

December 17, 2013

The Honorable Charles Schumer  
U.S. Senate  
322 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Schumer,

We are writing to express our support for S. 866, the “Patent Quality Improvement Act of 2013.” This legislation further improves the post-grant review process for covered business methods established under the American Invents Act (AIA).

As you know, the flood of business method patents of poor quality which were issued by the Patent and Trademark Office (PTO) in the 1990s has provided predacious patent assertion entities (“PAE’s”) with a powerful tool to extract meritless settlements from financial services firms. These practices have been highlighted in media reports, as well as scholarly papers published by the Federal Trade Commission. In 2009, you along with Senator Jon Kyl of Arizona, led the successful effort to include in the AIA a provision, which provided for the first time, an opportunity for the PTO to review certain business method patents against the best prior art. Important safeguards exist in the original provision to ensure that inventors are not harassed or unduly burdened.

By all accounts, the program has been successful. Not only has the PTO been able to examine prior art and issues of subject matter eligibility to invalidate some low-quality patents, but the courts have better managed their own resources by staying cases pending PTO re-examination. Indeed, several judges have referenced the legislative history which you and Senator Kyl provided as a clear guide to stay cases.

S. 866 improves on your original provision while still maintaining important safeguards. By making the program permanent, you ensure that that full spectrum of low-quality business method patents will be subject to review if asserted under the threat of litigation. No longer will it be possible for PAE’s to wait for the period between the expiration of the program and the expiration of the patent to commence litigation. When the program was originally contemplated, we encouraged Congress to make the program permanent for that precise reason. S. 866 accomplishes this important goal.

We are pleased that Congress has continued to shine a light on patent quality and patent litigation abuse. We believe that S. 866 speaks to both issues. and is critical to clear the landscape of poor quality patents that are most often used by assertion entities in meritless litigation.

We look forward to working with you on this important legislation.

Sincerely,

American Bankers Association  
American Insurance Association  
The Clearing House  
Credit Union National Association  
Financial Services Roundtable  
Independent Community Bankers of America  
NACHA—The Electronic Payments Association  
National Association of Federal Credit Unions  
National Association of Mutual Insurance Companies