. Meaningful patent protection, including the ability to provide notice, is a key factor for companies like Qualcomm in deciding whether to invest in new products and technologies.

Qualcomm appreciates the committee's interest in curtailing abusive demand letter activities; at the same time, we urge the committee to be cautious so as not to inadvertently hinder legitimate patent enforcement practices. A demand letter law that makes patent notification or enforcement too burdensome, too costly or too risky may deter appropriate notice activity and undermine incentives to innovate.

As the committee proceeds with this bill, we believe the following guiding principles will help strike the appropriate balance: First, the bill should clarify rather than expand the FTC's existing authority under Section 5 to address abusive demand letters; second, the bill should be limited to situations in which the sender has engaged in a

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pattern or practice of mailing bad-faith demand letters to consumers or end users.

The pattern or practice requirement appropriately targets the mass mailing of deceptive demand letters and is consistent with the FTC's Section 5 authority. And explicit bad-faith requirement is necessary to protect patent holders' First Amendment rights. It also avoids punishing patent holders for good-faith conduct. Limiting the bill to communications sent to consumers and end users protects those most vulnerable to abusive demand letters while reducing the risk that the FTC will be drawn into business-to-business disputes.

Third, the bill should clearly describe the conduct that would be considered unfair and deceptive and not impose overly-burdensome disclosure requirements.

Fourth, the bill should preempt State demand letter laws. Although State enforcement may be appropriate in certain circumstances, it would be extremely burdensome to subject patent owners to disparate and overbroad State demand letter requirements.

Keeping these principles in mind, the draft bill has a number of strengths. For example, the bill focuses on those engaged in the pattern or practice of sending unfair and deceptive demand letters to consumers and end users. The bill sets forth reasonable disclosure requirements and specifically describes the conduct that would be considered unfair and deceptive, and the bill preempts State demand

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letter laws. We urge the committee to retain these requirements and limitations in the bill.

On the other hand, there are provisions of the discussion draft that require further refinement. For example, the definition of systems integrators is overbroad. Additionally, the discussion draft would cover not only statements made in demand letters but things implied by them. This language could create too much uncertainty with respect to compliance and enforcement.

Qualcomm looks forward to working with the committee in its efforts to achieve a balanced and appropriately tailored bill. Thank you for allowing me to testify today, and I look forward to answering your questions.

Mr. Terry. Thank you.

[The prepared statement of Mr. Rogers follows:]

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Mr. Terry. And that concludes the testimony, and we will enter the questions from this panel up here.

And I want to start with you, Mr. Rogers. I guess, last to speak, first to answer questions. You testified that the concept of bad faith is, "necessary to capture the requirements of current case law." Can you please elaborate a bit on that comment?

Mr. Rogers. Well, again, it is appropriate in light of what we are trying to target here, and that is bad-faith, abusive behavior, and we want to, as Mr. Chairman said, thread the needle. We want to avoid deterring good-faith patent assertion. The bad-faith requirement also, we believe, is necessary for this bill to survive the challenges that Professor Mossoff has identified. We think it is important and necessary in order to make the bill appropriate and viable under the First Amendment and under the Noerr-Pennington doctrine that Professor Mossoff identified.

Mr. Terry. Thank you.

Ms. Morgan, in that same respect, you indicated during your testimony that bad faith is problematic and should be taken out. Would that make this law of strict liability such that even if a person innocently misstates something in a letter or a series of letters that they could, in theory, be civilly -- that they could be liable for civil penalties?

Ms. Morgan. I am not saying that you need to eliminate bad faith

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entirely. I think you need to have some sort of attribute with regards to Sections 2(a)1, 2 and 3 because -- I am sorry.

Mr. Terry. That is all right.

Ms. Morgan. I am not used to testifying here, needless to say.

Mr. Terry. We are just talking here, don't worry. There is no audience.

Ms. Morgan. Right. So I do think that you need something comparable to your bad-faith requirement or definition, but I think the problem is with the definition that you have here, and that is that it requires knowledge or that people effectively know and you can attribute them to having knowledge.

And both knowledge and falsity, because it is entirely possible that these letters will be particularly going forward, not exactly false, but they may be misleading and deceptive. And so you want to be careful that you don't eliminate enforcement when you don't have a false statement or when you cannot prove that the sender had knowledge.

That also relates to, I think, the benefit of having a catch-all clause. I think that if you just list, enumerate things that will violate the Act then you are going to eliminate the possibility of using the Act going forward, because the patent, what people have been calling the patent trolls, those who are sending fraudulent letters at this point in time will change their behavior. And so you need the courts

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and the FTC and the States to be able to enforce even when they do change their behavior if it is essentially the same kind of deceptive behavior.

Mr. Terry. Okay. Appreciate that.

So Ms. Greisman, I appreciate, again, all of your effort and we will continue to work together on this. You mentioned under Section 5 that you can currently hold someone liable and obtain an injunction against conduct that wasn't intentional, but is deemed unfair and deceptive. And so if we don't include the scienter requirement in this bill, does that mean that you could hold someone liable and obtain civil penalties for conduct that wasn't intentional?

Ms. Greisman. No, it does not. Under the Federal Trade Commission Act, in order for the Commission to obtain civil penalties, there exists, by statute, a knowledge requirement which is comparable, largely comparable to the knowledge requirement in the bill which speaks of actual knowledge or knowledge fairly implied. So the Commission already, under current bylaw, has to show some level of knowledge in order to obtain civil penalties. Separate from that, as you note, in order to obtain an injunction or other equitable relief, the Commission does not have to show any knowledge.

