

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**on**

**Discussion Draft of Patent Demand Letter Legislation**

**Before the**

**SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE**

**of the**

**COMMITTEE ON ENERGY AND COMMERCE**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.**

**May 22, 2014**

## **I. Introduction**

Chairman Terry, Ranking Member Schakowsky, and members of the Subcommittee, I am Lois Greisman, Associate Director of the Division of Marketing Practices at the Federal Trade Commission (“FTC” or “Commission”).<sup>1</sup> I appreciate the opportunity to present the Commission’s testimony on consumer protection issues involving patent demand letters, patent assertion entities (“PAEs”),<sup>2</sup> and the draft bill.

The activities of PAEs and the related issue of patent demand letters have been topics of increasing interest and concern. Last June, the Executive Office of the President reported that “suits brought by PAEs have tripled in just the last two years, rising from 29 percent of all infringement suits to 62 percent of all infringement suits,” and that this activity may have “a negative impact on innovation and economic growth.”<sup>3</sup>

The Commission is examining PAEs and patent demand letters from both a policy and an enforcement perspective. This testimony will focus on the latter, and how the draft bill might affect our enforcement efforts.

It is important to note that information about PAEs, how they operate, and their overall impact is limited, and that PAE activity may include a number of different business models.<sup>4</sup> PAEs could act as efficient middlemen who increase return on investment, particularly for small and individual inventors. PAEs may also have incentives to exploit flaws in the patent system,



issues include the broad scope of many patents, the ease with which

or deceptive claims that are unrelated to the merit of its patent claims, such as false threats of

FDCPA federal case law addressing false threats of litigation and false threats of imminent litigation.<sup>14</sup>

This enforcement experience and jurisprudence inform the way the FTC approaches potential violations of Section 5 concerning patent demands. As this Subcommittee is aware, FTC investigations are generally non-public, and the Commission does not disclose information such as the identities or alleged practices of individuals or entities under investigation. On January 13, 2014, however, MPHJ Technology Investments, LLC, a company under investigation, sued the Commission, challenging the FTC's authority to take enforcement action against it and seeking an injunction against any law enforcement efforts the agency might pursue.<sup>15</sup> As a result, the Commission can address certain facts that MPHJ has made public through its lawsuit.

MPHJ filed, along with its complaint against the Commission, a draft of a proposed complaint that FTC staff sent to MPHJ's counsel for purposes of settlement discussions. FTC staff's draft complaint alleges that MPHJ had sent letters to thousands of small businesses located in all fifty states representing that the recipient is likely infringing certain patents by using ordinary office equipment. According to the draft complaint, these letters state that the recipients likely need to obtain a license for use of the patents at a price of either \$1,000 or \$1,200 per employee. The draft complaint further alleges that MPHJ's letters represented that substantial numbers of businesses had purchased patent licenses from MPHJ when that was not in fact the case, and that MPHJ's letters also falsely threatened imminent litigation. The Commission has moved to dismiss MPHJ's lawsuit contesting the FTC's authority in this area.

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<sup>14</sup> *E.g.*, *United States v. Nat'l Fin. Servs.*, 98 F.3d 131, 138 (4th Cir. 1996); *Crossley v. Lieberman*, 868 F.2d 566, 571 (3d Cir. 1989); *Jeter v. Credit Bureau*, 760 F.2d 1168, 1175–77 (11th Cir. 1985).

<sup>15</sup> *MPHJ Tech. Investments, LLC v. FTC*, No. 14-11 (W.D. Tex.).



#### **IV. Conclusion**

Thank you for this opportunity to share the Commission's views. We look forward to working with you on this important issue.