

(Billing Code: 6750-01S)

FEDERAL TRADE COMMISSION
Agency Information Collection Activities;
Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice and request for public comment.

SUMMARY: The FTC is soliciting public comments on proposed information requests to Patent Assertion Entities ("PAEs") and other entities asserting patents in the wireless communications sector, including manufacturers and other non-practicing entities and organizations engaged in licensing. For purposes of this notice, PAEs are firms with a business model based primarily on purchasing patents and then attempting to generate revenue by asserting the intellectual property against persons who are al

SUPPLEMENTARY INFORMATION: On December 10, 2012, the FTC and the Antitrust Division of the United States Department of Justice (DOJ) jointly sponsored a workshop to explore the impact of PAE activity on innovation and competition. The FTC and DOJ also received public comments in conjunction with the workshop. While workshop panelists and commenters identified potential harms and efficiencies of PAE activity, they noted a lack of empirical data in this area, and recommended that the Federal Trade Commission use its authority under Section 6(b) of the Federal Trade Commission Act, 15 U.S.C. § 46(b), to collect information on PAE acquisition, litigation, and licensing practices. Senator Amy Klobuchar and Representative Daniel Lipinski likewise have called on the Commission to conduct a Section 6(b) study of PAE activity. Responding to these requests and recognizing its own role in competition policy and advocacy, the Commission proposes a Section 6(b) study that will provide a better understanding of PAE activity and its costs and benefits.

I. Description of the Collection of Information and Proposed Use

The proposed study will add significantly to the existing literature and evidence on PAE behavior. Earlier studies have focused primarily on publicly available litigation data and concluded that PAE litigation activity is on the rise. The Commission, however, has unique Congressional authority to collect nonpublic information, such as licensing agreements, patent acquisition information, and cost and revenue data, which will provide a more complete picture of PAE activity.

Because the Commission believes a broader study will enhance the quality of the policy debate surrounding PAE activity, it proposes information requests directed to the following questions:

How do PAEs organize their corporate legal structure, including parent and subsidiary entities? (Request B)

What types of patents do PAEs hold and how do they organize their holdings? (Request C & D)

How do PAEs acquire patents, and how do they compensate prior patent owners? (Request E)

How do PAEs engage in assertion activity (i.e. demand, litigation, and licensing behavior)? (Request F)

What does assertion activity cost PAEs? (Request G); and

What do PAEs earn through assertion activity? (Request H)

² See Patent Assertion Entity Activities Workshop, Fed. Trade Comm. <http://www.ftc.gov/opp/workshops/pae/>

³ Letter from Senator Amy Klobuchar to The Honorable Edith Ramirez, Chairwoman, The Honorable Julie Brill, Commissioner, The Honorable Maureen K. Ohlhausen, Commissioner, and The Honorable Joshua D. Wright, Commissioner (June 24, 2013), and Letter from Representative Daniel Lipinski to The Honorable Edith Ramirez, Chairwoman (June 25, 2013).

“Relating to” means, in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting, in connection with, dealing with, discussing, describing, identifying, reflecting, stating, or summarizing.

“Standard-Setting Organization” or “SSO” means any organization, group, joint venture or consortia that develops standards for the design, performance or other characteristics of products or technologies.

Information Requests

The FTC will have PAE Firms and Other Firms respond to Information Requests A-H. The FTC will have Manufacturing Firms respond to Information Requests A-B and E-H. The instructions will specify the Information Requests to which the Firm is required to respond.

- A. Identification of Report Author: Identify by full name, title, business address, telephone number, and official capacity the individual(s) who prepared or supervised the

- d. the Patent's Class, Subclass, and Art Unit;
- e. the Patent's filing date;
- f. the Patent's issuance date;
- g. the Patent's expiration date;
- h. the maintenance status of the Patent, including whether the Patent has expired for failure to pay Maintenance Fees;
- i. whether the Firm is engaged in post-grant prosecution for any identified Patent application;
- j. whether the Firm has abandoned any identified Patent application;
- k. whether the Firm is engaged in post-grant prosecution for any identified Patent, and describe the nature of the post-grant prosecution;
- l. whether the Firm has engaged in any research and development activities Relating to the Patent, and specify the nature and estimated cost of this research and development activity;
- m. whether any Person(s), other than the Firm, holds any legal rights to the Patent. As part of your response:
 - (1) identify the Person(s) who holds any legal rights to the Patent;
 - (2) describe the nature of the legal rights held;
 - (3) submit all documents(s) Relating to the legal rights held;
- n. whether any Person, other than the Firm, has an Economic Interest in the Patent, and:
 - (1) identify the Person(s) who hold an Economic Interest in the Patent;
 - (2) describe the nature of the Economic Interest held by the Person(s);
 - (3) submit all documents Relating to this Economic Interest;
- o. whether the Patent (or any claim therein) is subject to a licensing commitment made to a Standard-Setting Organization and specify:
 - (1) all Standard-Setting Organizations to which a licensing commitment has been made;
 - (2) all standards to which such a licensing commitment applies;
 - (3) the Person(s) who made the licensing commitment;
 - (4) the date(s) on which the licensing commitment was made;
 - (5) all encumbrances, including, but not limited to, all commitments to license the Patent or any of its claims on reasonable and non-discriminatory (RAND), fair, reasonable, and non-discriminatory (FRAND), or royalty-free (RF) terms;
- p. whether the Firm has included the Patent in any Demand;

