



Consumer Electronics Association

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April 2, 2015

Dr. Mark W. Huddleston  
President  
University of New Hampshire  
105 Main Street  
Durham, NH 03824

Dear President Huddleston:

On behalf of the 2,000-plus innovative companies that are members of the Consumer Electronics Association (CEA)<sup>®</sup> and also (I believe) on behalf of thousands of your alumni who own small, medium-sized and even larger businesses, I urge you to remove the name of your university from a February 24 letter opposing H.R. 9, the Innovation Act. This legislation passed the House in the last Congress with overwhelming, bipartisan support, and also has broad support from retailers, manufacturers, restaurants, hotels, Internet startups, inventors and others. The Innovation Act would restrict the most harmful abuses by patent trolls, while protecting inventors, innovative companies, research institutions and licensors, such as universities.

Patent trolls extort unfounded returns through thousands of annual letters that threaten and attack businesses of all sizes. At least 80 percent of patent troll victims are small- or medium-size businesses. They rely on the fact that most of these businesses do not have the legal resources to defend themselves. Patent extortion letters are almost free to send, and patent lawsuits cost little to bring, but they typically require huge legal fees to defend. When hit with a frivolous patent lawsuit, most businesses don't have the extra \$500,000 to \$1 million to go through the "discovery" process necessary to defend the most rudimentary cases. Instead, they are left with little choice but to settle out of court with the troll. When companies do fight back in court, trolls lose more than 90 percent of the time. Unfortunately, most victims of patent trolls can't afford their day in court. This legalized extortion racket costs our economy an estimated [\\$1.5 billion](#) a week— money our innovators can't reinvest in R&D to invent better products or more efficient processes. (It is also money they cannot contribute as alumni to universities or as corporate funders of university research.)

CEA and its members share your interest in assuring that patent system equity must not weaken intellectual property protections for our nation's research institutions. The Innovation Act strikes this balance. The February 24 letter opposing H.R. 9, cited two specific concerns: fee shifting and joinder. However, under the Innovation Act fees would be shifted only if "the position and conduct of the nonprevailing party or parties" was not "reasonably justified in law and fact." This standard, while affording litigants enhanced reliability on the process, is not a significant departure from the fee shifting provision that has existed in U.S. patent law since 1946. I am sure your institution would not file lawsuits that would come anywhere close to not being "reasonably justified in law or fact." When licensing technology, it should be a simple matter to require the licensee to bring only lawsuits that are reasonably justified in law or in fact, or to require indemnification if they fail to do so.

It is also unlikely that any university would ever be in a position to be affected by the joinder requirements in the Innovation Act. The joinder provision applies only where all three of the following qualifications are met: fee shifting is ordered by a judge because the position and conduct of the nonprevailing party was not reasonably justified in law and fact; the nonprevailing party is unable to fulfill its legal obligation to pay those fees; and the nonprevailing party “has no substantial interest in the subject matter at issue other than asserting such patent claim in litigation.” The “no substantial interest” requirement assures that the joinder provision will apply only to cases brought by entities that exist for the sole purpose of litigating a patent. Many patent trolls hide their patents and other assets in complex networks of shell companies, making it nearly impossible for courts to recover fees when they are ordered.

CEA is likely to be referring publicly to the positions taken by universities – particularly those engaged in taxpayer-funded research – on this critical issue. I would welcome your public support for, rather than opposition to, ending extortion and abuse by patent trolls. Should your position opposing H.R. 9 change, or if you would like to discuss this critical issue, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Shapiro". The signature is fluid and cursive, with a large initial "G" and "S".

Gary Shapiro  
President and CEO