

**HEARING BEFORE THE U.S. HOUSE JUDICIARY SUBCOMMITTEE
ON COURTS, INTELLECTUAL PROPERTY, AND THE INTERNET**

**“The U.S. Intellectual Property System and the Impact of Litigation Financed by Third-Party
Investors and Foreign Entities”**

June 14, 2024

**High Tech Inventors Alliance and Computer and Communications Industry Association
Statement for the Record**

The High Tech Inventors Alliance (HTIA) and Computer and Communications Industry Association (CCIA) commend Chairman Issa, Ranking Member Johnson, and other members of the Subcommittee for holding this hearing on critical issues surrounding the lack of transparency regarding third party litigation funding (TPLF) and appreciates the opportunity to provide a statement for the record. HTIA and CCIA strongly support congressional efforts to enact legislation that would mandate greater disclosure of the existence and identity of funders and of appropriate information regarding the nature of the funding agreement, the funder’s financial interest in the suit, and the level of control the funder has over key litigation decisions, such as whether to accept a settlement offer.

HTIA represents leading technology providers and includes some of the most innovative companies in the world. HTIA member companies are global leaders in software, ecommerce, cloud computing, artificial intelligence, quantum computing, digital advertising and marketing, streaming, networking and telecommunications hardware, computers, smartphones, and semiconductors. HTIA includes four of the top six software companies in the world, two of the top ten providers of 5G network infrastructure, three of the ten largest tech hardware companies, and three of the ten largest semiconductor companies in the world. HTIA’s member companies are some of the world’s largest funders of research and development, collectively spending more than \$165 billion on R&D annually. Our members also include some of the world’s largest patent owners and have collectively been granted nearly 350,000 patents.

CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For more than 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development annually, and contribute trillions of dollars in productivity to the global economy.

HTIA and CCIA members are frequent targets of infringement litigation brought by shell companies that do not make or sell any products, often do not have headquarters or factories

or physical offices, and exist for the sole purpose of extracting money from U.S. businesses by means of threatening or engaging in patent infringement litigation. These companies, frequently referred to as patent assertion entities (PAEs), are often nothing more than a name on a corporate registry, the one or two legal documents required for the formation of a corporation, and a post office box that serves as their corporate address.

While abusive patent assertions have been a significant problem for U.S. businesses for several decades, over the past few years the harm caused by PAE litigation has been increasingly exacerbated by a flood of third-party litigation funding and other investment funding for patent suits. In general, TPLF refers to a financial arrangement between a litigant and a funder that is not a party to the litigation in which the funder agrees to finance part or all of a party's litigation expenses on a non-recourse basis such that the funder is only entitled to repayment if the funded litigant wins the suit and receives an award of damages.

The involvement of third-party funders has changed the nature of the PAE litigation against our members. Rather than a single suit, funders are now investing in extensive litigation campaigns, in which the target companies are sued repeatedly by a PAE that has access to almost limitless resources from a third-party funder. These campaigns often involve wave after wave of lawsuits, each costing millions of dollars to defend. And, due to the involvement of the third-party funder, these cases are often all but impossible to settle and drag on for extended periods of time. The costs of defending against one of these campaigns are regularly in the tens of millions of dollars and can potentially run into the hundreds of millions.

Almost all of HTIA's member companies, and many of CCIA's, have been a target of this type of litigation campaign in which the PAE plaintiff was backed by a third-party funder or where the PAE was funded through direct investment in the PAE itself. For example, HTIA and CCIA member company Google has been sued more than 40 times by Uniloc, which is a PAE associated with (and funded by) the Fortress Investment Group ("Fortress"), a large private equity firm with roughly \$50 billion of assets under management. Until recently, Fortress was controlled by Softbank, an investment holding company headquartered in Tokyo. In May, Mubadala Investment Company (Mubadala) completed the acquisition of a majority stake in Fortress. Mubadala is a state-owned investment management holding company that acts as one of the sovereign wealth funds of the Emirate of Abu Dhabi, which has more than \$300 billion in assets under management. In sum, the more than 40 suits against Google were funded by a large private equity firm controlled by a foreign investment holding company that is now controlled by a sovereign wealth fund owned by the government of Abu Dhabi.

Google is not the only HTIA or CCIA member company that has been targeted by Uniloc. This PAE has sued Apple nearly 60 times, Amazon more than 20 times, Samsung nearly 20 times, Microsoft more than 20 times, Cisco five times, Salesforce twice, and Adobe once. In all, Uniloc has brought more than 150 patent infringement suits against HTIA and CCIA member companies (and more than 600 suits in total).

