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November 19, 2013

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: Tomorrow's Full Committee Mark-up of the *Innovation Act* (H.R. 3309)

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association that exclusively represents the interests of our nation's federal credit unions, I write in conjunction with tomorrow's mark-up of the *Innovation Act* (H.R. 3309). As you know from previous correspondence, NAFCU supports several reforms found in this bipartisan bill. We appreciate the committee's attention to our nation's patent system and look forward to working with you as the legislative process continues.

The *Innovation Act* (H.R. 3309) successfully builds upon the *Leahy-Smith America Invents Act* [P.L.112-29] to ensure a more efficient patent system, including NAFCU supported language that would help protect credit unions from baseless litigation involving questionable business method patents. We urge the Committee to keep such provisions (including enhanced pleading standards and limits on discovery) intact moving forward. It would provide important relief to credit unions by making it faster and more cost effective to prove that a patent is of poor quality in instances where it leads to frivolous infringement litigation.

A growing number of credit unions are reporting receipt of demand letters from law firms representing "patent trolls" claiming patent infringement with an option to settle or face litigation. The Transitional Program for the Review of Covered Business Method Patents (CBM program) is an important tool for credit unions in seeking fairness in such situations and should be expanded to include the pre-litigation process. Unfortunately, the current process is cost prohibitive, particularly for smaller credit unions. In addition to provisions discouraging such a practice to begin with, the *Innovation Act* (H.R. 3309) includes a fee-waiver provision that would give the Patent Office discretion to waive such a fee, increasing the opportunity for small institutions to protect themselves from this organized racket.

We also appreciate the legislation's attention to the CBM program. In addition to giving the U.S. Patent Office fee waiver authority described above, the *Innovation Act* (H.R. 3309) removes the sunset provision in current law that would lead to the end of the CBM program. While NAFCU supports this effort, we would note that this section also limits the scope of patents that can be reviewed to those first to invent patents issued before 2011. Given how problematic this issue has been for not-for-profit credit unions, NAFCU believes that arbitrarily limiting the program could lead to additional and unnecessary burden on our members.

Lastly, it is our understanding that the Manager's Amendment to be offered at the mark-up tomorrow will attempt to address the concerns of end-users. Financial institutions of all sizes find themselves in litigation as end-users since a bulk of the business method patents claim a method or process implemented through some type of technology. Because technology providers are unlikely to voluntarily step into a suit and stand in place of their clients, we believe adding a "mandatory joinder" to the patent law is a matter of fairness and would more accurately distribute risk between all parties involved.

On behalf of our nation's credit unions and their 96 million member owners we thank you for considering this legislation. The *Innovation Act* (H.R. 3309) undoubtedly makes the patent review process better for credit unions and we look forward to working with the committee as the legislative process moves forward. If my staff or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact myself, or NAFCU's Director of Legislative Affairs, Jillian Pevo, at (703) 842-2836.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad Thaler", written over a horizontal line.

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Committee on the Judiciary