



Statement for
the Hearing
“The Impact of Abusive Patent
Litigation Practices on the
American Economy”

Before the United States Senate
Committee on the Judiciary

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Chairman Grassley, Ranking Member Leahy, and Members of the Judiciary Committee, I am Brad Powers, General Counsel of Kinze Manufacturing, Inc. On behalf of Jon and Marcia Kinzenbaw and Kinze Manufacturing, we are honored to have the opportunity to present testimony today about the profound negative impacts of abusive patent assertions on our company, on innovation, and on our economy.

Kinze Manufacturing, Inc.

Kinze Manufacturing is a leading manufacturer of planters in the United States, but it didn't start that way. In 1956, Jon Kinzenbaw was 21 years old. With \$5 in his pocket, a small bank loan, and a gift for fixing farm equipment, he opened a welding shop in Victor, Iowa. Jon's first patented invention was a plow the farmer could adjust from his tractor. Shortly thereafter, Jon invented the first-ever single axle, low-profile grain cart. After his invention in 1975 of the rear-folding planter toolbar, the company grew quickly. Kinzenbaw himself has been the named inventor for 19 patents for Kinze Manufacturing Inc., and the company holds numerous other patents. Kinze impacts Iowa factory workers as well as farmers and small business owners throughout the country. Today, Kinze is still privately held by the Kinzenbaw family, and has employed up to 1,000 people in the state of Iowa manufacturing high-quality agricultural equipment, providing farmers with the tools they need to help feed the world. Our products are distributed through a network of independently owned dealers located in agricultural states throughout the country.

The Impact of Abusive Patent Tactics on Our Company

Kinze is built on innovation and relies upon a strong and healthy patent system to continue to deliver innovation to farmers. Kinze has asserted its patents against competitors and has successfully defended itself from allegations from competitors. Litigation is part of the process and, when the litigation is with merit, Kinze accepts this. Unfortunately, patent assertion entities take unfair advantage of the patent system and, today, threaten its health.

In 2012, Kinze experienced the impact of a patent assertion entity first hand, when "Clear with Computers" sued Kinze, alleging infringement of two of its patents. Unlike Kinze, Clear with Computers makes no products. What it does make is lawsuits: It has filed over 60 patent cases since 2008. Clear with Computers argued that Kinze.com violated the company's patents for an "electronic proposal preparation system" and "electronic proposal preparation system for selling computer equipment and copy machines" -- in short, the complaint alleged that Kinze infringed the patents by allowing users to search for products and filter search results. This suit cost us many hours of time and significant legal fees before we were ultimately able to resolve the dispute.

That experience has left a lasting impact on Kinze. Farmers rely on access to the latest technology to help them get more out of every acre while reducing their costs and



protecting their soil. But Kinze's contract negotiations with suppliers and service providers now routinely include discussions of allocation of liability in the event of patent assertion. These additional negotiations require additional resources and delay research, development and production of new products, slowing farmers' access to key technology. We are spending more time and effort developing contracts, and thus have less to spend on developing the new inventions that will make farming more productive and efficient.

The allocation of IP liability also limits Kinze's ability to work with small companies. Smaller companies, because of their limited resources, are hesitant to provide indemnification for IP liability. As a result, many smaller companies must decide whether to sign an agreement and accept the risk of defending baseless suits or not accept the business.

Abusive Patent Tactics as a Growing Problem

In the beginning, patent assertion entities seemed to focus on web-based software. This is what Kinze saw in our encounter with Clear with Computers. Unfortunately, the problem seems to be spreading beyond this limited domain. By way of example, companies like Cisco Systems have seen this type of issue in areas such as electronic equipment.

The planters used today have come a long ways since Jon's first folding planter back in 1975. New technology lets farmers precisely target inputs such as fertilizer and insecticide – reducing their costs and benefitting the environment. This technology includes high-tech electronics, GPS location and software. As technology moves to the field, it is no stretch of the imagination to believe the assertion entities will follow.

Moving Forward

The patent system, which was designed to foster innovation and bring the fruits of American creativity to everyone, has been thrown off balance by a few bad actors taking advantage of the high costs and uncertainty of litigation. Congress must step in to restore that balance, and Kinze is ready and eager to be part of that effort. Kinze supports efforts to increase the pleading requirements for filing suit, reduce the costs and burdens of discovery, and increase transparency of ownership in patent litigation. We are clear about who we are, what we own, and what can be done with it -- so should those who say we are infringing their patent rights.

We are innovators ourselves at Kinze, and proud of what we have done -- and will continue to do -- to bring our creativity to bear on the problems faced by modern farmers, and to help them get the best yields out of every acre. Our business is to innovate, so that we can help those farmers feed the world -- and so we would urge caution on provisions which could create significant hurdles for legitimate inventors seeking to enforce their patent rights, such as blanket fee-shifting provisions. There is a balance to be struck, and



we want to be careful to go far enough to take away the incentives from those who abuse the litigation system, and no farther.

Thank you, once again, for giving the Kinzenbaws and Kinze Manufacturing the opportunity to talk on this critical issue. As you consider legislation to address the very real threat posed by patent assertion entities, we strongly encourage you to consult representatives from all industries, including agricultural manufacturing. Improving our patent system is a vital and ongoing process, and we thank you for your commitment to seeking the right balance between providing incentives for innovation and protecting American businesses from the high cost of illegitimate patent assertion.