Uniloc is just one of many PAEs funded by Fortress. VLSI, a subsidiary of Fortress, engaged in a five-year litigation campaign against HTIA and CCIA member company Intel. In one of the suits, a jury in the Western District of Texas awarded VLSI \$2.18 billion.¹ This damages award was later vacated and, in separate proceedings before the Patent Trial and Appeal Board, VLSI's patents were found to be invalid.² In another lawsuit, VLSI's case was assigned to Chief Judge Connolly of the District of Delaware. Chief Judge Connolly issued two standing orders in early 2022 that require disclosure of the identity of third-party funders and their owners, along with some basic information about the funding arrangement. Chief Judge Connolly found VLSI's disclosures to be "clearly inadequate" and stayed the litigation pending VLSI's full compliance with the order. Rather than disclose the investors that funded the campaign against Intel, however, VLSI walked away from a \$3 billion dollar suit that it had been pursuing for five years. VLSI not only abandoned its lawsuit, but it gave Intel a covenant not to sue it or its customers.

It bears emphasis that all of the suits described above were brought by just two of the many PAEs funded by Fortress—and that Fortress is just one of the many entities that are financing patent infringement litigation. In other words, the over 150 suits against HTIA and CCIA members described above represent only the very tip of the iceberg. There have also been many similar suits funded by Fortress against defendants that are not members of either association, and an even larger number that have been financed by other third-party funders. To extend the metaphor, not only do the suits described above represent only the tip of the iceberg, but this iceberg is just one of many.

As these facts illustrate, third-party-funded PAE litigation is imposing enormous costs on U.S. companies. According to the American Intellectual Property Law Association's annual economic survey, the median cost of litigating through trial for a patent case in which at least \$25 million is at issue is \$3.65 million. If we assume that this is roughly the cost incurred by association members in defending just those cases funded by Fortress, this means that a single third-party funder has imposed more than half a billion dollars in litigation costs just on the member companies that were the targets of these suits.

Other aspects of this situation should also be concerning, if not outright alarming, to policy makers. It is troubling that a PAE ultimately controlled by a foreign entity nearly succeeded in extracting more than \$2 billion from Intel based on worthless patents that were subsequently invalidated. The fact that VLSI abandoned a \$3 billion lawsuit rather than disclose the identities of its owners and investors should be similarly disquieting. It is hard to imagine what type of entity is so problematic that VLSI chose to walk away from a potential multi-billion-dollar payday to avoid disclosing that they have a business relationship with the entity. Finally, it is troubling that a foreign government now owns one of the largest funders of patent litigation against U.S. operating companies and that other nations are actively participating in funding

¹ *VLSI Technology LLC v. Intel Corp.*, No. 6:21-cv-00299 (W.D. Tex.).

² *VLSI Technology LLC v. Intel Corp.*, 87 F.4th 1332 (Fed. Cir. 2023).

patent litigation against American businesses. Many foreign governments appear to make investments that are at least partially intended to serve their national interests rather than being solely motivated by potential profits.

Undoubtedly, some will argue that claims about the involvement of foreign entities are simply a red herring. However, as already discussed, one of the most litigious of these patent assertion entities is controlled by a foreign sovereign wealth fund. And, as the result of recent disclosures required by one judge, it has become clear that Chinese entities – among others – have become active in funding U.S. patent litigation.³ Others will claim that judges already have sufficient authority to require these disclosures and that no legislative solution is required. However, even if that were true, the undisputable fact is that it is not happening. These disclosures are not being required except by a handful of the nearly 700 district court judges in the country.

As was noted more than once during the hearing, third party litigation funding represents a segment of economic activity in the U.S. that has potentially enormous risks and consequences for the U.S., yet it represents a situation about which we don't even know what we don't know. Requiring more transparency regarding who is funding U.S. commercial litigation is critical for understanding the funders' motives and the risks created by such funding.

In closing, we would like to again commend members of the Subcommittee for raising the profile of this important issue and offer our strong support for the effort to require increased transparency in this area through legislation.

³ As a result of Judge Connolly's disclosure requirements, we have recently learned that a China-based third-party funder, PurpleVine IP Operating Co., is financing multiple U.S. patent litigations, including a case against an HTIA member.