NACS

SUBMITTED VIA E-MAIL

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Re: The Innovation Act (H.R. 9)

Dear Chairman Goodlatte,

On behalf of the National Association of Convenience Stores ("NACS"), I write to express support for the Innovation Act (H.R. 9), which attempts to address the growing threat to our nation's economy by patent assertion entities or patent trolls that threaten and file abusive litigation – often based on illegitimate patent claims – against American businesses, including convenience stores.

NACS is an international trade association composed of more than 2,200 retail member companies and more than 1,600 supplier companies doing business in nearly 50 countries. The convenience store industry is a critical component of the nation's economy, operating approximately 150,000 stores across the United States. In 2013, the convenience store industry generated almost $700 billion in total sales, representing approximately 2.5% of United States GDP. Yet, the convenience store industry is truly an industry of small businesses. Not only are the vast majority of branded outlets locally owned, more than 70 percent of the NACS' total membership is composed of companies that operate ten stores or less, and more than 60 percent of the membership operates a single store.

Patent trolls present a serious and costly threat to the U.S. convenience store industry. Unfortunately, it is quite common for NACS members to receive several patent demand letters each year that threaten litigation should the recipient refuse to pay a licensing settlement fee. Most convenience stores do not have in-house (or outside) patent counsel and they do not have experience in patent litigation. Therefore, it is often cheaper for NACS members to settle a patent infringement claim rather than fight it. Patent trolls know and exploit this, often asserting infringements claims that are not based on a legitimate patent claim.

The high costs associated with this abusive practice present a serious problem. Because most convenience stores operate with a slim one-to-three percent profit margin, patent trolls are particularly detrimental to our industry. All of the additional 'patent troll' costs imposed on NACS members, such as the legal fees needed to fight patent trolls or the licensing fees used to pay them off, are extremely damaging to convenience store owners because they take away already limited funds from investment and other economically productive opportunities. For this

reason, NACS has been actively involved with efforts to reign in abusive tactics by patent trolls through the United for Patent Reform Coalition.

The Innovation Act is an important step towards addressing this problem. Nevertheless, this bill could do more to protect the end users of products, like convenience store owners, from litigation. Typically, the manufacturer of a product – not the customer who buys and uses that product – is the company with the best information and ability to litigate a patent suit. It makes sense, therefore, for manufactures to litigate the key issues in a case about one of their products without later disadvantaging end users who may eventually have to go to court. H.R. 9 needs to strengthen its customer stay provisions to ensure that courts can stay a case against an end user while the manufacturer litigates the major issues.

Because of its potential impact on American businesses, H.R. 9 is a very important piece of legislation, and NACS appreciates the time and effort that has gone into the bill thus far. NACS supports the Innovation Act and its ultimate passage, and hopes that the legislation will be further strengthened to better protect end users of products from abusive litigation as it continues through the legislative process.

Sincerely,

Paige Anderson

Paige Anderson
Director, Government Relations
National Association of Convenience Stores