Mr. Terry. Okay. I appreciate that.

I am going to yield back my time and recognize the gentleman from Maryland who is the acting ranking.

Mr. Sarbanes. Acting ranking. Thank you, Mr. Chairman. I

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appreciate the opportunity to ask them some questions, and we don't have a lot of time here so let me get right to some of the provisions in the bill because we want to get some of your answers on the record.

Ms. Morgan, your testimony is particularly important because you are, you know, at the State level trying to apply these enforcement opportunities and seek the appropriate remedies, so we want to make sure that in the drafting the bill we don't, in some way, constrain your ability to do that.

You expressed some concern that Section 4(b)1 requires State attorneys general to show actual consumer harm before they bring a case under the bill. And I was curious if that is a requirement that is consistent with typical consumer protection causes of action?

Ms. Morgan. No, it is not. And there are two parts of that section that are unlike, at least the Vermont statute, and I believe in many other statutes. First of all, we don't have to act as *parens patriae*. We come in as the State. We are not standing in the shoes of the consumers.

And similarly, your bill here requires that we prove that a consumer or an end user has been adversely affected. And what that is going to do is to prevent us from coming in and stopping patent trolling when we first hear of it, if the person who received the letter has not been adversely affected. If they come to us immediately and say look at this letter, can you do something about it, can you stop

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it from going to other Vermont companies or nonprofits, we wouldn't be able to under this provision. So we would want to come in under our Consumer Protection Act in that case.

Mr. Sarbanes. It takes away your ability to be sort of preemptive in the way you are doing some of the enforcement, it sounds like.

The draft also limits remedies available to State attorneys general to injunction and compensatory damages on behalf of recipients who suffered actual harm. And I am wondering, would that limitation of remedies affect your office's likelihood of bringing claims under this statute?

Ms. Morgan. I think that it would. Under our Consumer Protection Act and UDAP laws in other States, we have the ability to get penalties and the ability to get attorneys' fees and costs, and that is a very important deterrent to the companies that are issuing these letters.

Mr. Sarbanes. Thank you. Also, I would like to note that a recipient under this bill is considered not to have a, quote, established business relationship with the sender, end quote. Are there problems with the way that this language could be interpreted; and if so, how would it affect your office or agency's ability to enforce the law?

Ms. Morgan. There are problems, and thank you for asking that. Because the definition of sender does not include the fraudulent patent

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demand -- people who are sending fraudulent demand letters. So the definition of sender is really undermining your statute here. There is a violation only if there is a recipient, and recipient has to have a relationship with a sender, at least arguably that is the case. And so, again, we would get into a dispute in court about whether or not this is an actual sender or not under your statute. And frankly, the more you can solve the problems before we get to court, the better off we will all be and the more likely we will bring an --

Mr. Sarbanes. So that is definitely another potential constraint.

Mr. Davis, you stated that SPAN would have, I think you said, grave concerns about legislation in this area that did not expressly enable the FTC to reach other unfair or deceptive practices that patent trolls may develop in the future, not explicitly included in the Section 2 of the draft. Can you explain that a little bit more?

Mr. Davis. Yes.

Mr. Sarbanes. Thank you.

Mr. Davis. This relates to the application to the Noerr-Pennington doctrine. There is some, I think, misconceptions about what Noerr-Pennington is. It is a court-created doctrine of statutory interpretation that applies when you have a broad, a statute of broad application like the antitrust laws as Professor Mossoff mentioned, or potentially Section 5 of the FTC Act.

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What happens in that case when someone goes after what might be considered petitioning behavior, under these broad statutes, the court will look and ask whether Congress intended that statute to deal with that type of petitioning behavior. If that petitioning behavior isn't specifically mentioned, then the court will read that out of the statute. So even if the broad language of the statute covers that particular conduct, if it is petitioning behavior, it won't be read as covering it.

Mr. Sarbanes. Okay.

Mr. Davis. The courts have actually been split on whether demand letters are petitioning behavior, but seems like there is a movement towards finding that demand letters are petitioning behavior. So there is a concern that if Congress doesn't write this law and include a broad language, a catch-all provision, that the courts will read the statute as limiting the FTC's authority to what is specifically mentioned in the bill under Noerr-Pennington.

Mr. Sarbanes. Thank you very much. Yield back.

Mr. Terry. Thank you. Gentleman from Mississippi is recognized for 5 minutes.

Mr. Harper. Thank you, Mr. Chairman.

Mr. Davis, you expressed concern that while you supported a threshold, the phrase "pattern or practice" could create a loophole that could easily be evaded by patent trolls. You know, we don't want

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that either. Can you give us an example of how it could be evaded?

Mr. Davis. Thank you. We actually support the use of pattern and practices as a threshold to the statute. It prevents the use of the statute -- or the bill, I am sorry, from being used against legitimate patent holders and we agree with these in that circumstance. It is, however, a threshold. It's threshold language for all of the substantive provisions in the Act, and we are concerned if the definition of the term is too restrictive, that it will limit the application of the bill unduly.

Mr. Harper. All right. Ms. Greisman, in determining what a pattern or practice looks like, is there any existing law or rule that on which you could rely, or would rely?

