



May 3, 2016

Chairman Chuck Grassley
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building,
Washington, DC 20510-6050

Ranking Member Patrick Leahy
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building,
Washington, DC 20510-6050

Dear Chairman Grassley and Ranking Member Leahy:

The National Small Business Association (NSBA) is the nation's first small-business advocacy organization, with more than 65,000 small-business members in every state and every industry across the country. While NSBA supports reasonable efforts to protect small business innovators from unnecessary patent infringement actions, and appreciates the efforts undertaken by the bill's sponsors, we urge you to oppose the *Venue Equity and Non-Uniformity Elimination (VENUE) Act of 2016 (S. 2733)*. Despite the fact that small businesses create more patents per employee than large companies, our members believe that changes to the patent system have made it more expensive and complicated for small-business patent holders to defend their rights.

Patent protections are particularly important for small businesses, which operate on much smaller margins and often rely more heavily on their intellectual property for revenue than large firms. According to the U.S. Small Business Administration, small businesses produce 16 times more patents per employee than large patenting firms, which has a direct correlation with job growth. They are a significant stakeholder in any patent reform legislation.

This legislation attempts to address an issue of "forum shopping" where patent holders, sometimes "patent trolls", seek to litigate in a jurisdiction solely because it has a history of awarding large sums to patent holders. Some plaintiffs make their choice based not on what federal district has the strongest connection to the dispute, but rather on which court they believe they have the best chance of winning in. A canny plaintiff will exploit differences between courts in their favor—differences in how they enforce certain rules, for example, or in their track records with a type of case. It is widely known that forum shopping runs rampant in patent cases.

While, S.2733 may be intended to stem the flow of patent litigation into a few of these jurisdictions around the country, its approach will also hurt small businesses. Unfortunately, the way this legislation approaches the problem is to limit venue choices for all patent litigation, rather than just targeting patent trolls which abuse the system. As a result of the changes this legislation would make, it will be more difficult for small businesses to enforce their legitimate patent rights.

S. 2733 changes the statutory language outlining where a patent holder may bring his action for patent infringement. By changing the current system, wherein a plaintiff can effectively bring patent litigation against a defendant in any jurisdiction where the defendant has continuous contacts, the legislation significantly cuts down on potential venues for patent holders. If passed, the VENUE Act may not even allow a small business to file in its own jurisdiction in some situations, making litigation all the more expensive for often cash-strapped small businesses. The VENUE Act may be successful at limiting the venue choices for “patent trolls”, but it will likewise limit the venue options for all legitimate patent holders, including small businesses. Small businesses not meeting the new venue criteria established by this legislation could be required to file their lawsuits in far-flung jurisdictions, including the infringer’s own jurisdiction. This limitation would confer an even greater advantage to infringing firms, especially against small-business patent holders with limited funds to defend their patent rights.

Small businesses may be the victims of “patent trolls” too and the small-business community is certainly sensitive to the damage that baseless patent litigation can have on a company’s operations. However, special care must be taken to ensure that legislation tailored to decrease the amount of baseless patent litigation does not do so by simply reducing all litigation, and in the process make it more difficult for all patent holders, including small businesses, to enforce their patent rights.

The patent environment is becoming increasingly incompatible with America’s small businesses. The VENUE Act is certainly not the comprehensive reform we need, as its unfair procedural rules put innovators and small businesses at a distinct disadvantage. I urge the Senate Committee on the Judiciary to oppose the VENUE Act and carefully examine the impact that it will have on small businesses around the country.

I look forward to working with you to find ways to accomplish our shared goal of improving the patent system, without hurting America’s small-business patent holders in the process.

Sincerely,

A handwritten signature in black ink that reads "Todd McCracken". The signature is stylized, with the first name "Todd" written in a cursive-like font and the last name "McCracken" in a more blocky, slightly cursive font. A horizontal line extends from the end of the signature.

Todd McCracken
President & CEO