

Mr. Jonathan Band
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Introduction

Chairman Hatch, Ranking Member Leahy, and members of the Subcommittee, my name is Jonathan Band. I am an attorney in private practice specializing in intellectual property. I am pleased to testify today on behalf of Visa U.S.A. and The Financial Services Roundtable.

The Visa Payment System is the largest consumer payment system in the U.S. and in the world, with more volume than all other major payment cards combined. In the U.S., there are about 14,000 financial institutions in the Visa system. They issue approximately 450 million Visa cards, consisting of almost 280 million Visa credit cards and over 150 million Visa debit cards. Visa U.S.A. member institutions have signed up approximately 5.5 million U.S. merchants to accept Visa payment card products. Annual volume in the U.S. is \$1.3 trillion, of which almost \$1 trillion is in card sales. Last year, Visa cardholders used their cards for over 18 billion transactions in the U.S.

I am also pleased to testify on behalf of The Financial Services Roundtable's Patent and Intellectual Property Working Group, to which Visa U.S.A. belongs. The FSR represents 100 of the largest diversified financial services companies providing banking, insurance, and investment products and services to American businesses and consumers. The Working Group has closely followed and participated in the discussions in different fora in Washington concerning patent quality and patent litigation reform. FSR representatives have testified twice before the House Intellectual Property Subcommittee on patent issues.

The financial services community is intensely interested in patent quality and litigation issues, and is grateful that you are considering these matters. The subject of today's hearings is injunctions and damages, and I will focus my oral testimony on these topics. However, our views on the need for reforming the laws relating to injunctions and damages in patent litigation can be understood only against the background of the serious patent quality problem.

Today, over 800,000 applications are pending in the PTO and Examiners are unable to spend enough time to provide a meaningful examination on complex applications. Regardless of which factors contribute to a lack of patent quality, businesses of all shapes and sizes, including banks, broker-dealers, insurers and finance companies are threatened by a large and growing number of frivolous claims of patent infringement. Currently pending claims of infringement are a serious problem, but they are only the tip of the iceberg because of the lag in allowance of patent applications related to business methods and financial services. After the landmark decision in *State St. Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), the number of pending patent applications that involve financial services have surged generally. Because it typically takes more than three years to procure allowance of applications for business methods (e.g., Class 705), the risk of increased litigation for the financial services industry is now present.

While the Patent Act's provisions concerning injunctions and damages would need adjustment even if the Patent Office granted only valid patents, the patent quality problem makes the need for litigation reform all the more compelling. The possibility of

