



COMMITTEE ON DEMOCRATS  
**ENERGY & COMMERCE**  
RANKING MEMBER FRANK PALLONE, JR.

**FOR IMMEDIATE RELEASE**  
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**Statement of Ranking Member Frank Pallone, Jr.**  
**Committee on Energy and Commerce**  
**Subcommittee on Commerce, Manufacturing, and Trade**  
**Markup of H.R. \_\_, the Targeting Rogue and Opaque Letters Act**

*April 22, 2015*

Today, the Subcommittee will be marking up Chairman Burgess's draft bill on patent demand letters. The patent system plays a crucial role in the economy by promoting innovation.

Yet, we have heard that some businesses, commonly known as patent trolls, have been taking advantage of the patent system using abusive patent demand letters. The recipients of these letters are often small, main street businesses like coffee shops, realtors, hotels, and restaurants.

The purpose of the bill before us is to encourage targeted enforcement and ultimately stop such abusive tactics by patent trolls.

I could support demand letter legislation that advances consumer protection. But I cannot support this bill, which creates a disincentive to enforcement by tying the hands of state attorneys

general and by creating barriers to Federal Trade Commission (FTC) enforcement that are simply too high.

Some state attorneys general have taken legal action to protect their citizens from unfair and deceptive demand letters. In addition, 20 states have already enacted legislation to tackle this abusive activity. This bill would completely preempt the 20 laws that expressly address abusive patent assertion communications. It also severely constrains states' ability to take an active role by limiting available remedies and placing an arbitrary cap on civil penalties.

Just like with the data breach bill, if Congress seeks to pre-empt specific state laws – especially on issues on which the states have been leaders fighting unfair and deceptive acts, such as false and misleading demand letters – the federal effort should be at least as strong as those state laws.

Moreover, the bill would place a number of additional burdens on enforcers at both the state and federal levels, particularly by requiring proof that the sender *knew* that representations in the letter were false or misleading. This knowledge requirement is an unusual element that would make investigations and enforcement far more difficult. The FTC staff, in comments on this draft, explained, “Consumers can be harmed by misrepresentations regardless of whether the party making the representations knows them to be false.” The staff further stated that proving knowledge “would be a significant and counterproductive departure from existing law.”

Furthermore, the affirmative defense in the draft creates a loophole so large it could completely eliminate liability for unfair or deceptive demand letters, creating yet another barrier to enforcement.

I will support efforts to ensure that states and the FTC continue to be able to enforce against fraudulent actors and are able to collect civil penalties from wrongdoers. However, I cannot support the bill before us today without some significant changes.

Let's work together to craft legislation that will protect the rights of patent holders while ensuring the appropriate tools exist to enforce against abusive practices.