

February 14, 2019

The Honorable Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

Dear Director Iancu,

We are small business owners, company founders, and startup executives. We write to express our concern about some of your recent remarks concerning patent assertion entities (PAEs), or “patent trolls,” and their impact on innovation. We understood your remarks to be downplaying, or even denying, the serious harms caused by abusive patent litigation from PAEs. It is very concerning to us that you would minimize or deny the real-world experience of businesses like ours.

In a recent speech to the Eastern District of Texas Bar Association, you suggested that critics of PAEs are spreading “scary monster stories” and do not care about innovation.¹ But we know first-hand that PAEs can cause enormous harm.

Our experiences with PAE threats and litigation include:

- David Bloom: The cost of defending against PAE patent litigation drove David’s ecommerce startup, Ordrx, out of business. David had to tell 40 people that they no longer had jobs. The asserted patents were later ruled invalid, but this came too late to save his company.
- Austin Meyer: Austin created a world-renowned flight simulator called X-Plane. His small company was sued by a PAE for offering the program on the Google app store. Austin prevailed but only after more than three years of expensive litigation.
- Ruth Taylor: A PAE sued Ruth for running a website that allowed people to vote for their favorite photograph. The PAE dismissed its claims after Ruth filed a motion to dismiss raising *Alice v. CLS Bank*. Without pro bono legal help, Ruth would have faced devastating legal costs for simply running a hobby website.

These abusive litigations from PAEs cannot be dismissed as mere “monster stories.” In addition to the expense, the stress of patent litigation is a significant distraction and burden, especially for

¹ A transcript of these remarks can be found at: <https://www.uspto.gov/about-us/news-updates/remarks-director-iancu-eastern-district-texas-bar-association-inaugural-texas>

small business owners. Research shows that companies sued for patent infringement later invest less in research and development.²

There are thousands of stories like ours. A single PAE, Shipping & Transit LLC, sued over 500 companies in a campaign a federal judge described as “unreasonable” and “exploitative.” Many other PAEs have sued more than 100 companies before their patents were finally found invalid. We hope you appreciate that every single one of these suits caused a productive company unnecessary expense and distracted it from its core mission.

We are concerned that some of the recent moves by the USPTO are likely to increase the number of low-quality patents being issued, and will make it harder to challenge invalid patents. For instance, the USPTO’s most recent proposed guidance for examiners regarding *Alice v. CLS Bank* seems calculated to minimize the impact of the Supreme Court decision rather than an attempt to diligently apply the law.

In your role as Director of the USPTO, your duty is to the public at large, not just patent applicants and patent owners. Rather than attack critics of PAEs, the USPTO should focus on patent quality. This should include both improved examination and ensuring that the Patent Trial and Appeal Board serves the purpose Congress intended: allowing invalid patents to be challenged more efficiently. Only by reducing the supply of low-quality patents can the USPTO promote innovation for all.

Very truly yours,

Kevin Hamilton, Founder, Binary Formations	Mechanicsville, VA
Stefan Lederer, CEO and Co-founder, Bitmovin	San Francisco, CA
Ruth Taylor, Owner, BytePhoto	Pennsylvania
Michael Skelps, Founder, Capstone Photography	Middlefield, CT
Mike Haldas, CEO, CCTV Camera Pros	Lantana, FL
Arlen Feldman, Co-Founder, Cherwell Software	Colorado Springs, CO
Ryan Singel, Co-Founder, Contextly	San Francisco, CA
Ken Cooper, Founder, Coopercode	Bellingham, WA
Jack Sheng, CEO, eForCity	Arcadia, CA
Rick Pepper, Founder, Elevengear	Sebastopol, CA
Drew Curtis, Founder, Fark.com	Lexington, KY
Jeff Glueck, CEO, Foursquare	New York, NY
David Rose, Founder, Gust	New York, NY
Scott Resnick, COO, Hardin Design & Development	Madison, WI
Chris Hulls, Co-Founder, Life360	San Francisco, CA
Alex Haro, Co-Founder, Life360	San Francisco, CA
Eric Gundersen, CEO, Mapbox	San Francisco, CA

² See https://www.tilburguniversity.edu/upload/8f3507ab-df1f-46c5-89a4-e1855f171404_Main_Litigation.pdf

Justus Decher, Founder, MyVitalz
David Bloom, Founder, Ordrx
Colin Sullivan, Head of Legal, Patreon
Kevin O'Connor, Mg. Partner, ScOp Venture Capital
Tood Moore, CEO and Founder, TMSoft
Marc Maron, Founder, WTF Podcast
Austin Meyer, Founder, X-Plane

Omaha, NE
New York, NY
San Francisco, CA
Santa Barbara, CA
Arlington, VA
Los Angeles, CA
Columbia, SC