

**Rep. Jan Schakowsky**  
**Commerce, Manufacturing, and Trade Subcommittee Hearing**  
**“H.R.\_\_\_\_, Targeting Rogue and Opaque Letters (TROL) Act”**  
*April 16, 2015*

Thank you, Mr. Chairman, for holding this legislative hearing on the TROL Act.

Patent Assertion Entities, also known as patent trolls, pose a serious threat to consumers and businesses all across the country. They send vague and threatening letters to businesses and end users around the country – extracting settlements in the thousands of dollars from businesses that can’t afford to go to court.

It costs patent trolls virtually nothing to send patent demand letters, but they have cost American businesses tens of billions of dollars in recent years.

I am interested in finding a solution to this problem that protects businesses and consumers against patent trolls. That solution must also recognize the legitimate rights of patent holders to protect their ideas and technology.

I appreciate this bill’s attempt to balance those two priorities – it is not easy work. Unfortunately, this bill misses the mark.

This bill requires the FTC to prove “bad faith” of the sender in order for patent demand letters to be considered an unfair or deceptive act or practice. In short, this means that the FTC has to be able to prove that the sender of a patent demand letter knowingly made false statements or was aware that the recipient would be deceived. That is an incredibly high burden of proof – and its unenforceability would prevent action against trolls.

This bill’s affirmative defense clause is also a major issue. Under this bill, the sender of patent demand letters can avoid FTC action if they can demonstrate that they in the usual course of business sends written communications that do not violate this Act.” That’s crazy. What it means is that if you communicate – as all of us do – on a regular basis without sending patent demand letters, you can troll as much as you like.

Not to be a broken record for those that watched the full committee markup yesterday, but I have serious concerns about this bill's preemption of state laws. 20 states – including my home state of Illinois – have already enacted specific policies to curb trolling. In many ways, these state protections exceed those that would be guaranteed under the TROL Act. We should not preempt state law with this bill that does nothing to address the problem of patent trolls.

I look forward to hearing the perspectives of our witnesses on these and other issues today, and to working to improve this legislation before it is marked up. I yield back.