

# United States Senate

WASHINGTON, DC 20510

March 13, 2014

Dear Majority Leader Reid and Minority Leader McConnell:

The U.S. patent system serves as a bedrock for American innovation and economic growth. The ability of patent holders to bring legitimate lawsuits to enforce their intellectual property rights has been and continues to be central to the effectiveness of our nation's patent system. Unfortunately, some patent holders have exploited that system by bringing abusive lawsuits that have become an enormous drag on the U.S. economy. According to the Congressional Research Service, patent assertion entities, often referred to as "patent trolls," filed more than 60 percent of all patent suits in 2012.<sup>1</sup> Since 2005, the economic costs of abusive patent litigation have more than quadrupled to \$29 billion a year in direct payouts and \$38 billion a year in lost wealth opportunities.<sup>2</sup> The effects of patent trolls are now felt far beyond the technology sector, as Main Street businesses across economic sectors are increasingly the targets of abusive patent litigation. And more than half of such patent suits now involve small businesses and startups, which are a vital source of innovation and job creation.<sup>3</sup>

Given these enormous economic costs, there is strong bipartisan interest in seeking to ensure that the U.S. patent system encourages innovation rather than wasteful litigation. On December 5, 2013, the House of Representatives approved H.R. 3309, legislation designed to curb abusive patent litigation, by a margin of 325 to 91. This bipartisan effort demonstrates that Members of Congress from both sides of the aisle can come together in an effort to bolster the economy and serve the interests of the American people. We are confident the Senate can also pass commonsense, bipartisan legislation that discourages wasteful litigation and thereby spurs innovation, while preserving the ability of good-faith actors to enforce legitimate patent rights. Indeed, the Senate Judiciary Committee is currently debating a range of proposals by both Democrats and Republicans to address abuses of the patent system.

In his recent State of the Union address, President Obama highlighted the critical importance of patent reform and encouraged Congress to "pass a patent reform bill that allows our businesses to stay focused on innovation, not costly, needless litigation." We must ensure that our patent system encourages investments in new products and technologies rather than forcing business owners and innovators to devote limited resources to defend against abusive patent lawsuits. At a time when millions of Americans remain unemployed or underemployed, Congress must focus on impediments to economic growth such as the threat of costly and unnecessary litigation caused by an unbalanced patent system.

We appreciate the attention that Senate Judiciary Chairman Leahy and Ranking Member Grassley, as well as other members of the Judiciary Committee, have devoted to this critical issue. We hope the Committee reports meaningful legislation very soon. We urge you to then move swiftly to advance necessary reforms to address abusive patent litigation, and we stand ready to offer our support for commonsense improvements to our nation's patent system.

Sincerely,



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Mark Udall  
U.S. Senator



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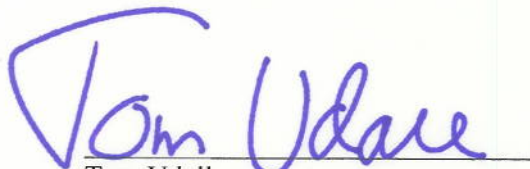
Rob Portman  
U.S. Senator

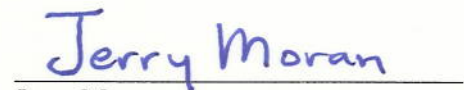
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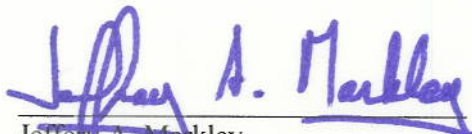
<sup>1</sup> Brian T. Yeh, *An Overview of the "Patent Trolls" Debate*, Congressional Research Service (April 2013).


<sup>2</sup> James Beesen & Michael J. Meurer, *The Direct Costs From NPE Disputes*, Boston University School of Law Research Paper (June 2012).

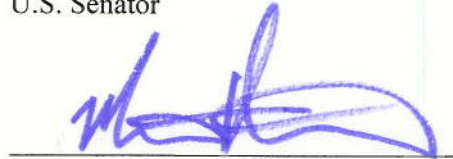
<sup>3</sup> Colleen Chien, *Startups and Patent Trolls*, Santa Clara Law School Research Paper (Sept 2012).


  
Tom Udall  
U.S. Senator


  
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U.S. Senator


  
Jeffrey A. Merkley  
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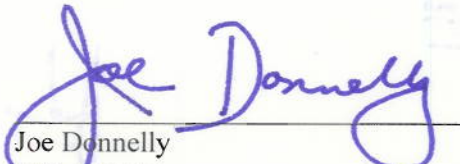
  
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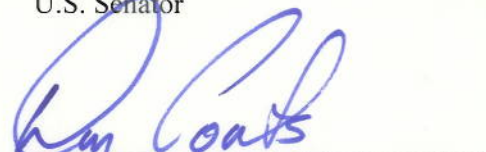
  
Martin Heinrich  
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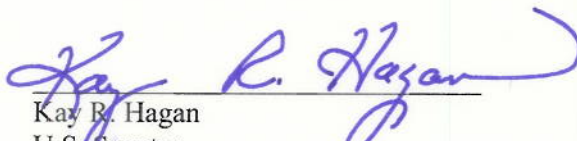
  
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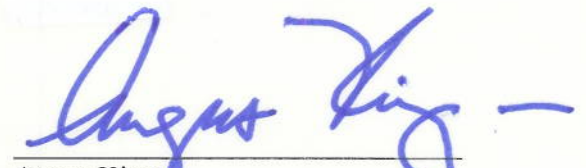
  
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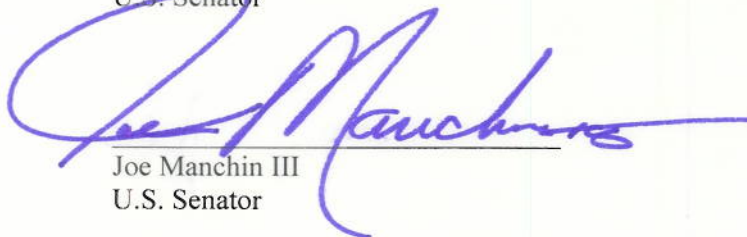
  
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Joe Manchin III  
U.S. Senator

  
Mike Johanns  
U.S. Senator

cc: Senator Patrick Leahy  
Senator Charles E. Grassley