



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

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**Statement of Ranking Member Frank Pallone, Jr.
Committee on Energy and Commerce
Hearing on H.R. __, the Targeting Rogue and Opaque Letters Act
Subcommittee on Commerce, Manufacturing, and Trade**

April 16, 2015

Mr. Chairman, the patent system plays a crucial role in promoting innovation by providing an incentive to inventors to make costly and time-consuming investments in research and development of new inventions. At the same time, the system requires that the inventions be disclosed so that others can build upon the inventions.

At our last hearing on this issue in February, and as early as the fall of 2013 in the Subcommittee on Oversight and Investigations, we heard from stakeholders that some businesses, especially small, main street ones like coffee shops, realtors, hotels, restaurants and retailers, have been receiving abusive patent demand letters.

Efforts to combat abusive demand letters have already begun. 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.

Furthermore, the FTC brought an administrative complaint against MPHJ Technologies, a well-known patent troll. That case was recently settled through a consent order that prohibits MPHJ from making deceptive statements in its demand letters.

The question before us is simple; are those current efforts enough to combat the problem or should Congress legislate in this area? Legislative solutions to address these vague, threatening, unsubstantiated, and often, inaccurate letters have received bipartisan support, so I have hope that we can find a solution that all members are able to support.

Last Congress, this Committee held three hearings, and the Subcommittee marked up a bill. While I will support efforts to find tailored relief for our constituents receiving these abusive letters, we should not undermine the great work already occurring.

For example, I will support efforts to ensure that states and the Federal Trade Commission (FTC) continue to be able to enforce against fraudulent actors and are able to collect civil penalties from wrongdoers. The states and the FTC are experts in consumer protection. These are not complicated patent law cases as some suggest, but instead garden variety fraud and deception cases. States may be particularly well-suited to handle these issues because they best understand the circumstances of their residents.

However, I cannot support the bill before us today. It includes problematic language that does not move us forward. Among other things, it created a knowledge standard, one not typically needed to prove fraud, and it pre-empts stronger state laws.

As I said yesterday in the context of data security and breach notification, if we as a Congress choose to legislate, we need to make sure that we are furthering the interests of consumers. As I also mentioned yesterday, 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.

The goal of this legislation might be well-intentioned, but the drafting is seriously flawed. I am happy that this issue is going through regular order anew this Congress and I urge my Republican colleagues to work with me in a bipartisan fashion to get the language right. Thank you.