Ms. Greisman. I am not aware of any statute or rule enforced by the FTC where that kind of language actually constrains the ability of the agency to act, though that kind of language does appear in private causes of action and I think perhaps some laws enforced by the States.

Where the constraint is is the Commission is authorized by law only to act in the public interest. What that means is it does not act where there are purely private disputes or isolated incidents, so there has to be something that is affecting the marketplace in a significant enough manner to rise to the level of warranting Federal action.

Mr. Harper. Okay. All right. Well, Mr. Davis, hearing

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Ms. Greisman's interpretation of the phrase, do you still have concerns about the phrase?

Mr. Davis. I don't. I think, I agree with Ms. Greisman's discussion. I think that there is still the same concern given the absence of the use of that phrase.

Mr. Harper. Okay.

Mr. Davis. But, again, we support use of pattern or practice, assuming that the definition works.

Mr. Harper. Ms. Greisman, if I could ask you, Mr. Rogers testified that private disputes and negotiations, presumably between large, sophisticated companies, do not need to be regulated. Are there any limiting principles of FTC law rules or enforcement guidance that would preclude the FTC intervening in actions between two such companies?

Ms. Greisman. I respectfully go back to my prior comment that the Commission is required to act only in the public interest, and it would not be, in my mind, in the public interest to intervene in what I consider purely private disputes or isolated incidents that do not have a significant impact on the market.

Mr. Harper. All right. Let me ask you this: The standard in the draft for defining an unfair or deceptive act or practice is to engage in a pattern or practice of sending letters in bad faith that are false or deceptive. The FTC enforces violations of other rules

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such as we have discussed, Fair Credit Reporting Act, that permits civil penalties for a knowing violation that constitutes a pattern or practice. Have there been any difficulties meeting that standard in FTC enforcement cases of FCRA, and is there any reason why this standard could cause problems in that context?

Ms. Greisman. I am not aware of any problems in the Fair Credit Reporting Act context, and I would not anticipate at this point any in this context.

Mr. Harper. All right. Mr. Davis, if I could come back to you on the issue of rebuttable presumption.

Mr. Davis. Yes.

Mr. Harper. You expressed concern that the rebuttable presumption will render this bill less likely to be enforced. A sender of one of these letters can only avail themselves to the rebuttable presumption if they don't engage in any of the prohibitive behavior of subsection A, paragraphs 1 through 3, and they make good faith to disclose what is required under subsection A, paragraph 4.

In other words, if they don't engage in any of the bad behavior, they can't be held liable for a technical violation because the FTC thinks that they didn't do a good enough job with the disclosures. Why would that hinder enforcement against people who made purposely false statements or people who make purposely false statements in conjunction with omissions?

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Mr. Davis. Well, I agree, Congressman, that the rebuttable presumption only applies to the transparency provisions. But those transparency provisions are very important. The principal problem that we have, that our members have with patent trolls is how expensive it is to deal with those demand letters. That is the force behind the patent troll demand letters.

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[10:15 a.m.]

Mr. Davis. And the transparency provisions are very important in helping us lower the cost of dealing with those demand letters. The information that you would use to figure out whether there is a good faith effort to come up with the information needed to put in the demand letter relating to how the patent is being infringed by the product or service that the recipient has is in the possession of the sender of the letter.

Mr. Harper. Got you. Okay.

Mr. Davis. And as a result, it seems more appropriate for this to be a -- rather than a rebuttable presumption, to be an affirmative defense, something that that person sent, no matter what proof.

Mr. Harper. Thank you, Mr. Davis. And I am past my time. I yield back, Mr. Chairman.

Mr. Terry. Yeah. Thank you. And recognize the gentleman from California.

Mr. McNerney. Thank you, Mr. Chairman. And I thank the witnesses this morning. You know, no piece of legislation is perfect. We are not talking mathematics here. We are taking English, and eventually we have to vote on these things, so I would like to know

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from each one of you, would you support this if you were a member of Congress and it was up for final vote, starting with Ms. Greisman, yea or nay.

Ms. Greisman. That is a tough question.

Mr. McNerney. We have to face these tough questions once in awhile.

Ms. Greisman. I think that what the bill does is it provides the Commission with an additional tool that it does not currently have, which is civil penalty authority, and I think, on balance, that is positive.

Mr. McNerney. Okay. That is a yea then. Thank you. Ms. Morgan.

Ms. Morgan. I appreciate that this is a positive step forward, but I think there are too many problems with it as it is and so that it will not be effective in the way that you would like it to be effective.

Mr. McNerney. So nay. Professor.

Mr. Mossoff. I recognize that it is very important not to let the perfect be the enemy of the good, which is always a danger to academics face, and I think the preemption provisions and the prohibitions on false and misleading statements in section 2 are excellent and would do much to address the identified problem with the bad actors, but I would still have constitutional reservations about

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the mandatory disclosures, and so with that, those reservations, I would probably vote no.

Mr. McNerney. Thank you. 2 noes, 1 yes so far.

Mr. Davis. It wasn't the question you asked, but with the amendments that we proposed, we would be in favor of it. As I said in the testimony, the systems integrator definition is a gating -- is a gating issue for us.

Mr. McNerney. So yea. Yes, Mr. Potter.