- q. whether the Firm has Litigated the Patent; and
 - r. whether the Firm has licensed the Patent to any Person(s).
2. Provide the assignment and Assertion history for each Patent held by the Firm since January 1, 2008. As part of your response, specify:
 - a. all Person(s) to whom the Patent was assigned before the Firm Acquired the Patent and the date(s) of assignment;
 - b. all Person(s) to whom the Patent was licensed before the Firm Acquired the Patent and the date(s) and term(s) of license;
 - c. whether the Patent was Asserted before the Firm Acquired the Patent, and list the Person(s) who Asserted the Patent, the Person(s) against whom the Patent was Asserted and identify whether the Assertion resulted in Litigation(s) or license(s):
 - (1) if the Assertion identified in C.2.c resulted in Litigation, provide all information requested in Request F.2;
 - (2) if the Assertion identified in C.2.c resulted in a license agreement, provide all information requested in F.3;
 - (3) state whether the Assertion identified in C.2.c involved a technology transfer provision, and provide all technology transfer agreements Relating to this response.
 3. Submit all documents Relating to any communication since January 1, 2008 between the Firm and any investor or potential investor, financial or otherwise, Relating to any Patent(s) held by the Firm since January 1, 2008.

D. Patent Portfolio Information:

1. Describe all Patent Portfolios held by the Firm since January 1, 2008; and specify:
 - a. how the Firm organizes the Patent Portfolio(s);
 - b. the numbers of the Patents included in the Patent Portfolio(s); and
 - c. the Firm's valuation of the Patent Portfolio(s) and the date of the valuation.
2. Submit all documents Relating to the Firm's reasons or business strategy for organizing the Patent(s) into Portfolio(s) including but not limited to, market analyses, financial analyses, business presentations to investors and potential investors, and disclosures required by Securities and Exchange Commission or any other Person.

E.

Acquired in bankruptcy, or whether it was acquired from the original inventor;

(5) the financial terms of the Firm's Acquisition of the Patent Portfolio; As part of your response, specify:

(a) whether the Firm paid a lump sum, the amount of the lump sum; the Person(s) to whom the lump sum was paid, and the date the payment was made;

(b) whether the Firm paid, ~~is~~ paying, an ongoing payment, and specify:

i. how the ongoing payment is calculated;

ii. the total amount of the ongoing payment paid as of the date of this Request;

iii. the amount of each individual payment paid as of the date of this Request; the Person(s) to whom each payment was made; and the date of each payment;

iv. the total amount of the ongoing payment expected to be paid in the future; and all Person(s) expected to receive future payments; and

(c) whether another Person(s) ~~contributed~~ contributed financially to the purchase of the Patent Portfolio, and if so, identify the Person(s) and percentage ~~share~~ ownership or other legal entitlement to the licensing or other revenue derived from such Patent(s).

2. Identify each Patent the Firm has ~~sold~~ transferred since January 1, 2008. As part of your response, specify:

a. the Person(s) who Acquired the Patent;

b. the date(s) on which the ~~Person~~ Person(s) Acquired the Patent;

c. the financial terms of the Person(s)' ~~Acquisition~~ Acquisition of the Patent. As part of your response, specify:

(1) whether the Person(s) paid a ~~lump sum~~ lump sum, the amount of the lump sum, the Person(s) to whom the lump sum was paid, and the date the payment was made;

(2) whether the Person(s) paid, ~~is~~ paying, an ongoing payment, and specify:

(a) how the ongoing payment is calculated;

(b) the total amount of the ongoing payment paid as of the date of this Request;

- (c) the amount of each individual payment paid as of the date of this Request, the Person(s) to whom each payment was made; and the date of each payment;
 - (d) the total amount of the ongoing payment expected to be paid in the future, and all Person(s) expected to receive future payments, and
 - (3) whether another Person(s) contributed financially to the purchase of the Patent(s), and if so, identify the Person(s) and percentage share of ownership or other legal entitlement to the licensing or other revenue derived from such Patent(s).
3. Identify any Patent not identified in response to E.1 or E.2 for which, since January 1, 2008, the Firm has had standing to sue and submit a copy of the license agreement that grants the Firm standing to sue.
 4. Submit the Patent purchase or Acquisition agreement for all Acquisitions identified in response to Request E.1.
 5. Submit all documents Relating to the Firm's Acquisitions identified in response to Request E.1, including but not limited to market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.
 6. Submit all documents Relating to the Firm's sales and transfers identified in response to Request E.2, including but not limited to, market analyses, financial analyses, business plans statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.

