



Andrei Iancu, Co-Chair  
David Kappos, Co-Chair  
Judge Paul Michel (Ret.), Board Member  
Judge Kathleen O'Malley (Ret.), Board Member  
Frank Cullen, Executive Director

June 12, 2024

The Honorable Jim Jordan  
Chairman  
House Committee on the Judiciary  
2138 Rayburn House Building  
Washington, DC 20515

The Honorable Jerrold Nadler  
Ranking Member  
House Committee on the Judiciary  
2138 Rayburn House Building  
Washington, DC 20515

The Honorable Darrell Issa  
Chairman  
House Judiciary Subcommittee  
on Courts, Intellectual Property,  
and the Internet  
2138 Rayburn House Building  
Washington, DC 20515

The Honorable Henry C. "Hank" Johnson, Jr.  
Ranking Member  
House Judiciary Subcommittee on Courts,  
Intellectual Property, and the Internet  
2138 Rayburn House Building  
Washington, DC 20515

Dear Chairman Jordan and Ranking Member Nadler, Subcommittee Chairman Issa and Ranking Member Johnson:

On behalf of the Council for Innovation Promotion (C4IP), I write regarding your upcoming hearing on June 12, 2024, on "The U.S. Intellectual Property System and the Impact of Litigation Financed by Third-Party Investors and Foreign Entities."

The Council for Innovation Promotion is a bipartisan coalition chaired by two former directors of the U.S. Patent and Trademark Office. Our board also includes two retired judges from the Court of Appeals for the Federal Circuit, former Chief Judge Paul Michel and Judge Kathleen O'Malley. We aim to promote U.S. innovation and economic competitiveness by championing strong intellectual property (IP) rights. Robust patents and other IP protections that are meaningfully enforceable enable, rather than impede, access to socially beneficial inventions.

We appreciate the Subcommittee's attention to the critical issue of how third-party litigation funding (TPLF) and state-funded entities are shaping the landscape of intellectual property disputes in the United States. This issue has significant implications for our innovation ecosystem, our global competitiveness, and even our national security.

TPLF helps ensure that inventors and small businesses have the financial resources to defend their intellectual property rights against infringement. Patent litigation is

notoriously expensive, often costing millions of dollars.<sup>1</sup> For individual inventors, startups, and small businesses, the prospect of taking on deep-pocketed corporations in court can be daunting, if not financially impossible. By providing funding for meritorious cases, TPLF helps level the playing field and ensure that the strength of a party's patents and legal arguments, not the size of its bank account, determines the outcome.

This is particularly important in the context of infringement of U.S. patents carried out by foreign-owned companies, who sometimes have direct state backing. We know that countries like China have made concerted efforts to acquire American intellectual property by any means necessary, including outright theft, forced technology transfers, and cyberattacks.<sup>2</sup> Another way rival foreign governments can advance their goals is by providing financial and legal support to companies that intentionally infringe on U.S. patents. The scale and sophistication of these efforts are staggering, and the cost to the U.S. economy is estimated to be in the hundreds of billions of dollars annually.<sup>3</sup>

For many small and medium-sized U.S. businesses, the prospect of litigating a U.S. court case against a state-backed patent infringer is simply impossible without outside funding. As a result, many U.S. innovators cannot afford to sue in court when their IP is stolen or misappropriated by foreign companies who may be acting at the behest of a foreign government.<sup>4</sup> This not only harms the individual businesses involved but also undermines the broader incentives for innovation and investment that are critical to American technological leadership.

The same dynamic plays out between startup firms and corporate behemoths, U.S.-based or otherwise. When large corporations infringe on small companies' patents, they force their smaller rivals to either engage in lengthy and expensive litigation or simply accept the theft of their hard-earned IP. Further, firms that lack the resources to defend their proprietary technology in one case often become targets for infringement from other established corporations. TPLF helps correct this power imbalance by providing small firms with the financial and legal resources required to stand up to infringers and discourage future abuses.

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<sup>1</sup> Thompson-Reuters, *Patent Litigation 101*, Legal Blog, <https://legal.thomsonreuters.com/blog/patent-litigation-101/#:~:text=A%202015%20survey%20by%20the,million%20by%20its%202019%20survey> (last visited June 11, 2024).

<sup>2</sup> Erica Pandey, *Rude, Red Awakening: China's Theft of U.S. Tech Is Hard to Stop*, Axios (May 26, 2018), <https://www.axios.com/2018/05/24/china-intellectual-property-ip-theft-trade-war>; House Foreign Affairs Committee, *Egregious Cases of Chinese Theft of American Intellectual Property*, <https://foreignaffairs.house.gov/wp-content/uploads/2020/02/Egregious-Cases-of-Chinese-Theft-of-American-Intellectual-Property.pdf>.

<sup>3</sup> The IP Commission, *The Theft of American Intellectual Property: Reassessments of the Challenge and United States Policy* (2017), [www.nbr.org/wpcontent/uploads/pdfs/publications/IP\\_Commission\\_Report\\_.\\_Update.pdf](http://www.nbr.org/wpcontent/uploads/pdfs/publications/IP_Commission_Report_._Update.pdf).

