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Day In Washington

Grocery Industry Support for Patent Reform

Supermarket retailers are typical “end users” with regard to patents. They merely use the technology of which patent trolls are claiming infringement. Patent trolls, or patent assertion entities, are often shell companies or law firms that have bought patents with no intent to develop or produce anything; the business model is to simply enforce their patents. Recently, grocers have been sued, threatened with litigation and sent demand letters by trolls for employing widely adopted technology, such as text messages, store locator functions and clickable menus on their websites. Retailers have even been sued and sent demand letters for offering Wi-Fi in their stores or using QR codes on their business materials.

The grocery industry has joined with other end user groups who have been victimized and harassed by trolls to seek legislative relief from this growing problem.

The cost of the problem

- Patent troll litigation costs the U.S. economy \$80 billion a year
- The average patent infringement case costs \$2 million to litigate
- Recent estimates show that trolls threatened 100,000 companies in 2012

Grocers Support Meaningful Reform

- Grocers support the litigation reforms included in the House-passed bill (H.R. 3309) that include fee shifting, heightened pleading standards and discovery reforms
 - Grocers support the similar provisions included in Senator Cornyn’s patent reform bill (S. 1013) in the Senate
- Grocers need a workable customer stay provision that will allow the manufacturers’ case to move forward first, without unnecessarily binding the end user to the result of that case.
 - Currently, neither the House-passed bill or Senator Leahy’s bill (S. 1720) as introduced adequately address retailers’ concerns. Grocers are committed to continue working with Congress to find a workable solution that offers real relief and protection for end users
- Retailers support bringing transparency, clarity and consistency to demand letters
 - Grocers strongly support the demand letter provisions included in Chairman Leahy’s introduced bill and encourage the committee to keep the language as it is currently drafted
 - Grocers also support Senate Commerce and the House Energy & Commerce Committee’s attention to demand letter transparency and interest in moving bills in those committees

Time is of the essence, Congress needs to act now. Patent trolls continue to harass main street businesses like the grocery industry. Until grocers and other end users are given tools to fight back, trolls will continue costing businesses both valuable resources and diverted labor hours.