Mr. Potter. As I said to the chairman when I met with him yesterday, if the door is locked and there is no meal breaks and no bathroom breaks, we can get this to a place where it is a really good bill. In fact, it will be a great bill, but at this point, with the coverage not including substantial numbers of our members who receive, regularly receive demand letters and have been sued and put out of business by trolls, we couldn't defend -- we couldn't support this bill as written, but we look forward to that door is locked and no meal breaks meeting.

Mr. McNerney. Thank you.

Mr. Rogers. I think there is commonality on the definition of the recipients. The system integrator language has -- is not broad enough in certain respects, according to my colleagues, and it is also broad in other respects. It would sweep in very sophisticated large manufacturing companies like cell phone manufacturers and computer

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manufacturers, and even car companies that are essentially system integrators. Ford would be a system integrator under this, and I think that is unintended. But I think that if we can work on the definition of "recipients," this is a very good, very well-balanced bill that threads that needle between trying to target abuse by bad actors and trying to protect good faith rights activities of patent holders.

Mr. McNerney. So is that a yea or a nay?

Mr. Rogers. That is a yea with work on the definition of "recipients."

Mr. McNerney. Very good. Professor, do you think it is possible to thread this needle?

Mr. Mossoff. With --

Mr. McNerney. To protect patent holders and yet to protect small businesses?

Mr. Mossoff. Yes, I think it is completely possible to thread the needle. And in fact, I think the provisions of section 2 that address what reflects the real concerns, which is the misleading and false and deceptive statements in letters that are being sent out to unsophisticated individuals and small businesses would -- could -- would be properly addressed by that, and in fact, those prohibitions are important, too, because they bring themselves -- they bring the -- they bring the statute there for within the exceptions to both the Noerr-Pennington Doctrine under the sham

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litigation exception as well as the predicate requirement under the First Amendment that there is -- under First Amendment analysis that there is no protection for false or misleading or deceptive statements.

Mr. McNerney. Would it be possible to limit the number of letters that a patent assertion entity could send out? Would it be possible to say you can only send out 10 letters or 100 letters or -- by the Constitution?

Mr. Mossoff. I don't think there is anything in the Constitution that would say you could limit or permit the letters. I do think that as an underlying policy matter, though, it would be very difficult to identify what would be the appropriate number or amount because we just don't know on a going forward basis how new innovative technology would be deployed in the marketplace and potentially used or exploited by legitimate users or infringers. And the whole purpose of the patent system is to, in fact, promote and bring into the hands of consumers that new innovative technology, and we need to make sure that there is this appropriate legal protections provided to the creators of those technologies when they come up with them.

Mr. McNerney. Okay. Thank you.

Mr. Terry. Thank you. The gentlelady from Tennessee is recognized.

Mrs. Blackburn. Thank you, Mr. Chairman, and I want to thank each of you for your time and for your patience and working with us through

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this. I know you are hearing a lot of the section 3, section 5 conversations, and our concerns there. So, Ms. Greisman, let me come to you. Mr. Davis recommended a language change for you-all, that the bill include language to clarify this legislation is not intended to foreclose the FTC section 5 enforcement authority to pursue any unfair deceptive acts or practices with respect to patent demand letters not otherwise expressly listed in the legislation.

So, I am asking you, the savings clause in section 3(c) was meant to accomplish precisely that, so are you concerned -- do you have concerns about the language and whether or not there is adequate protection for the existing section 5 authority?

Ms. Greisman. Thank you. I appreciate the question. I do think the savings clause as drafted is consistent with other savings clause, and it most likely is adequate to the task.

Mrs. Blackburn. You do. Okay. Mr. Potter, let me come back to you, if I can. You stated that it is important this bill not, and I am quoting you, limit the Federal Trade Commission's authority to enforce against deceptive and unfair practices in any way whatsoever. But the bill contains an explicit savings clause ensuring that the FTC can still pursue action against trolls under the section 5 authority.

So, are you concerned that the savings clause is not sufficient to preserve the FTC's enforcement authority.

Mr. Potter. Congresswoman, I made an executive decision in

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between my written testimony and my oral testimony not to include that point because I am deferring to the Federal Trade Commission on the matter of the savings clause that affects their authority.

Mrs. Blackburn. So you are going to work on this?

Mr. Potter. I am prepared to work on this.

Mrs. Blackburn. Okay. That sounds great. Ms. Morgan, you are getting a workout today, aren't you? And you have expressed some concern on the preemption provision, that it removes your ability to protect consumers under your laws of general applicability. The intent was to create a single uniform law with respect to patent demand letters but not to remove existing consumer protection angles. Can you describe the language that causes you concern in section 4(a)(2) or provide the committee in a short period of time. You can do this -- we are short on time today. You can submit this in writing if you would like.

Give us what you think would be better alternative language, and you suggest clarifying that a clause of action brought under this Act would not arise under, let's see, 28 U.S.C 1338, and I would like for you to explain the effect of this. And you can do all of this in writing because we are short on time, and I want to come to Ms. Greisman for one more footnote 6 of your testimony states that the FTC is prepared to use its competition authority in this context, if warranted. So, I would like for you to expand on that, and I would also like for you

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to give us what a hypothetical would --

Ms. Greisman. Any competition issue, and we obviously do have competition authority under section 5 of the FTC Act.

Mrs. Blackburn. Right.

Ms. Greisman. And our competition authority does extend to transfers of intellectual property --

Mrs. Blackburn. Okay.

