

**Opening Statement of the Honorable Fred Upton
Subcommittee on Oversight and Investigations
Hearing on “The Impact of Patent Assertion Entities on Innovation and the Economy”
November 14, 2013**

(As Prepared for Delivery)

Today’s hearing will examine certain practices relating to “patent assertion,” or the practice of bringing – or threatening to bring – a lawsuit against an organization who is allegedly infringing on a patent. Litigation related to patent infringement has dramatically spiked in recent years. According to the Government Accountability Office, from 2010-2011, the number of these lawsuits increased by one-third. A report released by the White House in June stated that as many as 100,000 companies were threatened last year with patent infringement lawsuits.

Members of both the House and Senate have proposed legislation to address patent assertion litigation. Our purpose today is somewhat different. We are taking a step back to get the facts about what happens before these patent suits are filed. Each of the companies testifying today has received something called a “demand letter” from a patent assertion entity. Typically, these letters claim that the company is infringing on a patent and ask the company to either settle and pay a licensing fee – or prepare to be sued.

For some of these companies, dealing with these demand letters and the threat of litigation has drained resources that could have been spent on innovation, expanding their companies, and hiring additional employees. In many cases, identifying the specific patent at issue, and who is behind the demand letter, is a challenge, complicating a company’s ability to defend itself and determine whether to settle or fight the claim. What entities are sending these demand letters? What patents are being asserted? Do these demand letters specify the particular patent at issue and the alleged infringement? What effects and costs do these demand letters and litigation threats have on your companies? These are a few of the issues we want to address today, so we can get a better understanding of the facts relating to these letters, and how they affect the companies who receive them.

I think all of us recognize that protecting patents and inventions is important. Bringing a lawsuit to protect a patent, to protect an invention, is warranted in many cases. Those types of cases — where a valid patent is being asserted and protected — seem to be a very different thing from the recent rash of demand letters that are vague, do not contain simple information about the patent at issue or the alleged infringement, and contain threats to sue unless a company pays up. As job creation and innovation are threatened, we want to figure out today what separates legitimate patent disputes from the types of demand letters and actions that seem to be brought simply to exact a settlement payment.

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