F. Patent Assertion Information:

1. Demand Information:

- a. identify all Demands sent by, or on behalf of the Firm since January 1, 2008 and specify:
 - (a) all Person(s) to which the Demand was sent;
 - (b) the Patent(s) Relating to the Demand;
 - (c) the total time spent and costs incurred by the Firm, or any Person working on behalf of the Firm, for any research Relating to the Demand, including but not limited to any attempt to compare the allegedly infringing product(s) or process(es) with the Asserted Patent claims;
 - (d) any Litigation initiated by the Firm Relating to the Demand, and the outcome of any such Litigation;
 - (e) any license agreement Relating to the Demand;

- (f) any revenue obtained by the Firm Relating to each Demand, separately listed for each year since January 1, 2008, and for each Patent Portfolio held by the Firm.
 - b. for each year since January 1, 2008, file the Firm's total expenses Relating to all Demands identified in response to Request F.1;
 - c. for each year since January 1, 2008, file the Firm's total revenue Relating to all Demands identified in response to Request F.1;
 - d. submit a copy of each Demand identified in response to Request F.1, and all documents reflecting communications Relating the Demand;
 - e. submit all documents that reflect business strategy or financial research Relating to the Demand(s) identified in response to Request 6.A; and
 - f. submit all license or settlement agreements Relating to the Demand.
2. Litigation Information:
- a. identify all Litigation(s) pending since January 1, 2008 to which the Firm is a party involving any Patent(s) held by the Firm since January 1, 2008. As part of your response, specify:
 - (1) whether the Firm is a plaintiff or defendant in the Litigation;
 - (2)

- (c) the terms of the settlement agreement, and if the settlement included a license or cross-license, all licensing information requested in Request F.3;
 - (9) for each year since January 1, 2008, the costs the Firm incurred for the Litigation;
 - b. for each Litigation identified in Response to Request F.2, submit all orders Relating to disposition of any dispositive motions;
 - c. state whether the Firm has any contingency fee agreement(s) Relating to any Litigation(s) identified in response to Request F.2; and specify:
 - (1) the Person(s) with whom the Firm shares the contingency fee agreement(s);
 - (2) how the contingency fee is calculated;
 - (3) for each year since January 1, 2008, the amount paid pursuant to the contingency fee arrangement; and
 - (4) submit a copy of the contingency fee agreement(s).
3. License Information:
- a. identify all license agreements the Firm entered into with any other Person(s) since January 1, 2008 Relating to any Patent(s) held by the Firm since January 1, 2008. As part of your response, specify:
 - (1) the Patent(s) licensed;
 - (2) the date and length of the license agreement;
 - (3) the licensor(s) and licensee(s);
 - (4) whether the license agreement Relates to any Litigation. As part of your response:
 - (a) identify the Litigation to which the license agreement Relates;
 - (b) for license agreements Relating to any Litigation, state when settlement was reached and when the license agreement was executed, e.g. rate order on a dispositive motion, on the eve of trial;
 - (c) state whether the Court issued an order construing any claim(s) of the Patent(s) asserted before the license agreement was executed;
 - (5) all revenue obtained by the Firm Relating to each license agreement, separately listed for each year since January 1, 2008, and for each Patent Portfolio held by the Firm; and specify:
 - (a) the effective royalty rate, and the base to which it is to be applied;

- (b) state whether this revenue was shared with any Person;
 - (c) identify the Person and the revenue shared;
 - (d) submit the revenue sharing agreement(s);
- (6) all projected revenue expected by the Firm as a result of the license agreement, by year, and the method for calculating the projected revenue, e.g. as a fraction of revenue or a fee per unit sold;
 - (7) whether the license agreement includes any cross-license, and submit a copy of the cross-license;
 - (8) whether the Firm conducted a valuation of the cross-license, and submit all documents Relating to the valuation; and
 - (9) whether the license agreement includes any provisions for technology transfer from the Firm to the licensee(s).
4. For each license agreement identified in Response to Request F.3, submit a copy of the agreement and all documents Relating to the agreement, including but not limited to, documents reflecting communications Relating to the license, documents summarizing sales made by the licensee, and documents reflecting arrangements to share revenue generated by the license.
 5. Submit all documents Relating to the Firm's rationale for all Assertions identified in response to Request F, including but not limited to, market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.
 6. Submit all documents Relating to the Firm's projected gross revenue or return-on-investment for all Assertions identified in response to Request F, including, but not limited to, market analyses, financial analyses, business plans, statements to investors and potential investors, and disclosures required by the Securities and Exchange Commission or any other Person.