Ms. Greisman. -- issues that might relate to collusive behavior, monopolization or attempts to monopoly, but the competition inquiry is so highly fact-specific, I really would be hard pressed to provide --

Mrs. Blackburn. Okay.

Ms. Greisman. -- a hypo at this point.

Mrs. Blackburn. All right. I will take that as your answer. Mr. Chairman, in the interest of time and votes coming up, I yield back.

Mr. Terry. Thank you. And recognize the gentleman from Vermont.

Mr. Welch. Thank you very much, Mr. Chairman. You know, is it within your power to lock this great panel into a room with no bathroom breaks or window in order to come out with that bill we want.

Mr. Terry. I don't know. We should write a bill.

Mr. Welch. Well, I want to thank the panel. I especially want to recognize Wendy Morgan who has been a great member of the Attorney General's Office in the State of Vermont for years, and of course,

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Vermont has been a leader on this. A lot of our small businesses are just getting hammered, and we have got to do something, bottom line. We just have to do something. It is outrageous when you are a MyWebGrocer or another small company and you are getting these rip-off patent letters.

We had a nonprofit that some parents with disabled kids started, and they scraped together money, bake sales, everything, and they get these rip-off patent letters, so it is a problem. But the fact it is a problem, we don't want to come up with a solution that creates other problems, we get that, but the closed room with no windows, that is no a bad idea because we do have to solve this, and I appreciate your leadership on this, Mr. Chairman.

But let me ask Mr. Rogers and Mr. Potter. You know, the old tech companies that are reputable have valuable patents and they have got to protect them. We get that. And new tech companies are oftentimes on the receiving end of some of these patent trolls, so there is legitimate interest on both sides, and it is legitimate, I understand, for you both to be looking at this from the perspective of the folks you represent. And it is a lot of the small guys in Vermont that are advocating this so vigorously, but we have got IBM, which is, you know, the biggest engine of our economy in the State, very important.

Is there a way to draft this that you both are satisfied?

Mr. Rogers. So, Congressman, I would be happy to answer that

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first. Absolutely.

Mr. Welch. Well, you know, I am going ask quite seriously, the suggestion, you can help us on this because I think this panel here wants to do something that solves the problem but doesn't create another one, and you have a collective knowledge and experience, you know what the reality is, but my request of you is that you really do spend some time trying to work out what those differences are. We are not going to do it right here, but I don't know, Mr. Chairman, I mean, that -- that would be helpful to us, wouldn't it, because --

Mr. Terry. Yes, it would.

Mr. Welch. -- our goal is to get a bill that works.

And let me ask, Professor, you want as little intervention as possible, and -- but here is my question. If there is little intervention as possible means the status quo continues and our nonprofits and our small emerging tech companies are getting hammered and harassed and bled to death financially, that is not acceptable, and I wouldn't think it would be for you, so would you see there to be a need to provide some protection against the abuse of the process to protect those folks?

Mr. Mossoff. Oh, certainly, and I -- and I hope I made it clear that I believe that the prohibitions on sending false and deceptive and misleading letters are acceptable and appropriate, and as a matter of fact, do address, I think, the concerns that had been raised by some

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of the bad actors in the patent system. I think that the important principle, though, that we always have to remember is that costs are symmetrical, that you know -- and I think you have been touching on this, that to address -- to create systemic changes that address bad actors creates burdens and costs for good actors as well.

Mr. Welch. Yeah, but that is -- that is a drafting issue. I mean, to say that, basically, if we say that solving one problem is going to cause another, to me, there is two outcomes. One is you don't do anything, so then you keep a bad situation continuing for innocent people, or if you fix it, you have really got to thread that needle and do the hard work to find a way where the good actors are protected and the bad actors are hammered.

Mr. Mossoff. Right.

Mr. Welch. Now, Ms. Morgan, on preemption. You know, Vermont, Mr. Chairman, has a very active consumer protection bureau and it has helped small businesses and it has helped a lot of our consumers, so it is important for us in Vermont to maintain that ability for our Attorney General's Office to protect our citizens and our small businesses, and the preemption issue is a big one, and I just want to give you a chance to speak a little bit more about that, Ms. Morgan.

Mr. Terry. In 19 seconds. No pressure.

Ms. Morgan. Preemption, preemption, preemption, don't do it.

Mr. Terry. Got it.

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Ms. Morgan. The States are -- the States want to protect the small businesses and the nonprofits that are, as you say, getting hammered, and we can do that under our Consumer Protection Act if you don't in some way interfere with that, so that is -- my initial testimony was around being sure that you not interfere with it.

And furthermore, if you want us to use this statute, it has to be in a form that is useful and doesn't create a lot of risk of litigation around peripheral issues, so I am all in favor of locking us in a room. I think that is a good idea, and as you, Representative Welch know, I spend a fair amount of time locked in rooms in the Statehouse or in the cafeteria trying to resolve things in precisely that way, and it is an excellent way to go.

Mr. Terry. Thank you.

Mr. Welch. I yield back.

Mr. Potter. Mr. Chairman.

Mr. Terry. Mr. Kinzinger from Illinois is recognized for 5 minutes.

Mr. Potter. Mr. Chairman, may I take one moment to answer the question that was asked of me?

Mr. Terry. Sorry.

Mr. Potter. Okay.

Mr. Kinzinger. Thank you, Mr. Chairman, and again, thank you-all for being here, and I know it is a very important issue and one that

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has been rightfully getting a lot more of attention lately.

