



June 11, 2024

The Honorable Darrell Issa
Chairman
Subcommittee on Courts, Intellectual
Property, and the Internet
House Judiciary Committee

The Honorable Henry C. “Hank” Johnson
Ranking Member
Subcommittee on Courts, Intellectual
Property, and the Internet
House Judiciary Committee

Dear Chairman Issa and Ranking Member Johnson:

Cisco Systems, Inc. (“Cisco”) submits this statement in connection with the upcoming subcommittee hearing, “The U.S. Intellectual Property System and the Impact of Litigation Financed by Third-Party Investors and Foreign Entities.” Cisco is a provider of critical technology and security solutions. It is a leader in enterprise server technology and is the world’s largest enterprise security company. Unfortunately, as a leading technology company, Cisco has become a frequent target of often baseless third-party funded litigation, most notably in patent related disputes.

In third-party litigation funding (“TPLF”) cases, a non-party that has no connection to a dispute provides funding for the litigation in exchange for a share of the financial recovery. Despite the proliferation of such funded litigation, there is currently no nationwide requirement to disclose the identity of third-party funders or their funding arrangements to opposing parties or even to the presiding judge. This allows litigation funders to operate in the shadows in federal patent litigation, with only a few exceptions where certain lower courts have taken measures for the disclosure of certain arrangements. Often, neither the defendants in the suits nor the court know who is backing a suit—including whether that entity is a foreign actor with interests adverse to those of the United States.

Although some foreign funders might be after a profit, others may well see strategic value in the suit itself. Lawsuits can distract from innovation—a real benefit to foreign industries hoping to compete with American enterprises. Even worse, some funded suits may be designed to elicit the kind of confidential information, like source code, that can only be uncovered through discovery in litigation, leading to the potential theft of intellectual property.

This secrecy poses significant potential risks to America’s national security. The traditional toolbox of the nation’s adversaries might have been industrial espionage and the deployment of spies. But increasingly, entities adverse to the United States are also turning to



litigation funding to promote their interests.¹ For example, one of the largest litigation funders recently revealed that approximately 28% of its \$2.8 billion in assets under management is backed by sovereign wealth funds—that is, funds controlled by foreign governments.²

In general, TPLF cases also impose an increased economic burden on Cisco and other similarly situated defendants. This burden is focused in two areas. First, TPLF cases tend to be larger in scope than non-funded cases and can involve numerous patents accusing infringement across dozens of product lines. Second, setting aside the often-baseless claims associated with a number of asserted patents, the duration of TPLF cases against Cisco is longer than the duration of a non-funded case. This is true because the nominal plaintiff has no incentive to settle for any reasonable amount as it typically has “nothing to lose” given the non-recourse nature of TPLF cases.

Moreover, when there are attempts to resolve cases through mediation or otherwise, the TPLF is not at the negotiating table although it frequently has the largest stake in any recovery depending on the “waterfall” provisions of its agreement with the nominal plaintiff. As such, the often-anonymous nature of the deep pockets behind the cases impedes attempts to resolve them for reasonable amounts and causes the cost to defend such cases to increase dramatically.

The increasing use of TPLF in the United States and the varying judicial treatment of TPLF issues demonstrate the need for a uniform disclosure requirement to allow for full transparency as to all parties with a financial interest in litigation in U.S. courts. The secretive funding is also undermining our nation’s economic success and public respect for the judiciary.³ Requiring disclosure of TPLF would minimize these risks. And it would vindicate the public’s right to know if a foreign government (or agent) is litigating in American courts. Specifically, there is a need for transparency as to: (a) the existence and identity of any third-party litigation funder in any matter; and (b) the nature and scope of the funding agreement between the funder and the nominal plaintiff in the case.

Accordingly, Cisco requests that the subcommittee carefully consider the threat posed by secretive litigation funding as well as the additional economic burdens funded cases place on Cisco and similarly situated defendants. We urge that the subcommittee exercise its role in overseeing the federal judiciary, to impose disclosure requirements for bringing TPLF to light, promote transparency, and ensure that TPLF is not used for any improper means.

¹ Michael E. Leiter, *et al.*, *A New Threat: The National Security Risk of Third Party Litigation Funding*, U.S. Chamber Institute for Legal Reform 1-2 (Nov. 2022) (“There is growing concern that a large volume of foreign-sourced money may be pouring into U.S. civil litigation against U.S. companies and industries (including those in defense and other highly sensitive sectors) through third party litigation funding (TPLF), raising significant national and economic security risks.”), <https://instituteforlegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding>.

² U.S. Gov’t Accountability Office, GAO-23-105210, *Third-Party Litigation Financing: Market Characteristics, Data, and Trends* pg. 10 n.24 (Dec. 2022), <https://www.gao.gov/assets/gao-23-105210.pdf>.

³ *See id.* at 20-21.



Sincerely,

/s/

Sarita Venkat, Vice President and Deputy General Counsel, Litigation and Competition

Cc: The Honorable Jim Jordan, Chairman, House Judiciary Committee
The Honorable Jerrold Nadler, Ranking Member, House Judiciary Committee