G. Aggregate Cost Information:

1. For each year since January 1, 2008, identify:
 - a. the total cost to and amount paid by the Firm Relating to all Acquisitions identified in response to Request F. State whether the Firm shares any fraction of this cost with any Person, and if the answer is yes, specify:
 - (1) the Person(s) with whom costs are shared;
 - (2) how this amount is calculated;
 - (3) the total cost shared to date;
 - (4) any cost expected to be shared in the future;
 - b. the total cost to and amount paid by the Firm Relating to all Assertions identified in response to Request F, and specify:

- (1) the total cost to and amount paid by the Firm Relating to all Demands identified in response to Request F.1. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom costs are shared;
 - (b) how this amount is calculated;
 - (c) the total cost shared to date;
 - (d) any cost expected to be shared in the future;
- (2) the total cost to and amount paid by the Firm Relating to all Litigations identified in response to Request F.2. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom costs are shared;
 - (b) how this amount is calculated;
 - (c) the total cost shared to date;
 - (d) any cost expected to be shared in the future;
- (3) the total cost to and amount paid by the Firm Relating to all License Agreements identified in response to Request F.3. State whether the Firm shares any fraction of this cost with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom costs are shared;
 - (b) how this amount is calculated;
 - (c) the total cost shared to date; and
 - (d) any cost expected to be shared in the future.

2. Submit all documents Relating to all costs and payments identified in response to Request G.

H. Aggregate Revenue Information:

1. For each year since January 1, 2008, identify:
 - a.

b. the total revenue received by the Firm Relating to all Assertions identified in response to Request F, and specify:

- (1) the total revenue received by the Firm Relating to all Demands identified in response to Request F.1. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom revenue is shared;
 - (b) how this amount is calculated;
 - (c) the total revenue shared to date;
 - (d) any revenue expected to be shared in the future;
- (2) the total revenue received by the Firm Relating to all Litigations identified in response to Request F.2. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom revenue is shared;
 - (b) how this amount is calculated;
 - (c) the total revenue shared to date;
 - (d) any revenue expected to be shared in the future;
- (3) the total revenue received by the Firm Relating to all License Agreements identified in response to Request F.3. State whether the Firm shares any fraction of this revenue with any Person(s), and if the answer is yes, specify:
 - (a) the Person(s) with whom revenue is shared;
 - (b) how this amount is calculated;
 - (c) the total revenue shared to date;
 - (d) any revenue expected to be shared in the future;
- (4) any revenue not identified above, shared with any Person(s) and specify:
 - (a) the Person(s) with whom revenue is shared;
 - (b) how this amount is calculated;
 - (c) the total revenue shared to date; and
 - (d) any revenue expected to be shared in the future.

2. Submit all documents Relating to all revenue identified in response to Request 8.

It should be noted that pending this information collection, the destruction, mutilation, alteration, or falsification of documentary evidence within the possession or control of a person, partnership or corporation subject to the FTC Act is subject to criminal prosecution. 15 U.S.C. § 50, see also 18 U.S.C. § 1505.

II. Estimated Burden Hours

Staff will ask respondents to answer several written questions and to provide documents related to the answers provided. Because responses will necessarily vary depending on the respondent, we have provided a range of estimated response times from 90 to 400 hours. The total estimated burden of answering the questions and producing documents per respondent is based on the following:

Organize document and information retrieval: 15 – 50 hours

Identify requested information: 15 – 150 hours

Retrieve responsive information: 20 – 80 hours

Copy requested information: 20 – 40 hours

Prepare response: 20 – 80 hours

Thus the cumulative hours burden to produce documents and prepare the response sought will be between 3,600 (90 hours x 40 companies) to 16,000 (400 hours x 40 companies).

III. Estimated Cost Burden

It is not possible to calculate with precision labor costs associated with answering the questions and producing the documents requested each will entail various levels of management and/or support staff among many di

IV. Request for Comment

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by Section 3506(c)(2) of the PRA, 44 U.S.C. 3506, the FTC is providing this opportunity for public comment before requesting that OMB approve the study. Specifically, the FTC invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information. The FTC encourages recipients of prior compulsory process orders to offer suggestions on how the burden of the proposed collection may be reduced. All comments should be filed as described below, and must be received on or before [insert date 60 days from the date of publication in the FEDERAL REGISTER].

You can file a comment online or on paper for the Commission to consider your comment, we must receive it on or before [insert date 60 days from the date of publication in the FEDERAL REGISTER]. Write "PAE Reports: Paperwork Comment; Project No. P131203" on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, <http://www.ftc.gov/os/publiccomments.shtml>. As a matter of discretion, the Commission tries to remove individual's contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[i]nformation that is secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

⁶ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