Mr. Rogers, I am going to start with you, and actually, I may basically focus exclusively on you. Today we are trying to tackle the dangers of abusive demand letters. I have heard from restaurant owners in my district that have received these demand letters because they are using credit card machines. So, there is a problem that needs to be addressed. I think that is very obvious. With that said, in your business, what are some legitimate purposes that you think demand letters can serve?

Mr. Rogers. So, to start with, Congressman, demand letters can avoid litigation. We receive demand letters all the time, and it puts a party on notice that there is property rights issue that exists with respect to their products, and you can actually deal with a demand letter in a variety of different ways. If you pay attention to it, you may be able to say you are wrong, it doesn't affect our product, and let me explain why. You may also decide to enter into a license, and we have done both, and sometimes it results in litigation, and litigation has to move forward.

But the demand letters are -- are a necessary precursor towards resolving property rights, and in the ongoing litigation, if it actually does occur, demand letters actually set markers that matter for purposes of either establishing liability or establishing a right to certain damages. So, demand letter and notification is integral

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to the patent system that we have.

Mr. Kinzinger. And we have heard from a number of stakeholders that are requesting a general catch-all prohibition on fraudulent statements. You testified that clarity is necessary in this bill to prevent misinterpretation and to put individuals on notice of what conduct is unlawful. Would tying a catch-all to the concept of fraudulent statements made in bad faith as defined in this bill provide acceptable notice?

Mr. Rogers. I think the problem with the catch-all is that, that it tips the balance between targeting bad faith and bad actors and trying to avoid harming good faith patent holders. It tips the balance too far in the wrong direction. If you have a catch-all, it creates a chilling effect with respect to the companies that want to assert their patent rights in good faith, particularly smaller companies. We are going to be very concerned about what is involved and what that means, and they may feel that they are going to get trapped, and it creates a chilling effect towards asserting their patent rights to begin with, and that, in turn, then creates and tends to undermine their incentives to innovate and get patents in the first instance. So I'm very concerned about a catch-all.

Mr. Kinzinger. So, I have another question, but actually, what I am going to do because I am in a good mood and it is our Friday, kind of, Mr. Potter, if you wanted to respond to the question that was asked

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of you previous, I will give you little bit of time, because you seem like you were just sitting there wanting to respond, so go ahead.

Mr. Potter. Thank you very much, Congressman. Let me say in his absence to Congressman Welch and to the subcommittee, I think the answer is yes, that we can reach a resolution, but the resolution must have some basic information required in demand letters, and I don't think Mr. Rogers is even disputing that. And so the professorial First Amendment argument, which has been rejected by courts in the Fair Credit Debt Practices Act -- Collection Practices Act, is specious and just needs to be pushed aside, but beyond that, on these practical issues of whether we are protecting billion dollar companies or billion dollar market companies or five-person companies, we can figure out a way to a dress that issue.

Mr. Kinzinger. Thank you. Mr. Chairman, I yield back.

Mr. Terry. Thank you. At this time recognize the vice chairman, Mr. Lance.

Mr. Lance. Thank you very much. Good morning to the panel. Let me say it is my view that Congress are the last people on earth who should suggest that you should be locked in a room to solve the problems of the United States.

To you, Mr. Rogers, I have no doubt that there are frivolous demand letters that are sent, and we should do all that we can to crack down on this abuse, from my perspective, we also must be careful lest we

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unintentionally hurt legitimate investors. There is, of course, no patent police, and patent rights are enforced by individuals who hold those patents. My question to you is this, what harm might be done to the economy if we pass legislation that hampers innovators from enforcing their valid patent rights?

Mr. Rogers. So, the harm to an economy that has transitioned from being primarily a manufacturing economy to an innovation economy --

Mr. Lance. Yes.

Mr. Rogers. -- is very, very significant.

Mr. Lance. Yes.

Mr. Rogers. And so threading the needle here is critical, very important, and I think that this -- this step, this bill is very well-balanced. As I said before, we had some things to work on. I would urge you not to do things that undermine small inventors. And just touching on Mr. Potter's last comment, if we -- if we ladle into this bill onerous disclosure requirements relating to identifying every claim and every detail of every infringement theory, a prolific small inventor who has a portfolio of 100 or a couple of 100 patents or even scores of patents, will find that to be so daunting and so expensive and so lawyer-intensive, that he is going to wonder why he got his patents to begin with. We have to be very careful, and I think this committee has done a very good job so far of being very careful.

Mr. Lance. Thank you. Thank you very much, Mr. Rogers.

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Professor Mossoff, would any of the required disclosure elements in the draft, standing on their own, pass First Amendment analysis? Is this a way to cure -- are there any ways to cure the flaw, or are there any disclosure elements that we could require to test such an analysis from your perspective, sir?

Mr. Mossoff. Thank you, Congressman, and it is an excellent question. And because of the structure of the -- of intermediate test scrutiny sometimes given and the multi-factor test that they developed under the Central Hudson decision, it is difficult to answer the question in the abstract.

Mr. Lance. Yes.

Mr. Mossoff. The concern -- so, any one particular disclosure requirement, probably in isolation, is not -- it would probably be upheld as legitimate. The difficulty and concern, of course, is a slippery slope.

Mr. Lance. Of course.