<sup>4</sup> Pandey, *supra* note 2.

Thanks to TPLF, inventors of every size have better prospects of defending their innovations in court. Of course, to even obtain TPLF, inventors generally need to establish that they have a strong case. Implementing extensive disclosure requirements for TPLF arrangements on top of the normal TPLF due diligence will only make it harder -- if not impossible -- for small businesses, individual inventors, and start-ups to access the justice they deserve, since such requirements could dissuade third parties from partnering with resource-poor patent owners even if they have a meritorious case.

While TPLF is a crucial tool for American inventors and startups to defend their IP rights against infringement, some have raised concerns about the potential for foreign entities to use TPLF to fund lawsuits in the United States as a means of interfering in our legal system. These critics argue that mandatory disclosure of TPLF arrangements is necessary to uncover these foreign influences and protect the integrity of the U.S. legal system. However, these calls for broad disclosure are aimed at stifling inventors' access to TPLF and often rest on hypothetical scenarios rather than concrete evidence of widespread foreign funding of U.S. litigation. In reality, the far more pressing and well-documented threat comes from the systematic theft of American IP by large foreign and domestic actors.<sup>5</sup>

Mandatory disclosure rules aimed at rooting out speculative cases of foreign interference risk upending a system that promotes access to the legal system with a clear upside. By making it harder for plaintiffs to access TPLF, these rules would impede the ability of American inventors and startups to defend their IP rights against very real instances of infringement. The result would be a perverse one -- in the name of safeguarding against hypothetical meddling, we would hamper the tools our innovators need to combat actual IP theft.

Moreover, existing court procedures and ethical rules are more than adequate to address any specific, evidenced instances of improper foreign influence on a case-by-case basis.<sup>6</sup> Broad disclosure mandates, in contrast, threaten to unduly disadvantage plaintiffs by revealing sensitive information about litigation budgets and strategies to their opponents. They also risk painting inventors as mere puppets of "shadowy" funders when, in reality, TPLF is often the only way they can afford to protect their IP rights in a global marketplace rife with infringement.

Third-party support for litigants is well-established in the American legal system. Contingency fee arrangements, pro bono representation, and other external funding mechanisms have a long history of ensuring that meritorious claims get their day in

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<sup>5</sup> *Id.*

<sup>6</sup> Anthony J. Sebok, White Paper on Mandatory Disclosure in Third-Party Litigation Finance 22, Mandatory Disclosure Rules for Dispute Financing, <https://www.law.nyu.edu/sites/default/files/CCJ%20Mandatory%20Disclosure%20Book.pdf>.

court, regardless of the claimant's financial status.<sup>7</sup> Singling out TPLF in patent cases for unique disclosure burdens would create an unfair and illogical double standard.

As the Subcommittee examines these issues, we urge you to prioritize the overarching goals of fostering innovation, protecting intellectual property, and ensuring that our legal system remains accessible to all claimants. Disclosure mandates that deter or penalize the use of TPLF would undermine these objectives and tilt the scales in favor of infringers with the deepest pockets. Instead, the focus should be on strengthening the ability of American inventors and businesses to defend their IP rights against threats, including those from big corporations and state-backed foreign firms.

Thank you for considering our perspective on these critical matters. We look forward to serving as a resource to the Subcommittee as you continue to examine this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Cullen', is positioned below the word 'Sincerely,'.

Frank Cullen  
Executive Director  
Council for Innovation Promotion (C4IP)

cc:

Rep. Thomas Massie, Member, House Judiciary Subcommittee on Courts,  
Intellectual Property, and the Internet  
Rep. Scott Fitzgerald, Member, House Judiciary Subcommittee on Courts,  
Intellectual Property, and the Internet  
Rep. Cliff Bentz, Member, House Judiciary Subcommittee on Courts, Intellectual  
Property, and the Internet  
Rep. Lance Gooden, Member, House Judiciary Subcommittee on Courts, Intellectual  
Property, and the Internet

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<sup>7</sup> Christopher Mendez, *Welcome to the Party: Creating a Responsible Third-Party Litigation Finance Industry to Increase Access and Options for Plaintiffs* 104, 39 Miss. College L. Rev. 1 (2020), <https://dc.law.mc.edu/cgi/viewcontent.cgi?article=1252&context=lawreview>; William C. Marra, *What's So New About Litigation Finance? Disclosure and Regulation of a New Take on an Old Practice* 89, *Mandatory Disclosure Rules for Dispute Financing*, <https://www.law.nyu.edu/sites/default/files/CCJ%20Mandatory%20Disclosure%20Book.pdf>.

Rep. Ben Cline, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Kevin Kiley, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Nathaniel Moran, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Laurel Lee, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Russell Fry, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Ted Lieu, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Joe Neguse, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Deborah Ross, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Adam Schiff, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Zoe Lofgren, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Madeleine Dean, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

Rep. Glenn Ivey, Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet