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**Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property
Protections in Their Businesses**

Before the Committee on Small Businesses

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Chairman Chabot, members of the committee, thank you for the opportunity to appear before you today. I hope to give you some insight into the value of startups as today's small businesses, and into the experiences we have with patents and the intellectual property system.

I am General Counsel of Expa, a startup studio helping the world's best entrepreneurs build and grow their businesses. Based in California, New York, and Vancouver, we were founded in 2014 to bring together founders, designers, and people with great ideas, and provide a platform for creating companies. We do that in a few ways. First, as a team of entrepreneurs, our partners incubate startups internally, building a company from scratch and nurturing it into a full-fledged business. Second, we work with outside founders who are at the earliest stages of building their companies, advising them and making them a part of the Expa network so that they can benefit from our expertise and resources. And finally, we find the most exciting new teams and ideas, using our capital to invest in them as they take their businesses to the next stage.

We give companies at their earliest stages the foundation and the tools to turn their ideas into businesses. We have incubated 15 companies, and advised and invested in 25 more from across the country. These include Current, a parent-controlled debit card that allows teens to build their financial skills; Spatial, a company building revolutionary virtual reality-based collaboration tools; and Shift, which helps veterans find careers that match their skills, values, and potential, and connects those veterans to today's most promising companies. We are proud to be creating and supporting the companies that will drive the economy forward.

Startups and small businesses like these Expa companies rely on the immense value that the patent system provides to entrepreneurs. It is a system that is meant to reward **true** innovation by allowing a patent holder to reap the benefits of her work while providing a service to the public in sharing her discoveries. When our companies file for patents, they do so knowing they are benefiting the long-term public domain, as well as building their own value.

Filing for patents is a long, arduous, and expensive process. It requires lawyers, months—or years—of back and forth communications with the patent office, and long hours spent sitting with engineers, working through process explanations and revising descriptions. It is difficult and can be frustrating, but when the process works well, you are rewarded with a valuable asset, both for your business and for society. Reforms made by Congress, the Patent and Trademark

Office (PTO), and the courts over the last few years have helped to increase the strength and integrity of the patent system, increasing the likelihood that it does work well.

Unfortunately, these reforms have not been enough to prevent an insufficiently rigorous patent review process and abuse of the system. That is why, for many startups and other small businesses, the only interaction they will ever have with the patent system will come through predatory patent litigation — the dreaded patent trolls.

One of our companies recently went through this nightmare, when it was named, alongside dozens of other companies, as a defendant in a patent infringement suit. Instead of focusing on a big upcoming product launch, the team had to divert its attention to find a law firm and to fight the charge that they were violating a vague patent. Luckily, we at Expa were able to draw upon some of our resources and help them get the complaint dismissed by showing that the company did not even use the underlying technology that the plaintiffs alleged in the complaint. Unfortunately, we know that this will not be the last patent troll that Expa companies will face.

Before joining Expa, I was General Counsel at Kickstarter, the crowdfunding platform. Kickstarter was a place for artists, creators, and entrepreneurs of all kinds to raise funds from their communities to bring their ideas to life. Thousands of restaurants, bookstores, podcasts, gaming companies, and creative spaces got their start on Kickstarter and have been able to sustain themselves through continued funding.

During my time at Kickstarter, we faced five patent troll suits, directed both at Kickstarter and our users. Each of these suits involved low-quality patents, and alleged infringement on the vaguest of terms. We spent more than four years fighting the first of these suits, spending several millions of dollars in total until, eventually, a court ruled that the patent claimed against us was invalid because it attempted to patent an abstract idea. This helped us to establish a precedent of fighting patent troll suits, credibly telling plaintiffs when they tried to come after us that we were prepared to litigate. By doing this, we were able to force them to drop their suits without putting up the tens—or even hundreds—of thousands of dollars that businesses are often forced to pay in order to continue operating under the threat of patent trolls.

Kickstarter was lucky to have the resources to fight these suits. Expa's companies are at earlier stages of their business lives, stretching every dollar to build their products and their businesses. They do not have the same funds to stand up to patent trolls. But they, at least, can take advantage of a network that will help guide them through the terrifying world of patent litigation that opens up when they receive that first demand letter. Most small businesses do not have access to these kinds of resources. They find themselves facing these threats alone, and are forced to either pay a settlement or face years of costly litigation. These situations have a major impact on businesses, leading to changes in strategy, diversion of resources, deferred hiring, and even complete shutdown.

This is the reality that startups and small businesses face because of the proliferation of low-quality patents, particularly in the technology and software spaces. More than 40,000 software patents are granted in any given year. There are certainly many legitimate innovations among these. But too many of these patents are unreasonably vague or incomprehensible, allowing the kind of predatory and extortionist behavior I just described.

Some recent developments have helped improve patent quality: the Patent and Trademark Office's post-grant review process, known as the Inter Partes Review, that allows bad patents to be challenged after they have been granted; and the Supreme Court's *Alice v. CLS Bank* decision, which helped clarify that abstract ideas and processes cannot be patented. But we have a long way to go. And we are heartened by the attention you and the rest of Congress are devoting to this important topic.

Today's small businesses may look different than those of yesterday: they are startups and technology companies, in coworking spaces rather than storefronts, using the internet to reach not just their local communities, but global audiences as well. Yet startups still share so many of the same experiences, excitements, and struggles that small businesses have faced in every generation. They are few people putting everything they have into bringing an idea to life. They are balancing checkbooks, stretching dollars, and working around the clock to build their businesses. Whether that business starts as a small grocery store in Cincinnati and becomes the largest supermarket chain in the U.S., or builds a computer in a garage in California and then becomes the world's largest technology company, the potential of small businesses is vast. And as startups and technology-based companies make up an ever-growing part of the small business landscape, it is incumbent on all of us to protect true innovation, and to allow these businesses to flourish free from the threat of predatory litigation.

Thank you for your time. I look forward to your questions.