Mr. Mossoff. And what you see in the Supreme Court's precedents going back 30 years in Bolger and Riley and Zauderer and Central Hudson, going all the way back to the Virginia Board of Pharmacies where the Supreme Court has repeatedly held that even seemingly innocuous disclosure requirements addressing simple facts have been struck -- have been struck down as being unconstitutionally compelled speech.

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Mr. Lance. Because of -- in part, because of the slippery slope.

Mr. Mossoff. Yes, in part because of the slippery slope and that even in the commercial context, yes, speech has economic motivation, but nonetheless, it embraces noneconomic communications, yes, were fact-based but nevertheless themselves are not commercial standing.

Mr. Lance. And it has been a long time since law school, and Virginia Pharmacy was quite awhile ago, wasn't it?

Mr. Mossoff. That was back in the early 1970s, but the -- but coming all the way up to Sorrell, 2012, which involved -- the Supreme Court struck down the -- a Vermont statute or requiring disclosure of pharmaceutical records by prescribing physicians as an unconstitutional compelled speech.

Mr. Lance. Thank you very much. I yield back the balance of my time, Mr. Chairman.

Mr. Terry. Recognize the gentleman from Missouri, Mr. Long for 5 minutes.

Mr. Long. Thank you, Mr. Chairman. And Mr. Davis, you qualified your acceptance of the bad faith concept so long as it is not inconsistent with FTC's existing standards for unfairness and deception. Does it matter that the definition of bad faith in this bill was borrowed from the FTC Act and it is something the FTC must show in order to obtain civil penalties, which is a remedy for the violation to outline in this bill?

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Mr. Davis. Thank you, Congressman. It does matter and it is important. Our concern is that the language diverges slightly from the language in section 5 of the FTC Act. There is a -- at the very end of the provision, so that the FTC Act relates to actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive; whereas, this bill relates to actual knowledge or knowledge fairly implied on the basis of objective circumstances et cetera because such representations were false. And we are concerned that the -- that the bad faith definition implying falsity rather than deceptive would allow patent trolls to slip in literally true but -- but deceptive representations in their demand letters that the FTC would not be able to go after under the current definition.

Mr. Long. Okay. Okay. Thank you. And Ms. Greisman, the first thing I want ask you is how many different ways are there to mispronounce your name?

Ms. Greisman. Infinite number.

Mr. Long. You probably heard them all, haven't you?

Ms. Greisman. I am sorry?

Mr. Long. I say you probably heard them all, haven't you, all the different ways, but you indicated that the FTC is familiar with the scienter requirement in the bad faith definition and that you do not anticipate new obstacles in the context of civil penalty cases which

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can arise under this Act. How do you prove that someone has actual knowledge or knowledge fairly implied?

Ms. Greisman. That can be proved in a variety of ways, and I want to just pick --

Mr. Long. Can you pull your mic just a little bit closer?

Ms. Greisman. Sure. Sorry. That can be proved in a variety of ways, and I just want to pick up on something that Mr. Davis said. I agree with everything he said, and I did not think, within the narrow context of civil penalties, our burden is significantly different than it is otherwise by the requirement to prove something is false because of the narrow prohibitions in the statute, in the proposed bill itself. As a general matter, I agree with him that it could be problematic.

Proving actual knowledge can be done any variety of ways. It could be done through deposition testimony, through emails, through written correspondence, and the same for knowledge -- knowledge fairly implied. It is a burden of proof that we are quite familiar with.

Mr. Long. So you don't think it is going to be an issue?

Ms. Greisman. As a general matter, no, sir.

Mr. Long. Okay. Okay. Being that votes are called and we have got other people to ask questions, Mr. Chairman, I yield back the remainder of my time.

Mr. Terry. Thank you. Recognize the gentleman from Florida.

Mr. Bilirakis. Thank you. Thank you, Mr. Chairman, I

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appreciate it very much. Question for the panel. American universities are particularly important to the innovation of the economy. I am sure you agree with that. Located in the Tampa Bay area, the University of South Florida is a major research institution that is a worldwide leader in producing university patents and a national leader in producing spinoff companies. Approximately 55 percent of all Federal funded research is conducted by universities. I believe it is in the taxpayers' interest for the research to be developed into products or processes rather than to be underutilized, and I think you probably agree with that, too. The discoveries made at our universities can often be eventually commercialized, but they are patented to protect the investment in development.

There have been concerns that some legislative proposals may inadvertently define the universities as patent trolls. I am confident that this legislation before us does not go that far. With that understanding, will you please discuss how this particular draft bill distinguishes between those who send out large numbers of letters merely seeking payoffs and legitimate large scale patent defenders like our university systems? And we can start with Ms. Greisman, if she would like.

Ms. Greisman. I think it directly does in one way by speaking in terms of pattern and practice. Because it is enforced by the FTC Act, as I mentioned earlier, the FTC Act can only act in the public

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interest, so that is another constraint on what we could do vis-à-vis enforcing the law, the proposed bill.

Ms. Morgan. And I would say the enumerated provisions --

Mr. Terry. Is your microphone on?

Ms. Morgan. I am sorry. Thank you. The enumerated provisions are -- are going to focus attention on the bad actors, not the people who are legitimately enforcing their patent rights. And the Vermont law that was enacted a year and a half ago specifically addresses the university situation. This one does not, but I think, in any event, the universities are not going to be sending out the kinds of letters that are described here in section 2.

