

Statement of Todd Moore

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Statement for the Hearing “Patent Reform: Protecting American Innovators and Job Creators from Abusive Patent Litigation”

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I am Todd Moore, founder of TMSoft LLC, a Virginia-based developer of mobile apps and games. I’m probably best known for creating the White Noise app for your smartphone which help millions of people sleep better at night. My app has been featured on the Dr. Oz show, Today Show, Fox & Friends and more. Jimmy Fallon even made fun of it on his show with a special, not-so-soothing “Axl Rose” edition.

I am a member of CEA, an association representing over 2,000 of America’s most innovative companies. CEA also owns and produces the International Consumer Electronics Show every January in Las Vegas. I am also a board member of the Application Developers Alliance (“Apps Alliance”), a non-profit global membership organization that supports developers as creators, innovators, and entrepreneurs.

Thank you for this opportunity to testify about the importance of the Innovation Act and its critical importance to app developers like me and startup innovators nationwide.

I founded my company in 2008 to create smartphone applications. I worked nights and weekends on different app ideas while keeping a full time job to pay the bills. One of the apps I created, White Noise, started getting a lot of attention in the press and at one point became the #1 app on iTunes. White Noise generated enough revenue so I could quit my job, focus on my startup full-time, and hire employees. I was living the entrepreneurs dream, but I never dreamed the biggest

danger to my business would come from a patent troll.

In 2011 my company received a demand letter from Lodsys claiming my app was infringing on one or more of its patents. Lodsys is a privately held “patent monetizing firm” that does not make or produce any products. I was sued in Marshall, Texas - where I have never been but where patent trolls are a local industry that seems to be enabled and supported by local courts.

The demand letter included a screenshot of White Noise showing a webpage inside the app with a button that opened the iTunes App Store - essentially, a hyperlink. I immediately assumed they had simply made a mistake because hyperlinks are universally common technology - in fact, they are the building blocks of the entire World Wide Web. However, I later found out that numerous other app developers had received similar demand letters. Lodsys wanted us all to pay a licensing fee or they would sue for patent infringement.

Lodsys filed a lawsuit against my company and numerous other app developers in 2013. Although the lawsuit was clearly frivolous, I was forced to defend myself and my company in the court system. I was aware that litigation could cost well into the millions of dollars. I knew I didn't have that sort of money - and the patent troll knew that too.

Lodsys was quick to offer me a way out – all I needed to do was wire \$3,500 to an overseas bank account and promise never to speak publicly of the case, and they would dismiss the lawsuit.

Most companies would take that deal without hesitation, but many companies that settle with patent trolls risk catching the attention of other patent trolls looking to make quick profit. Another issue with settling is you won't be able to speak publicly about it because the troll demands a non-disclosure agreement that prevents you and your company from speaking about the terms of the settlement. As someone who likes to speak publicly about technology and the software industry, censorship did not sit well with me.

Through the Apps Alliance, I met Dan Ravicher from the Public Patent Foundation, a nonprofit organization whose mission is to represent the public's interest in the patent system. Dan Ravicher

agreed to defend my company pro bono. Once Lodsyst understood that TMSoft would not roll over and pay an easy settlement and that we had a free lawyer who would challenge the patent's validity, it looked for its own escape. Trolls are not interested in asserting valid patents and obtaining fair royalties; they are interested in easy settlements and quick paydays that fund their next set of lawsuits.

Patent trolls have utterly distorted the patent system. Legitimate licensing of patents allows the exchange of valuable technologies for fair prices so that others can use inventions and build great new products and services. Patent trolls, in contrast, destroy value. I was lucky to have a free patent attorney, who estimates that the several hundred hours his team spent on my case would have cost me \$190,000 at a typical patent litigation firm. And we had not yet set foot in a courtroom.

It is likely that the Patent and Trademark Office would have not granted the Lodsyst patent under today's new rules. But that future-looking solution is not a complete solution, because the Lodsyst patent and thousands of low-quality patents were approved by PTO for 20 years under the old rules, and they are ammunition for patent trolls unless Congress acts.

Also notable is that Apple had already licensed the Lodsyst patent from Lodsyst, and Apple then provided licensed technology to me. Congress must provide end-user protections to users of software (and not only hardware) so that trolls are required to sue the real alleged infringer, not only small companies like mine that generally are easy marks for quick money. In my case the troll would have been forced to sue Apple, Google or Microsoft - and this troll wasn't looking for that kind of fight.

Ignoring patent trolls and hoping they'll go away is not a solution. The patent troll business model is low-risk and high-reward, as trolls get free contingency-fee lawyers and put their junk patent assets in shell companies. They are destroying small businesses while offering society absolutely no benefit.

My small business has licensed technology and media from many companies, and in return we get something useful that improves our

products. That is how legitimate companies use patents to build value and great products. In contrast, with patent trolls, you don't get useful technology that can be used in your product. You get an agreement that they won't sue you. That's not how our patent system is supposed to work.

Finally, I've heard claims that patent reform legislation will harm small inventors. This is nonsense. I risked my capital to build a business and invent great apps. I am not discouraged by reforms that will support legitimate patents, legitimate licensing and legitimate enforcement. I'm a small innovator and what harms me is that the patent system is being exploited by litigation opportunists. The only way to protect true inventors with real patentable inventions is for Congress to reform the system so it works as intended.

What patent trolls are doing to small businesses like mine is simply wrong. We need common sense reforms like the Innovation Act that will force patent trolls to think twice about bringing baseless and frivolous lawsuits. Please shut down the patent troll racket and let small businesses like mine get back to innovating, creating jobs, and building great products that people love.