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National Association of Federal Credit Unions | www.nafcu.org

December 16, 2013

The Honorable Patrick Leahy
Chairman
Senate Judiciary Committee
United States Senate
224 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

RE: Credit Union Support for Limiting Patent Troll Abuse

Dear Chairman Leahy and Ranking Member Grassley:

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 hearing, "*Protecting Small Businesses and Promoting Innovation by Limiting Patent Troll Abuse*." We appreciate the committee's attention to our nation's patent system and look forward to working with you as the legislative process continues.

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. These deceptive letters are confusing and misleading as they often allege that the use of everyday technology violates the patent holders' rights. Further, these letters typically state vague or hypothetical theories of infringement, and often overstate or misinterpret the patent in question. Because the cost of litigation is often more expensive than paying a settlement amount, "trolls" use the threat of litigation as leverage to extract payment from the recipient business who settles in lieu of running the risk of a complex and lengthy legal battle. As an issue of fairness, we urge the committee to pursue meaningful solutions to protect businesses of all sizes from these tactics.

As Congress continues to consider a path toward a more efficient and fair patent system, we urge the committee to include provisions that would provide the Federal Trade Commission (FTC) with further direction, under its existing Section 5 authority, to go after the unfair and deceptive demand letters that patent trolls routinely send to unsuspecting businesses and nonprofits across the country. NAFCU was pleased to see FTC policing measures included in the *Patent Transparency and Improvements Act of 2013* (S. 1720), bipartisan legislation introduced by Chairman Leahy and Senator Lee. We would support additional language that would help to promote demand letter transparency by requiring certain minimum disclosures be made by trolls

to better identify themselves, the patent in question, and the specific nature of the infringement being alleged. NAFCU commends Chairman Leahy and Senator Lee for the provision in their bill that would create the duty to disclose the "ultimate parent entity," and would encourage the committee to go a step further in regards to detailing the patent and the alleged infringement.

Additionally, 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. We would urge the committee to include 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.

Furthermore, 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 would more accurately distribute risk between all parties involved.

On behalf of our nation's credit unions and their 97 million members we thank you for your attention to this important matter. 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", with a long horizontal flourish extending to the right.

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Senate Judiciary Committee