And could I say one more thing about a comment that --

Mr. Bilirakis. Sure.

Ms. Morgan. -- Mr. Mossoff made? He said that there was a Vermont case that struck down compelled speech. It was not compelled speech. It was, in fact, exactly the opposite. It was speech -- there was -- it was a provision that did not allow certain accurate information, so it is not like what you are dealing with here with deceptive information. It did not allow accurate information to go to some people while it did to others. It did not allow it to go to marketers as well. It allowed it to go to universities, so I just wanted to clear that up with regard to the Vermont case. Thank you.

Mr. Mossoff. In fact, thank you, Ms. Morgan, you preempted my

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correction. I checked my notes because I was speaking extemporaneously when I answered the question earlier to the Congressman, but yes, it was a preemptive speech that it was struck down. It was a commercial speech case, and so it is a very significant case that indicates that commercial speech is still given much greater scrutiny now than the user --

Mr. Terry. I understand.

Mr. Mossoff. -- used to receive.

Mr. Terry. Thank you.

Mr. Mossoff. I apologize for that misstatement earlier, but to go back to the question that was presented to the panel. I believe that the question is very well made, Mr. -- Congressman, because universities, because they license and don't manufacture, are accused of being patent trolls, and for instance, University of Wisconsin, its tech transfer division, WARF, is often listed as one of the "Top 10 Patent Trolls" in lists that you see on the Internet for enforcing its patent -- its legitimate patent innovation from Wisconsin researchers against infringers.

So I think this is a real concern and that universities and individual inventors have been -- have been brought within the scope of this pejorative term "patent troll." And if you don't have actually specified lists, what type of activity you are prohibiting, you risk creating the types of damage to the innovation economy that Mr. Rogers

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has detailed, I think, quite well with respect to good inventors and original inventors, because a lot of our original large, even large companies today, like Google and Microsoft, Apple, start -- and Hewlett Packard started in garages and were individual inventors. In fact, Google, they were university graduate students at Stanford when they came up with their algorithm. They got a patent on it and received venture capital funding.

Mr. Bilirakis. Thank you.

Mr. Davis. I agree with you that the bill does a good job in avoiding putting universities into the same category as patent trolls. The statute appropriately does a lot to limit the application of the bill, does a lot to limit its application to patent troll activities and not the legitimate -- not for legitimate enforcement behavior. There is a belt, there is suspenders and something else holding up your pants. I mean, there is pattern and practice limitation, there is the bad faith limitation, and there is the user agent model that I think -- I think under all those, the universities would probably not be involved in this.

Mr. Potter. I agree that there are clear distinctions between good actors and bad actors, but I don't want to leave it unstated that universities do have the potential to send out a pattern or practice of deceptive demand letters, and in those contexts, remember that -- let's remember that universities are taxpayer-funded, patents

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are a gift or it is earned, but taxpayers are the beneficiary through the government and the PTO of the patent, and we should make sure that everybody is a good actor.

So, I appreciate that, as a general proposition, universities are not in the business of patent trolling, but that doesn't mean we should have clear distinctions if we are defining what is good behavior and what is bad behavior.

Mr. Terry. The gentleman's time has expired. At this time, I need to enter into a colloquy with the gentleman from Texas. The time for the votes has gone to zero zero, but there are still 288 of us that are not present. If you would like to take over the chair and ask your questions, I would gladly allow that.

Mr. Olson. I am happy to, sir. And I just have one question. I have got five for the record and submit those guys, thanks for your time.

Mr. Terry. All right. Go ahead.

Mr. Olson. My question may be from left field. I know being a baseball fan from Houston, Texas, you got to think what does he know about left field? There are no left fielders in pro-ball for 3 years now.

My question to you, Mr. Potter, is there a role for the State Bar Association to play in cases as the one you describe when the attorney representing the troll declined to engage making concert conversation

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about his communications?

Mr. Potter. The answer is maybe, but I can tell you that every small company I have dealt with that has faced this situation just wants to get out this mess and go back to work. They don't want to be then hiring ethics lawyers to go bring charges under the State Bar -- in the State Bar Association.

Mr. Olson. Thank you. Again, I have five questions for the record, four on threshold and one on the rebuttable presumptions. I yield back the balance of my time.

Mr. Terry. Thank you. Succinct for a Texan.

Mr. Olson. I can go on longer.

Mr. Terry. But that does conclude our questions. As Mr. Olson mentioned, we have the ability to submit written questions to you, which I will ask of my colleagues that we have them to our counsel on subcommittee by close of business Wednesday, the 28th, and because we are kind of on a quick timeline, if you would answer them within 10 days of receipt, we would greatly appreciate that, but you are not going to be locked into a room on the 11th day. You may be invited to participate in some meetings, but then now for some wrap-up business.

We have some letters for the record, the National Association of Federal Credit Unions, National Association of Realtors, Office of the Nebraska Attorney General, Main Street Patent Coalition, and by the way, the Office of Nebraska Attorney General John Bruning has his person

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sitting in the audience today, Mr. Dave -- lawyer Dave Lopez, so thank you for being here as well.

So I ask unanimous consent to submit those four letters. Hearing no objections, they will be part of the record. And that, my friends, ends a rather great hearing, so thank you-all for your participation.

[The letters follow:]

***** COMMITTEE INSERT *****

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[Whereupon at 10:53 a.m., the subcommittee was adjourned.]