

April 4, 2013

Via Electronic Mail
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex D)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Request for public comments on Patent Assertion Entity (PAE) activities

Dear Commissioners,

The Washington Legal Foundation (WLF) appreciates this opportunity to respond to the Federal Trade Commission's November 19, 2012 invitation for public comments on the impact of patent assertion entity (PAE) activities on innovation and competition. WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. To that end, WLF has regularly appeared before the Supreme Court and other federal courts in cases raising important patent law issues, particularly those cases in which enforcement of broad or ambiguous patent claims might serve to inhibit innovation. *See, e.g., Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336 (Fed. Cir. 2010); *i4i Limited P'ship v. Microsoft Corp.*, 589 F.3d 1246 (Fed. Cir. 2009), *withdrawn and superseded on reh'g*, 598 F.3d 831 (Fed. Cir. 2010), *aff'd* 131 S. Ct. 2238 (2011).

WLF's Legal Studies division, the publishing arm of WLF, has recently released two publications that will be of special interest to the Commission as it considers the impact of PAE activities on innovation and competition. In *CONVERSATIONS WITH: Trolling, Licensing & Litigating: A 21st Century Patent Paradigm?*, former Attorney General of the United States and Pennsylvania Governor Dick Thornburgh leads a discussion with Thomas L. Ewing, an attorney and patent counselor with Avancept LLC, and Professor Robin Feldman of the University of California Hastings College of the Law, on the lucrative practice of monetizing patents. Rather than utilizing patents to produce and sell products or services, an increasing number of "non-practicing entities" purchase, hold, and aggregate patents for the purpose of earning licensing fees or using the patents as weapons in litigation. Mr. Ewing and Professor Feldman discuss the positives and negatives of such activity; explain the different actors involved, from "patent trolls" to

defensive patent aggregators; and assess legal policy devices which may reduce abuses that can arise from patent monetization.

Likewise, in *CONVERSATIONS WITH: Patent Licensing and The U.S. International Trade Commission*, former Attorney General of the United States and Pennsylvania Governor Dick Thornburgh leads a discussion with Deanna Tanner Okun, a partner with the law firm Adduci, Mastriani & Schaumberg LLP and former Chairman of the U.S. International Trade Commission (ITC), and Paul Roeder, Vice President and Associate General Counsel, IP Litigation and Disputes Group, of Hewlett-Packard. The participants delve into the ITC's consideration of patent infringement claims, with a particular focus on complaints lodged with the Commission by patent-holders which primarily engage in licensing activity, rather than the production of products or services. Ms. Okun and Mr. Roeder also discuss and debate whether the ITC and the federal courts have opened the door too widely to patent-assertion entities or non-practicing entities.

Both of these timely publications are attached to this e-mail for your further consideration and edification.

Sincerely,

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